

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 06-22
Z.C. Case No. 06-22
(Construction of a Major League Baseball Ballpark – District of Columbia Sports and Entertainment Commission)
July 6, 2006

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on June 26, 2005, to consider an application by the District of Columbia Sports and Entertainment Commission (“DCS.E.C” or “Applicant”), pursuant to 11 DCMR § 1606, for the construction and operation of a Ballpark, which includes a mixed-use development, and ancillary uses in Squares 702 through 706 and Reservation 247 (the “Ballpark Site”) (for use by the Washington Nationals Baseball Club and for entertainment and associated uses. Although the sports stadium and the attached mixed-use development technically comprise one building, the stadium portion will be referred to in this Order as “the Ballpark” and the attached mixed-use development will be referred to as “the Adjacent Development”).

For the reasons stated below, the Commission, on July 6, 2006, voted to grant the application including the Applicant’s request to waive the requirement of 11 DCMR § 1606.7 that all parking within the Ballpark Site be located underground. The waiver is only as to 925 above-ground parking spaces to be located within the Adjacent Development as shown on the Applicant’s plans. All other parking must be underground. In that regard, the Commission denied an alternative request to construct approximately 1,111 parking spaces within two above-ground parking structures at the same location where the Adjacent Development is proposed. Similarly, the Commission denied a request to construct approximately 300 below-grade exposed parking spaces on the southern portion of the site.

As to the provision of ground floor preferred uses governed by 11 DCMR § 1606.14, the Commission is requiring that the Applicant devote 46,000 square feet of gross floor area to such uses along the Ballpark’s perimeter (as shown on the Applicant’s plans depiction “Option Two”) and granted a variance from the requirement that the areas devoted to Preferred Uses have a minimum floor to ceiling height of 14 feet.

The Commission also denied a request for a variance from the requirement of 11 DCMR § 1606.16 that each “building or structure located on the portion of South Capitol Street that lies within the Ballpark Site shall be set back for its entire height and frontage not less than fifteen (15) feet.”

A full discussion of the facts and law relied upon by the Commission follows.

FINDINGS OF FACT

The Applicant

1. The Applicant is the District of Columbia Sports and Entertainment Commission, an independent agency of the District of Columbia government. The Applicant is responsible for the management and operation of Robert F. Kennedy Memorial Stadium, the DC Armory, and their adjacent facilities and for presenting and promoting sports, entertainment and special events in the District and the Washington, DC, metropolitan area.
2. The Applicant cited the Ballpark Omnibus Financing and Revenue Act of 2004 (D.C. Law 15-320; 52 DCR 1757) as authority for it to develop, construct, and lease the Ballpark

The Property and Surrounding Neighborhood

3. The property that is the subject of this application is in Squares 702 through 706 and Reservation 247 (the "Ballpark Site"). The term "Ballpark Site" is also used in 11 DCMR 1606.1 to describe these properties.
4. The Ballpark Site is zoned CG/CR, which permits the construction and operation of a ballpark subject to the approval of the Zoning Commission, 11 DCMR §§ 1606.1 and 1606.18.
5. The property within the Ballpark Site is owned by the District of Columbia, with the exception of the approximately 2 acres of Reservation 247, a federally-owned parcel, which is the subject of a transfer of jurisdiction between the federal and District governments that pre-dates the proposed change of use for this site.
6. The total area of the Ballpark Site is approximately 852,907 square feet and is bounded by South Capitol Street on the west, N Street, S.E. on the north, First Street, S.E. on the east, and Potomac Avenue, S.E. on the south.
7. To the east of the Ballpark Site is a pumping station operated by the District of Columbia Water and Sewer Authority. To the south is a concrete mixing and batching plant, the site of which is the subject of a planned unit development application. To the north and west is a mix of low-density residential and commercial uses, as well as a bus garage owned and operated by the Washington Metropolitan Area Transit Authority.
8. The Naval Yard Metro Station is located at M and Half Streets, S.E., one block north of the Ballpark Site.
9. The Ballpark Site is within the Anacostia Waterfront Initiative ("AWI") area. The vision of the AWI is of a clean and vibrant waterfront with a variety of parks, recreation

opportunities, and places for people to meet, relax, encounter nature, and experience the heritage of the waterfront. The AWI also seeks to revitalize surrounding neighborhoods, enhance and protect park areas, improve water quality and the environment, and, where appropriate, increase access to the water and maritime activities along the waterfront.

