

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** *JL* Joel Lawson, Associate Director, Development Review  
Jennifer Steingasser, Deputy Director, Development Review and Historic Preservation

**DATE:** September 22, 2022

**SUBJECT:** ZC #06-22A – Ballpark  
Modification of Consequence to a condition of approval for the PUD, for the amount of space to be provided for Preferred Uses,

**I. BACKGROUND**

On July 6, 2006, the Zoning Commission approved PUD 06-22, a PUD for the Baseball Stadium site. As explained in the applicant’s filings (Exhibit 2), for reasons of financing and expediency, the building was not constructed consistent with the Order, in terms of the amount of Preferred Uses space provided around the perimeter of the building. The order required a minimum of 46,000 sq.ft., and the building was constructed with approximately 17,000 sq.ft., located along First Street SE. The Ballpark was completed in 2008, and according to the application, has been operating under temporary certificates of occupancy (CofO’s) since then.

The applicant is requesting modifications to conditions of the original Order, to reduce the amount of space for Preferred Uses, consistent with what was constructed; to establish a timeframe by which this space shall be “built out”, and to remove a requirement that the ground level of the constructed parking structures be “wrapped” with other street activating uses.

**II. RECOMMENDATION**

The Office of Planning (OP) finds that this application, to modify conditions of approval for the original PUD, can be considered a modification of consequence and recommends approval.

**III. APPLICATION-IN-BRIEF**

<b>Applicant</b>	Events DC
<b>Location of PUD</b>	1381 First Street SE; Square 0705, Lot 804
<b>Ward and ANC</b>	Ward 6, ANC 6D (note –this location is within an area to be redistricted to Ward 8, ANC 8F in 2023)
<b>Zone</b>	CG-4

#### IV. MODIFICATION REQUEST

Item	Original Order	Requested Modification
1. Sq.ft. of publicly accessible Preferred Use space	46,000 sq.ft. required	Reduce requirement to 17,000 sq.ft.
2. Building permit application for publicly accessible Preferred Uses	Not specifically stated	No later than six months from the effective date of this modification order
3. Above grade parking structures	Required to be wrapped with retail uses, consistent with the approved plan.	Removal of the requirement that the parking structures be wrapped.

Subtitle Z of the Regulations defines a modification of consequence as follows:

- 703.3 For the purposes of this section, the term “modification of consequence” shall mean a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.
- 703.4 Examples of modification of consequence include, but are not limited to, **a proposed change to a condition in the final order**, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.

Modifications of significance are defined as follows:

- 703.5 For the purposes of this section, a “modification of significance” is a modification to a contested case order or the approved plans of greater significance than a modification of consequence. Modifications of significance cannot be approved without the filing of an application and a hearing pursuant to Subtitle Z § 704.
- 703.6 Examples of modifications of significance include, but are not limited to, a change in use, change to proffered public benefits and amenities, change in required covenants, or additional relief or flexibility from the zoning regulations not previously approved.

A modification of consequence requires the establishment of a timeframe for the parties in the original proceeding to file comments on the request and the scheduling of a date for Commission deliberations. A more substantive “modification of significance” requires the holding of a public hearing, in accordance with Subtitle Z § 704.

In this case, the applicant is requesting modifications to conditions of the Order, and no new zoning relief is requested. This is consistent with the definition for a modification of consequence.

#### V. OP ANALYSIS

##### Amount of Preferred Use Space:

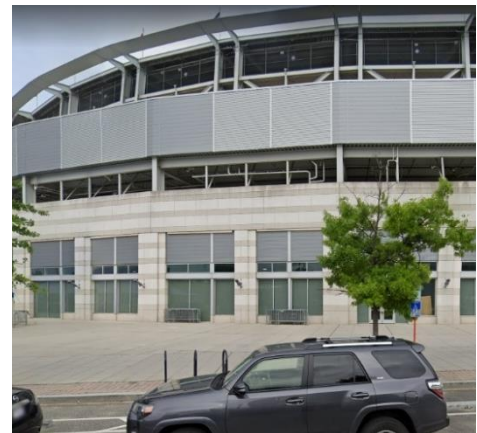
The amendment to Order Condition 1 to reduce the amount of required Preferred Use<sup>1</sup> space from 46,000 sq.ft. to 17,000 sq.ft., would make the Order consistent with what was constructed. As part of the original case 06-22, plans showing options for the ground floor size and layout of the street level of the ballpark were provided (See 06-22 [Exhibit 3A2](#)). With regards to the Preferred Use Space, Option Two (page 29) included a larger amount by extending the ground level façade close to the First

<sup>1</sup> In ZR-16, Preferred Uses are listed in Subtitle K § 515.2, and include Retail; Entertainment, assembly, and performing arts; Eating and drinking establishments; Animal sales, care, and boarding; Arts, design, and creation; and Services, general or financial, as are conditions for the construction of that space.

Street property line. The applicant at the time stated that this was not their preferred option. In Option 1 (page 27), the Preferred Use space was scaled back in depth by setting the building façade further back from the property line. However, the linear extent of Preferred Use space along First Avenue appears similar for both options.

At the time of approval, the Commission was clear on the need for street activating uses around the ballpark and adopted, in the Order, Preferred Use space consistent with Option 2, but the ballpark appears to have been constructed more consistent with Option 1. The space that was built has not been activated with Preferred Uses, which has been detrimental to the streetscape, and to the enjoyment of the area by ballpark uses and neighborhood residents. As the surrounding ballpark neighborhood has development, retail, restaurants and entertainment uses have instead opened in other buildings to the north, south, and east of the stadium – also consistent with planning from the time to create a broader entertainment district associated with the ballpark.

Although less deep, the Preferred Use space as built would generally meet the Commission intent of providing street activating Preferred Use space along the First Street façade. The depth of the space as built would seem adequate to accommodate these uses – particularly if the uses take advantage of the extensive on-site paved plaza space adjacent to the First Street sidewalk. The exterior façade of this portion of the building was generally built to accommodate these uses, with windows and entrance doors facing onto the plaza space. The applicant has advised that the space meets other requirements for Preferred Use space as set out in Subtitle K § 515.2 (b).



OP is not opposed to this modification.

### **Preferred Space Build-Out**

The applicant is proposing a new clause to Condition 1 that would require the filing of a permit for the “building out” or finishing of the Preferred Use Space, within six months of Commission approval of this modification. While this would not require that the space be utilized as Preferred Uses, it would help to ensure that the applicant intends to activate this space. OP is not opposed to this modification.

### **Parking Structures**

The applicant notes that, subsequent to the Commission approval of the original Order, District Council exempted the two parking structures on the north side of the building from zoning. The applicant has proposed to remove a condition related to a requirement for ground floor activation of those structures, in Condition 2.

Council at the time noted the pre-case method of construction used for the garages could not be modified in the future to accommodate wrap-around development, so these structures may not be able to be reconfigured to accommodate ground level retail space, no matter how desirable that outcome might be. The Council exemption of these structures from Zoning included a “sunset clause” to expire upon completion of construction, so it is OP’s understanding that any future re-development on this site, if the parking structures are demolished and replaced, would be subject to Zoning Commission review, and a design and form of development that provided an improved streetscape character would be evaluated. OP is not opposed to this condition.