10. The Ballpark Site is on the western edge of the Near Southeast Target Area, which is undergoing rapid transition. The Zoning Commission has already given approval to a number of separate development projects, including the Southeast Federal Center site, and the Hope VI Arthur Capper / Carrollsburg site, and the US Department of Transportation Headquarters.
11. The District Department of Transportation (“DDOT”) is currently managing the Environmental Impact Statement process for the reconstruction of South Capitol Street. The street is envisioned as a grand and lively urban boulevard in the tradition of Pennsylvania Avenue and Connecticut Avenue, serving residents and visitors as a principal gateway to the U.S. Capitol, the Anacostia waterfront and the Southwest, Southeast, and Buzzard Point neighborhoods. The impact of the Ballpark on this vision cannot be overstated.

The Application, Hearing, and Decision

12. On May 3, 2006, the Applicant filed an application for the construction and operation of a ballpark, pursuant to 11 DCMR §§ 1606.18 through 1606.24. The Application was amended on June 23, 2006 and supplemented on June 29th (“the application”).
13. The Office of Zoning scheduled a public hearing for June 26, 2006. The Commission provided proper and timely notice of that public hearing on this application by publication in the *D.C. Register* on May 19, 2006, and by mail to Advisory Neighborhood Commission (“ANC”) 6D and owners of property within 200 feet of the Ball Park Site.
14. ANC 6D, the Advisory Neighborhood Commission within which the Ballpark Site is located, was automatically a party in this proceeding.
15. The Commission received no requests for party status.
16. Pursuant to 11 DCMR § 1606.24, the Commission held a meeting on May 25, 2006 to offer preliminary comments on the application. At that meeting, the Zoning Commission raised concerns about certain aspects of the application, particularly the above-ground parking structures and a projection into the South Capitol Street setback to accommodate four observation platforms. The Commission suggested that the DCS.E.C rethink or modify these and other aspects of its proposal.

17. The Commission held a public hearing on this case on June 26, 2006. Commission members present were Vice Chairperson Anthony J. Hood and Commissioners Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull.
18. The DCS.E.C was represented by Mark H. Tuohey, III, Chairman of the Board; William N. Hall, Chairman of the Baseball Committee of the DCS.E.C; and Allen Y. Lew, Chief Executive Officer of the DCS.E.C.
19. The Applicant also presented the testimony of Joe Spear, Susan Klumpp, and Duncan Kirk from HOK Sports, Alan Harwood of EDAW, the Applicant's environmental consulting firm, and Louis Slade of Gorove/Slade, the Applicant's traffic consultant.
20. The testimony of other witnesses is summarized at the conclusion of these finding.
21. On June 29, 2006, the Applicant provided supplemental materials that offered more detailed renderings of portions of the Ballpark.
22. At a special public meeting held July 6, 2006, the Commission granted the application, together with a partial waiver of the requirement for underground parking, and a variance from the minimum floor to height requirement for retail uses. The Commission denied a waiver of the requirement for underground parking to permit 1,111 parking spaces in two exposed parking garages and 300 exposed parking spaces at the Ballpark's south plaza. Lastly, the Commission denied a variance to permit the four observation platforms to intrude unto the 15 foot set back area on South Capitol Street.

The Proposed Development

23. There are three discrete aspects to the application: (a) the Ballpark; (b) the location of parking spaces; and (c) extent of retail, service, entertainment, or arts uses ("Preferred Uses") along the Ballpark perimeter.

The Ballpark

24. The footprint of the Ballpark would occupy approximately 500,000 square feet within the central portion of the Ballpark Site and would have a capacity of 41,000 seats.
25. The Ballpark would have a total square footage of about 1.2 million square feet. This results in a floor area ration ("FAR") of about 1.4. The FAR computation includes an office "annex" adjacent to the planned new South Capitol Street / Potomac traffic circle at the south-west corner of the Ballpark Site.
26. The Ballpark would have a maximum height of 110 feet measured to the top of the roof canopy.
27. The proposed height and FAR are within matter-of-right limits.

28. Certain program elements within the Ballpark would be oriented to allow for non-game-day use, including a restaurant, conference center, Washington Nationals ticket office, and perimeter retail.
29. The Ballpark's orientation from home plate to center field will be towards the northeast. This orientation provides the best fit of the Ballpark onto the shape of the site, and it allows the principal outfield opening to orient towards the Navy Yard Metro Station, from where many, if not most, patrons will arrive to the site.
30. The site plan provides for ample pedestrian sidewalks around the Ballpark. Entrances to the Ballpark would be provided from each surrounding street, with principal entry openings onto a plaza at Half Street S.E. to the north, and onto Potomac Avenue S.E. and the Anacostia Riverfront to the south, funneling people towards the Metro station and the planned entertainment/retail district along Half and First Streets S.E. and along the waterfront, and away from existing residential areas.
31. A south plaza would be partly hard and partly soft landscaping.
32. The Ballpark's façade materials include glass, metal, stone, and masonry.
33. The Ballpark will promote the use of best practice environmental design, including stormwater management and recycling practices.
34. The Applicant's plans depict a projection extending into the fifteen foot set back area required by 11 DCMR § 1606.16. The projection consists of the outermost portion of an internal pedestrian ramp connection between the various levels of the Ballpark. The projection would be up to 15 feet in depth from the façade, and would start at a height of 15 feet above the sidewalk. The projection is depicted in Exhibit G of the Applicant's June 29, 2006 submission.
35. The stated purpose of the projection is to offer Ballpark patrons a view of South Capitol Street and the Capitol Dome.
36. The projection is not required as a result of any exceptional condition affecting the property.
37. Whatever nominal value this projection might add to a visitor's experience is outweighed by its interference with the views of those on South Capitol Street.
38. These platforms will also pose significant danger to pedestrians in this area from objects that might fall or be tossed from these areas. The clear line of sight these platforms will have to the Capitol presents a clear security risk.

39. The scoreboard would be located in the northeast corner of the Ballpark Site. The defined height will be 80 feet to the top of the scoreboard (as measured from South Capitol Street). This location is as far from South Capitol Street as possible, which allows the scoreboard to be partially screened by the rest of the Ballpark from motorists and pedestrians on South Capitol Street.
40. Field lighting utilizing a band of lights will be incorporated into the uppermost roof canopy. This will reduce light spill, minimize the need for lights on standards, and will minimize the visibility of the lights themselves, particularly as seen from outside the structure. These will be augmented by two free-standing light towers in areas of the outfield not covered by the canopy roof.
41. Consistent with the requirements of Major League Baseball, the playing field must have high intensity light (250 foot candles) directed towards the pitching mound. However, the Commission accepts the conclusion of EDAW, the Applicant's environmental consulting firm, that horizontal light spill will be limited to an area adjacent to the open northeast end of the Ballpark, where light levels would reach 5 to 6 candles. Light levels in the existing residential areas west and northwest of the Ballpark would not increase over existing nighttime levels of 2 to 3 candles.
42. Although the vertical effect of the Ballpark's lighting, known as "night glow", will temporarily reduce the ability to observe the nighttime sky in the immediately adjacent areas, the view of the Capitol Dome will not be significantly diminished from most vantage points.
43. The most significant external signage will be a naming rights sign on the Potomac Avenue elevation, at a height of 62 feet above the plaza below. The lettering proposed would be 17 feet tall and visible from the proposed new bridge, the waterfront, and from Potomac Avenue.. This naming sign is depicted in Architectural Sheet 40 of the Applicant May 18, 2006 submission
44. Another naming rights sign will be located twenty feet above the turnstiles on the Half Street plaza.
45. The potential adverse impact of the proposed signage will be mitigated by a condition controlling the number, location, and lettering of the naming rights signs.
46. The Applicant has submitted a Preliminary Transportation Operations Plan ("PTOP"), which sets forth goals and timeframes towards the creation of a final Transportation and Operations Plan. As envisioned, the final plan (which will take approximately two years to complete) will include traffic mitigation and traffic flow measures designed to encourage use of alternative forms of transportation and measures designed to address traffic flow and pedestrian, parking, and vehicular conflicts.

47. The PTO concluded that most patrons would arrive to the Ballpark by mass transit, but that the Ballpark would still have a parking demand of 4,500 spaces for both Ballpark patrons and employees. In addition to the 1,225 parking spaces that will be constructed on the Ballpark Site, additional spaces are expected to become available through adjacent private parking facilities and remote parking areas.
48. The Applicant and DDOT have entered into a Memorandum of Agreement (“MOA”), delineating the Applicant’s commitment to devising and using its best efforts to obtain funding for improvements to Ballpark traffic operations, and infrastructure.
49. Pursuant to the MOA, the Applicant is to provide DDOT with a final Traffic Operations Plan no later than April 30, 2007. DDOT has the absolute right to modify the draft plan. Prior to DDOT consenting to any building permit, the Applicant must provide information that addresses streetscape and public realm design, street tree and storm water management, and traffic and parking management, including “detailed plans for the location of parking facilities”.

Parking

50. Section 1606 of the Zoning Regulations, which governs the Ballpark use, does not specify a minimum parking requirement, but allows no more than 1,225 parking spaces within the Ballpark Site. The 1,225 parking spaces equates to the minimum number of spaces required under the District’s contract with Major League Baseball.
51. The Zoning Regulations further provides that all such parking must be underground. 11 DCMR §1606.7.
52. The Applicant proposes to locate 1,225 parking spaces within the Ballpark Site and has requested the Commission to approve two alternatives for doing so, both of which would require partial or total relief from § 1606.7.

The Structured Parking Alternative

53. The first alternative is to locate 1,111 above-ground parking spaces in two large stand-alone structures situated opposite each other at northernmost part of the Half Street plaza, which will serve as the principal entrance to the Ballpark.
54. The remainder of the 1,225 parking spaces proposed (114 spaces) would be located beneath a grass-covered area at the southern portion of the Ballpark site.
55. The garages would be designed to accommodate 36,000 square feet of retail uses and to screen parked vehicles from the view of spectators in the concourse level and within the seating bowl. There would be no significant ground floor retail on the portion of the east structure that abuts the Half Street plaza, and the retail facing First Street is interrupted by

a garage entrance. The structures would not be reinforced so as to permit the construction of uses attached to their uppermost level.

56. The above-grade parking structures would interject two square blocks of mundane architecture into an area intended to be pedestrian-oriented and a showplace for cutting edge building design. In the space where residential, hotel or commercial uses should be, there will be rows of parked vehicles on game days and empty spaces at most other times. Taken together, these factors will limit opportunities for the area surrounding the Ballpark to become the vibrant retail and entertainment district as planned.

The Wrapped Parking Alternative

57. As an alternative to the two exposed parking garages, the Applicant proposes to reduce the number of above-ground parking spaces at the northern portion of the Ballpark Site from 1,111 to 925 and to “wrap” those spaces within a large mixed-use development, (the “Adjacent Development”).
58. Along N Street, the above-grade parking would be fully wrapped by retail and residential uses.
59. On First and South Capitol Streets, parking would also be wrapped by retail, and sales office uses, a lobby, and amenity space.
60. Above street level, parking would extend out to South Capitol Street, but would be clad in ways to eliminate openings for ventilation, and to match a residential character. Along First Street S.E., the ground level parking would also be hidden behind other uses.
61. In addition, the Adjacent Development would include 8 levels of residential uses with approximately 672 units of housing totaling approximately 725,000 square feet. There will be 63 units set aside for affordable housing, which is roughly 10.5% of the total. Of these, 10% would be priced at 80% AMI; 5% would be at 60% AMI, and 5% would be at 30% AMI.
62. There would also be a 180-room boutique hotel use facing 1st Street S.E. totaling approximately 92,000 square feet, 26,000 square feet of street level retail along N Street, and baseball-oriented retail facing the ballpark entry plaza.
63. In addition to the 925 parking spaces that would be devoted to the Ballpark use, the Adjacent Development would contain 1 ½ levels of underground parking for residential, retail, and hotel uses (approximately 700 spaces).
64. Above grade, the mass of the Adjacent Development would be broken in two halves, or towers.

65. The Adjacent Development would be located within a slightly larger footprint than the exposed garages.
66. Because the Adjacent Development would be connected to the Ballpark through an above-grade conditioned pedestrian bridge, the two uses would constitute a single building.
67. The total FAR of the combined building (i.e. the Ballpark and the Adjacent Development) would be 2.95 (2,515,478 of gross floor area divided by a lot size of 852,907 square feet), which is within the matter-of-right limit.
68. The architecture of the Adjacent Development compliments that of the Ballpark, but also represents a bold and welcomed departure from what has become the standard look of new apartment houses.
69. The Adjacent Development will augment and enhance the Preferred Uses to be located at the Ballpark's perimeter. In contrast to the exposed parking structures, the Adjacent Development will further the economic development of this area, by offering a mix of uses that will draw District residents and visitors to this area throughout the year, not just on game days.
70. In order to maintain the 1,225 parking spaces originally proposed, the Applicant would increase the number of parking spaces in the southern portion of the site to 300. Although some of the parking spaces would be below-grade, none would be "underground" (i.e. covered over by the ground") as required by § 1606.7. The area that was to be a lawn would now be exposed, except for tent-like tensile structures.
71. This disposed parking area would disrupt the visual continuity of the Ballpark at this location.
72. As to this parking location, the Applicant has identified no exceptional condition of the property or practical difficulty resulting from any such condition that would prevent it from strict compliance with the underground parking requirement of 11 DCMR § 1606.7. Indeed, the fact that the Applicant proposed underground parking for this area, albeit for a lesser number of vehicles, argues against the existence of any impediment to strict compliance.

Preferred Uses

73. The Applicant proposed to construct 32,000 square feet of gross floor area devoted to Preferred Uses around the Ballpark perimeter, ("Option One"). The uses would be located mainly on First Street S.E., with some retail also on South Capitol Street, and facing the plaza at N Street.

74. The Applicant also sought approval to construct an additional 18,000 square feet of Preferred Uses (“Option Two”) should the necessary funding be identified. The additional 18,000 feet would be achieved by pushing out the depth of the Preferred Uses along First Street closer to the building restriction line.
75. Options One and Two are depicted on Sheets A1 and A4, respectively, in Tab 2 of the Applicant’s May 19, 2006 submission.
76. Under either option, the Preferred Uses would occupy at least 20% of the Ballpark’s perimeter as required by the first paragraph of 11 DCMR § 1606.14.
77. Portions of the areas devoted to Preferred Uses have less than the 14 feet of minimum floor to ceiling height required by 11 DCMR § 1606 (d).
78. The average depth from the exterior façade in towards the center of the building for the 32,000 square feet of gross floor area devoted to Preferred Uses under Option One is 37.3 feet, which is less than the 40 foot minimum required under 11 DCMR § 1606.14 (e). However, the average depth of the 46,000 square feet of Preferred Uses to be provided under Option Two exceeds that requirement.
79. In providing for the height of the Preferred Uses, the designers were limited by economic considerations related to the operational costs of the facility and by the need to accommodate necessary infrastructure.

Testimony of Elected Officials

80. The Mayor of the District of Columbia, the Honorable Anthony A. Williams, testified at the public hearing in favor of the Ballpark and Adjacent Development, which he considered to be a catalyst for development in the area. He nevertheless urged that the Commission to permit the construction of the exposed parking garages in the event that Adjacent Development could not proceed as planned. Councilmember Sharon Ambrose offered similar testimony. Councilmember Marion Barry presented testimony concerning the Ballpark and the many challenges it posed.

ANC Report

81. By written report dated June 15, 2006. ANC 6D expressed its unanimous opposition to the application based upon the placement of parking structures above-ground, the absence of an “environmental plan”, and the lack of both a traffic plan and a pedestrian plan that includes the surrounding neighborhood.
82. Andy Litsky, Chairman of ANC 6D, testified in opposition to the application. Chairman Litsky urged the Commission to reject structured parking on the northern portion of the Ballpark Site. Chairman Litsky stated that the ANC believes that as much space as

possible on the Ballpark Site should be devoted to providing positive community amenities, which could not be accomplished by using the northern portion of the site for above-ground parking.

83. Mr. Litsky noted that the ballpark would have the largest footprint of any building along the Anacostia River, yet there exists no clearly articulated environmental plan. He also emphasized the lack of a Traffic Operations Plan and described the Applicant's Preliminary Traffic and Operations Plan as being "narrow in scope and flooded with inconsistencies."

Government Reports and Testimony

The District Department of Transportation (DDOT)

84. DDOT filed a report with the Commission on June 19, 2006. The report noted that while the application offers some general comments "on dispersal of parking facilities, protection of neighborhood parking and streets from Ballpark-generated traffic, traffic control for pedestrian safety, and special signal timings during Ballpark events, there is no meaningful detailed description of *how* these goals will be achieved" (emphasis supplied).
85. As to traffic demand, the report noted, "the roadway network around the Ballpark is seriously constrained and cannot support a high incidence of automobile travel to games and events." DDOT concluded that it was critical that the Applicant provide facilities and incentives to encourage travel by alternative modes including walking, biking, and public transit.-
86. DDOT, like the ANC, was concerned over the absence of a detailed transportation and operations plan, which it believed was "critical to resolving many of the issues described in this memorandum". Nevertheless, in view of the time constraints involved, DDOT indicated that it would support the application if it there existed a Memorandum of Agreement "that specifies the Applicant's commitments for devising and funding improvements to transportation operations and infrastructure."
87. At the hearing, Kenneth Laden, testifying on behalf of DDOT, indicated that the Memorandum of Agreement submitted to the Commission by the Applicant satisfied DDOT's concerns.

The Office of Planning

88. The Office of Planning ("OP") filed a report with the Commission on June 19, 2006, which stated its general support of the proposal. The report concluded that the proposed Ballpark would further the goals and objectives of the District's Elements of the Comprehensive Plan and the Capitol Gateway Overlay District. OP was, however,

unable to recommend that the Zoning Commission approve the Application because of the above-grade parking structures, which it concluded were “contrary to the wording and intent of the Overlay and other planning initiatives for the area.” OP was also concerned with the level of retail uses proposed under Option One.

89. In response to the Applicant’s amended application, which included the Adjacent Development, OP submitted a Supplemental Report dated June 26, 2006. The Supplemental Report indicated that Applicant’s revised proposal “significantly change[d] the form of development on the site and the degree to which the development conforms to the regulations and guidelines of the Capitol Gateway (CG) Overlay District and other planning efforts for the Ballpark area.” OP nevertheless expressed concern with the change to parking on the South Plaza, because it would replace the lawn panel with partially exposed parking that would be visible from the Frederick Douglass Bridge. The report did not provide an analysis of the stand-alone parking structures because the facilities were not the Applicant’s preferred alternative, and because “these structures generally are not consistent with the intent of the CG Overlay goals and guidelines.”
90. Ellen McCarthy, the Director of the Office of Planning, and Joel Lawson, its Associate Director for Planning and Development, testified on behalf of OP. The witnesses emphasized their support for the Ballpark, the Adjacent Development, and the retail opportunities provided along First Street either in Option One or Option Two of the application.
91. On July 5, 2006, OP submitted a post-hearing supplemental report in which it again reiterated its lack of support for the exposed parking on the South Plaza area of the Ballpark Site, finding that the introduction of the tent-like structures would do little to reduce the visibility of parked vehicles. OP stated its general support for the affordable housing provisions of the new development, the environmental measures described by the Applicant to be implemented at the Ballpark, and the MOU between the Applicant and the DDOT.

CONCLUSIONS OF LAW

On November 4, 2005, the Zoning Commission for the District of Columbia published ZC Order No. 05-08, in which it gave notice of its final adoption of rules governing the use and area requirements for a major league baseball Ballpark to be located on Squares 702 through 706 and Reservation 247, defined therein as the “Ballpark Site”. Six months later, the Applicant filed an application for approval of a ballpark on that site. A major amendment, described as a “Supplement”, was filed less than two weeks before the hearing.¹

¹ An application may not be modified less than twenty days before a hearing, 11 DCMR § 3013.8. Although the Applicant did not request leave to modify its application, the Commission permitted the amendment in the public interest.

The application asked for relief from the requirement that any parking within the Ballpark Site be underground. The Applicant also sought variances from the depth and height requirements for Preferred Uses and to allow an interior ramp to extend into the 15-foot set back established for South Capitol Street. This Order will first address the zoning relief and variance requests.

Relief from the Requirement of Underground Parking

Section 1606 established no minimum parking requirement within the Ballpark Site. The District's contract with Major League Baseball did. In that agreement, the District promised to construct 1,225 parking spaces on site, of which 300 would be reserved for team personnel, and the remaining 925 for season ticket holders and persons with disabilities. All of these parking spaces were to be constructed prior to Opening Day 2008.

Consistent with its contractual obligation, the Applicant proposes to construct 1,225 parking spaces within the Ballpark Site, and offers two alternatives for doing so. The first alternative is to construct 1,111 parking spaces in two above-ground structures at the Half Street plaza. The garages would not be structurally able to support development above their uppermost level and retail uses would be interrupted by garage entrances. The remaining 114 parking spaces would be located completely underground at the South Plaza.

As an alternative to the exposed garages, the Applicant proposes to wrap 925 parking spaces in an attractive mixed-use development, which will include a significant amount of residential uses, a hotel, and additional ground floor retail. The parking spaces would be effectively hidden from the Ballpark's spectators. The Applicant refers to this development as its "Preferred Alternative". The Commission concludes it is the only viable choice.

The standard by which to judge the Applicant's request for relief from the underground parking requirement is set forth in 11 DCMR 1606.7, which allows the Commission to approve above-ground parking upon a showing of:

- (a) Practical difficulty with the provision of underground parking; and
- (b) Compliance with the provisions of §§ 1606.19 and 1606.20.

The Applicant cites the Council's cap on public funding for Ballpark construction, the escalating costs of materials, and the small amount of time left before April 2008 as the circumstances constituting practical difficulties to the construction of underground parking. Although the Applicant offered scant detail to support these assertions, it does seem clear that the Council's cap will not allow for the construction of both a first-class Ballpark and significant portions of underground parking. The increase in the cost construction materials has no doubt made matters worse. To quote the Mayor's testimony, "we are where we are."

Although practical difficulty may exist with respect to underground parking at the northern portion of the site, the Applicant has not explained, let alone demonstrated, why these same

circumstances make underground parking at the South Plaza impractical. No such circumstances existed at the time of the Applicant's initial filing, because its plans showed 114 vehicles covered over by a lawn. Its amended Application showed a total of 300 vehicles below grade, but not covered by ground surface. While this increase in parking spaces was obviously related to the reduction of parking at the northern portion of the site, there is no similarly evident reason for replacing lawn cover with a parking pit at the south, and none was offered. If vehicles are to be located at this portion of the site, they must be located underground with accessible plaza or landscaped area above, as shown in the original plans.

The finding of practical difficulties for the provision of underground parking at the northern portion of the site does not end the inquiry. The Applicant was required to demonstrate that the proposed above-ground parking complied with the provisions of §§ 1606.19 and 1606.20. The Applicant made no real effort to make this showing with respect to the exposed parking garages, perhaps because such a showing was not possible.

The Commission need only address the first criteria of § 1606.20, which requires that any proposed building must "help achieve the objectives of the CG Overlay District as set forth in § 1600.2." Among other things, § 1600.2 indicates that the CG Overlay was created to "assure the development of the area with a mixture of residential and commercial uses" and to "[e]ncourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses". The parking structures will not only fail to "help achieve" these ends, they will act as an impediment. While the structures would provide for ground floor retail, the placement of such uses is problematic and interrupted by garage entrances, particularly at the Half Street plaza and along First Street. While the architects have tried to enliven these structures, they would, if constructed, be hinder broader planning efforts by taking up space that should be filled with more vibrant residential, hotel, or commercial uses.

In sum, the Applicant's parking structure alternative is a poor use of this critical area of land imaginable. It would squander a one-time, irretrievable opportunity to create a vibrant, year-round retail and entertainment district at this site. This is not a fallback position, as the Applicant suggests, but a retreat from good planning and land use, which this Commission will neither countenance nor approve.

In contrast, the Adjacent Development proposed at this same location easily complies with all of the criteria of §§ 1606.19 and 1606.20. Rather than inhibit the creation of a year-round retail and entertainment district, this development together with the Ballpark would act as a catalyst. For these reasons, the Commission grants the Applicant's request to construct 925 above-ground parking spaces to be wrapped on the north, west, and east sides with residential and retail uses located within the Adjacent Development. No other type of above-ground parking on the Ballpark Site is permitted.

Variance Relief

The Applicant has requested variances from the minimum floor to ceiling height and depth of Preferred Uses, required by § 1606 (d) and (e), and to permit a circulation / observation tower to extend into the 15 foot setback on South Capitol Street established by § 1606.16. However, the Preferred Use depth variance is no longer needed. Although the Applicant had committed to providing 32,000 square feet of gross floor area devoted to Preferred Uses, and indicated it would add another 18,000 square feet should funding become available, the Commission is requiring that all 46,000 square feet be constructed.

The Commission would not ordinarily mandate a requirement of this kind. However, this is a unique application, and the Applicant is not a private entity, but part of a municipal corporation that has made a policy decision to cap public funding for this project. It is not for the Commission to second-guess that determination. But neither is the Commission bound to consider that cap, or the applicant's priorities in meeting that cap, as an absolute constraints on its prerogatives. In this case, the Commission believes that the full 46,000 square feet of Preferred Uses at the Ballpark's perimeter is needed to ensure the successful development of retail and entertainment uses to its north.

The additional 18,000 square feet of Preferred Uses will extend the average depth of these uses to more than the 50 foot minimum required by § 1606.16 (e), thereby eliminating the need for variance relief and ensuring the provision of practical and operational retail space. The Commission therefore need only consider the variance from the minimum height requirement, along with the requested projection into the South Capitol Street setback.

Variances from the strict application of the Zoning Regulations may be granted where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property." D.C. Official Code § 6-641.07(g)(3) (2001). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *Id.*

The establishment of a modern baseball Ballpark in an urban setting is an exceptional condition in and of itself. Trying to squeeze such a facility into an area as small as the Baseball Site required an imaginative use of available building space, which is clearly on display in this design. The architects could not furnish the needed amount of perimeter retail and also provide needed infrastructure without a reduction of some portions of the retail height to less than 14 feet. The reduction of height to 13 feet in some portions of the retail space is relatively small and will neither harm the public nor impair the intent of the regulations for this site.

The same cannot be said of the proposed setback projection, which was entirely a matter of choice. In response to a Commissioner's suggestion that there must have been some physical

constraint that required the projection, the Applicant's witnesses adamantly maintained that the projection existed only to enhance the experience of Ballpark visitors. There is no exceptional condition of the property that necessitates this projection and no practical difficulty to the Applicant will result from its elimination. Moreover, these unattractive platforms would interrupt the South Capitol Street streetscape and impair the views of those on the sidewalk. This portion of South Capitol Street is not intended to become irrelevant on those days and months when baseball is not being played. It is intended to be a monumental boulevard during all seasons. Whatever enjoyment Ballpark patrons might derive from these areas is outbalanced by the detrimental impact on the pedestrians below, both in terms of aesthetics and safety. In the latter regard, it only takes a quick look at the rendering titled "view from South Capitol ramp" in the Applicant's June 29, 2006 submission to understand the security risks posed by these platforms.

The Applicant's request for a variance from the South Capitol Street setback requirement is denied and its request for a variance from the minimum floor to ceiling height for Preferred Uses is granted.

Having now defined the Ballpark to include the Adjacent Development and 46,000 square feet of Preferred Uses around the Ballpark's perimeter, the Commission approves the application to construct and operate this Ballpark. The Ballpark will meet the specific requirements of § 1606, except for the two aspects (above-ground parking and retail height) for which a waiver and variance has been granted, and complies with the requirements of §§ 1606.19 and 1606.20.

Both the Ballpark and the Adjacent Development represent exemplary architectural design that will result in a lively and safe streetscape, not just on game days, but throughout the year. It has been designed to be compatible with plans for the surrounding area and to minimize Ballpark noise and light spill to existing neighborhoods to the west.

The Preliminary Traffic Operation Plan sets forth the measures needed to minimize parking and traffic conflicts and vehicular and pedestrian conflicts on the neighborhood and the United States Capitol and to provide for safe and convenient movement to and through the Ballpark Site so as to minimize potential impacts on both the neighborhood and the United States Capitol. These measures will be implemented through a final Traffic Operations Plan that must be approved by DDOT pursuant to a Memorandum of Agreement.

The Ballpark will promote the use of best practice environmental design, including stormwater management and recycling practices. The Commission encourages the Applicant to include green roofs on the concourse restaurant, the portion of the Ballpark adjacent to the scoreboard and the preferred use space along First Street/Potomac Avenue.

Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309.10(d)(3)(a)), the Commission must give great weight to the issues and concerns raised in the written report of the affected Commission. In addition, the Commission is required under § 5 of the Office of Zoning

Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04(2001)) to give great weight to Office of Planning recommendations.

Both OP and the ANC 6D expressed concerns that exposed parking structures would be a poor use of the land adjacent to the Ballpark. The Commission found this advice persuasive and therefore denied the Applicant's request for relief from the requirement of underground parking based upon the use of such structures. For the reasons stated in this Order, the Commission did not find the ANC advice persuasive with respect to traffic and parking issues, finding that the Preliminary Traffic Operations Plan and the Memorandum of Agreement will fully address Ballpark-related parking and traffic issues. The Commission also finds that the ANC's environmental concerns will be resolved as part of the building permit process. Lastly, the Commission agreed with OP that the area surrounding the Ballpark would benefit from an increased amount of retail around the Ballpark perimeter and generally agreed with OP's recommendation that the Ballpark, as described herein, should be approved.

DECISION

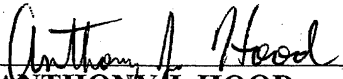
In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia orders **APPROVAL** of the Application for the construction and operation of a Ballpark, the Adjacent Development, and ancillary uses in Squares 702 through 706 and Reservation 247, except with respect to the zoning relief and variances denied. This approval is subject to the following conditions:

1. The Ballpark and the Adjacent Development shall be developed in accordance with the plans prepared by the architects for the Applicant and submitted to the Commission on May 3, 2006, June 23, 2006, and June 30, 2006, as modified and approved by the Commission as set forth herein, including the construction of the 46,000 square feet of gross floor area space to be devoted to Preferred Uses around the Ballpark perimeter in accordance with Option Two as depicted on Sheet A4 in the Options Appendix of the Applicant's May 3, 2006 application.
2. There shall be 1,225 parking spaces within the Ballpark Site, of which 925 may be above-ground; provided that such above-ground spaces are wrapped within the Adjacent Development as depicted on the Applicant's plans.
3. Parking areas that are not hidden from the public's view shall be clad in ways to eliminate openings for ventilation and to match a residential character.
4. There shall be no more than two principal external naming rights signs. One sign may be mounted approximately 62 feet above the entrance on Potomac Avenue with lettering no more than 6 feet high. A second sign may be located on the N Street entrance just above the turnstile canopy approximately 20 feet above the plaza.


5. The Applicant is required to comply fully with the provisions of the Human Rights Act, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 *et seq.* (act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the act will not be tolerated. Violators will be subject to disciplinary action.

On July 6, 2006, the Commission voted to **APPROVE** the Application by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons and Michael G. Turnbull to approve; Carol J. Mitten, not present, not voting), except that Vice Chairman Hood voted in opposition to the requirement that the Applicant provide the additional Preferred Uses depicted in Option Two.

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on DEC - 1 2006.



ANTHONY J. HOOD
VICE CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF ZONING



Z.C. CASE NO.: 06-22

DEC 05 2006

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 06-22 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Ed Rich, Esq.
Richard B. Nettler, Esq.
Robins, Kaplan, Miller & Ciresi
1801 K Street, N.W.
Suite 1200
Washington, D.C. 20006
3. Andy Litsky, Chair
ANC 6D
25 M Street, SW
Washington, DC 20024
4. Commissioner Robert Siegel
ANC/SMD 6D07
919 5th Street., SE
Washington, DC 20003
5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
6. Councilmember Sharon Ambrose
7. Office of Planning (Ellen
McCarthy)
8. Ken Laden, DDOT
9. Bill Crews, Zoning Administrator
10. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002
11. Office of the Attorney General
(Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "Sharon S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning