

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-22A
Z.C. Case No. 06-22A
Events DC
(Modification of Consequence of Capitol Gateway Zone Review
@ Squares 702 through 706 and Reservation 247)
October 27, 2022

Pursuant to notice, at its October 27, 2022 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Modification Application”) of Events DC (“Applicant”)¹ for a Modification of Consequence of a Capitol Gateway (“CG”) zone review approval granted in Z.C. Order No. 06-22 (the “Order”), for Squares 702 through 706 and Reservation 247 (the “Property”).² The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Modification Application.

FINDINGS OF FACT

BACKGROUND: PRIOR COMMISSION APPROVAL

1. On May 3, 2006, the Applicant applied to the Commission for CG zone review for the construction of a Ballpark (the “Ballpark”), now known and referred to herein as “Nationals Park,” pursuant to § 1612.18 of the 1958 Zoning Regulations of the District of Columbia (“ZR58”), which subjects the Ballpark and all other proposed buildings on the Property to review and approval by the Commission (the “Original Application”).³
2. The Original Application comprised three discrete components: (a) Nationals Park, (b) above-grade parking spaces contained within two standalone parking garages, and (c) retail, service, entertainment, or arts uses located around the perimeter of Nationals Park (“Preferred Uses”). (See Order at Finding of Fact [“FF”] 23.)
3. Consistent with the District’s contractual agreement with Major League Baseball (“MLB”) and § 1612.8 of ZR58, the Applicant committed to construct a maximum 1,225 parking

¹ The applicant in the original case was the District of Columbia Sports and Entertainment Commission which is now known as Events DC.

² The Property now encompasses Square 705, Lots 804 and 805.

³ The initial application was submitted and approved under ZR58. On September 6, 2016, the provisions of ZR58 were repealed in full, and replaced with the provisions of the 2016 Zoning Regulations of the District of Columbia (“ZR16”).

spaces within the Ballpark site in the Original Application. As related to the parking spaces, the Original Application included a base plan to construct 1,111 parking spaces in two standalone above ground parking structures on the north side of the Property and the remaining 114 parking spaces underground at the South Plaza; as related to Preferred Uses, the Original Application suggests that the base plan contained approximately 15,000 square feet of gross floor area (“GFA”) of Preferred Uses (collectively, the parking and preferred uses “Base Plan” hereinafter). In addition to the Base Plan, the Applicant submitted two alternative plans (“Option 1” and “Option 2”) that both contained greater amounts of Preferred Uses than the Base Plan. Option 1 contained approximately 32,000 GFA of Preferred Uses, and Option 2 contained approximately 46,000 GFA of Preferred Uses.

4. The Original Application noted several factors that resulted in the Applicant only being able to commit to constructing the Base Plan. The factors included escalating construction costs and strict limitations on public financing imposed by the D.C. Council. As such, the Applicant requested approval of the Base Plan, with flexibility to incorporate the additional Preferred Uses in Options 1 or 2 should non-public funding be secured.
5. On June 23, 2006, the Applicant revised the Original Application to include two mixed-use buildings on the northern portion of the Property in place of the two originally proposed standalone parking structures. The two mixed-use buildings, referred to collectively in the Order as the “Adjacent Development,” comprised above-grade parking structures wrapped with ground-level retail, residential, and hotel uses and reduced the number of spaces at the northern portion of the Property from 1,111 to 925.
6. At the time, the Applicant stated that its ability to construct the Adjacent Development was dependent upon a number of critical reviews, approvals and events that would not occur until after the Commission’s consideration of the Original Application, including approvals by the D.C. Chief Financial Officer, the D.C. Council, and acquisition of other public and non-public funding. The uncertainty caused by these factors caused the Applicant to request approval of the two standalone parking structures that were originally proposed as an alternative in case circumstances arose after the Commission’s approval that might preclude construction of the Adjacent Development.
7. As related to Preferred Uses, the Applicant stated that it could commit to the 32,000 GFA of Preferred Uses proposed in Option 1. The Applicant further stated that due to funding constraints that it no longer wished to pursue the 46,000 GFA of Preferred Uses in Option 2.
8. On July 6, 2006, the Commission approved the Nationals Park subject to conditions. The Commission decided against granting the Applicant’s request for flexibility as to the amount of Preferred Uses and the two standalone parking structures. Instead, the Commission’s approval required all 46,000 GFA of Preferred Uses that were proposed in Option 2, and construction of the Adjacent Development with 925 above-grade parking spaces (of the 1,225 parking spaces within the Ballpark site) wrapped within the Adjacent Development.

BACKGROUND: CONSTRUCTION OF THE BALLPARK

9. Following the Commission’s approval of Nationals Park, the Applicant continued to face significant construction cost escalation and funding constraints. Due to increasing costs and fast approaching deadlines to complete Nationals Park imposed by MLB, the Applicant was unable to secure any additional funding, public or otherwise, beyond what had already been appropriated by the D.C. Council to construct the Base Plan. In addition, the reviews, approvals, and events that would have been necessary to construct the Adjacent Development never materialized.
10. As a result, the D.C. Council passed the Ballpark Parking Completion Amendment Act of 2007 (D.C. Act 17-0085) (“the Act”), which amended the Comprehensive Plan to temporarily exempt portions of the Property from zoning in order to allow the Applicant to construct the two standalone parking garages originally proposed on the north side of the Property. Under the Act, the two standalone parking garages and the south parking lot would provide approximately 1,325 parking spaces.
11. Ultimately, Nationals Park was constructed with approximately 17,000 GFA of Preferred Uses; and, pursuant to the Act, with two standalone parking garages on the north side of the Property and a surface parking lot on the south side of the Property, in lieu of the Adjacent Development. .
12. Due to the foregoing factors, Nationals Park, as constructed, does not fully satisfy the requirements and conditions of the Order, and in particular, the requirement for 46,000 GFA of Preferred Uses along the perimeter of the Property. As such, Nationals Park has operated under a temporary certificate of occupancy that has been renewed several times since 2008.

PARTIES AND NOTICE

13. The only party to the Order other than the Applicant was Advisory Neighborhood Commission (“ANC”) 6D, the “affected” ANC pursuant to Subtitle Z § 101.8.
14. On July 29, 2022, the Applicant served the Application on ANC 6D and the D.C. Office of Planning (“OP”), attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

THE APPLICATION

15. On July 29, 2022, the Applicant filed the Modification Application to modify the conditions of the Order to: (a) reduce the requirement to construct additional Preferred Use space around the perimeter of Nationals Park from 46,000 GFA to a minimum of 17,000 GFA, (b) remove the requirement to wrap 925 above-grade parking spaces on the north side of the Property with the Adjacent Development, and (c) impose a time limit of no later than six months from the effective date of this modification order for filing a building permit to build out existing Preferred Use space along the First Street, SE side of Nationals Park. (Ex. 2.)

16. In its statement, the Applicant noted that when Nationals Park was completed in 2008 the surrounding neighborhood was still in the very early stages of revitalization, and thus the market for ground-level retail and other preferred uses was weak. Consequently, tenant interest in occupying the approximately 17,000 GFA of Preferred Use space that was ultimately constructed along First Street, S.E. was scarce and remained so for several years following completion of the Nationals Park. (Ex. 2.)
17. The Applicant stated that as the neighborhood around Nationals Park has matured, potential tenants have favored ground-level retail space in nearby developments that contain a mix of uses with more active surroundings rather than the existing ground-floor space along the perimeter of the ballpark on First Street, S.E., directly across from industrial properties owned by D.C. Water. Thus, while the Capitol Riverfront neighborhood around Nationals Park has sprouted a significant number of developments containing vibrant ground-level uses, which undoubtedly were catalyzed by the construction of Nationals Park, the existing approximately 17,000 GFA of Preferred Use space along the perimeter of ballpark on First Street, S.E. has remained vacant. (Ex. 2.)
18. Since completion of Nationals Park, the Applicant has made attempts to satisfy the Preferred Use requirement under the Order so that it could obtain a permanent Certificate of Occupancy for Nationals Park. (Ex. 2.)
19. In 2019, the Applicant developed conceptual plans for the construction of a large entertainment use at the southeast corner of the Property that would have satisfied the Preferred Use condition of the Order. The Applicant secured D.C. Council approval of a development agreement for construction of the entertainment use by the Washington Nationals, including \$3.6 million of funding toward construction costs.⁴ Unfortunately, the COVID-19 pandemic soon followed the D.C. Council's approval and construction of the entertainment use was put on hold for the foreseeable future. (Ex. 2.)
20. On September 27, 2022, the Applicant filed a supplemental statement that included excerpts of plans for Nationals Park that are contained in the original case record (Case No. 06-22) that show how the location of the existing Preferred Use space along First Street, S.E. relates to the amount of Preferred Use space required under the Order. (Ex. 8, 8A.)
21. In its supplemental statement, the Applicant noted that it had engaged the services of a retail broker to assess the current marketability of the approximately 17,000 GFA of Preferred Use space located along First Street, S.E. Based on preliminary feedback from the broker, the Applicant stated it was confident that the neighborhood surrounding Nationals Park is strong enough to support build out of the existing Preferred Use space along First Street, S.E. According to the Applicant, the feedback from the broker indicated that the large amount of potential outdoor retail / dining area adjacent to the existing

⁴ CA23-0255 – Proposed agreement with the Washington Nationals Stadium LLC
(<https://lms.dccouncil.us/Legislation/CA23-0255>)

Preferred Use space will greatly improve its marketability given the continued strong demand for outdoor seating / dining areas in the post-pandemic environment.

22. On October 13, 2022, the Applicant submitted a response to the issues raised by Advisory Neighborhood Commission 6D in opposition to the Modification Application being processed as a Modification of Consequence. (Ex. 10.)

RESPONSES TO THE APPLICATION

Office of Planning (“OP”)

23. On September 22, 2022, OP submitted a report (“OP Report”) stating no objection to the Modification Application being considered a Modification of Consequence and recommending approval of the Modification Application. (Ex. 7.)
24. In determining that the Modification Application can be considered as a Modification of Consequence, the OP Report cited to Subtitle Z § 703.4, which describes examples of a Modification of Consequence. These examples include proposed changes to conditions in a final zoning order. The OP Report stipulates that the Applicant is requesting modifications to conditions of the Order, and no new zoning relief is requested.
25. Amount of Preferred Use Space: The OP Report addresses the Applicant’s request to reduce the amount of required Preferred Use space from 46,000 GFA to a minimum of 17,000 GFA. The OP Report states no objection to this modification noting that “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.”
26. Preferred Use Space Build Out: The OP Report addresses the Applicant’s proposal to require the filing of a permit for the build out of the existing Preferred Use space along First Street, S.E. within six months of the issuance of the final order for this Modification Application. The OP Report states no objection to this modification.
27. Parking Structures: The OP Report addresses the proposed removal of the Order condition requiring the above-grade parking structures on the north side of the Property to include ground floor activation and be wrapped with the Adjacent Development. The OP Report states that “Council at the time noted the [pre-cast] 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 [the Office of Planning’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.” The OP Report states no objection to this modification.
28. On October 20, 2022, OP submitted a supplemental report to correct a typographical error in its original report. (Ex. 12.)

ANC 6D

29. On September 21, 2022, ANC 6D filed a report (the “ANC Report”) stating that at a duly noticed public meeting on September 21, 2022, with a quorum of four Commissioners present, the ANC voted 7-0 to oppose the Modification Application. (Ex. 9.) The ANC Report cited the following issues and concerns:
- The Applicant’s plan should be processed as a Modification of Significance as it will significantly impact upon ANC 6D residents who reside in and may even own property adjacent to Nationals Park and will have no opportunity to address their concerns if processed as a Modification of Consequence;
 - The Applicant’s plan will alter parking requirements of the Order, impacting transportation and traffic safety; and
 - The Applicant’s plan will significantly diminish the previously agreed to list of community benefits in the Order by providing less than 36% of the agreed upon retail, services, entertainment or arts uses surrounding (not within) Nationals Park.
30. On October 20, 2022, ANC 6D filed a second report (the “Second ANC Report”) reiterating its opposition to the Modification Application being processed as a Modification of Consequence, and for the reason set forth in its initial report. (Ex. 11.)

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make Modifications of Consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.”
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” as an example of a Modification of Consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Modification Application on all parties to the original proceeding, in this case ANC 6D.
5. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as the changes to the conditions of the Order proposed by the Applicant can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties has been met, and therefore the Commission considered the merits of the Modification Application at its October 27, 2022 public meeting.

7. The Commission concludes that the Modification Application’s proposed changes to the conditions of the Order can be granted as requested by the Applicant. As discussed during the Commission’s deliberation on October 27, 2022, the Commission was well aware during its initial review of Nationals Park that there were other factors outside of the Commission’s jurisdiction that were likely to impact the Applicant’s ability to construct the ballpark as approved under the Order. These factors included, but were not limited to, funding constraints imposed by D.C. Council and strict requirements for parking and completion of construction imposed by MLB. The Commission initially decided against granting the Applicant’s request to have more than one approved design in hopes that the Applicant would obtain the funding and approvals necessary to construct the Adjacent Development and the full, 46,000 GFA of Preferred Uses approved under the Order. However, the Commission was aware that the funding and operational constraints placed upon the Applicant by the D.C. Council and MLB could result in the need to modify the Commission’s approval at some point before, during, or after construction.
8. Notwithstanding the proposed modifications to the Order, the Commission concludes that Nationals Park, as constructed, still fully satisfies the CG zone review criteria of Subtitle K § 515.4(a) and (b), including achievement of the objectives of the CG zones set forth in Subtitle K § 500.1. In addition, the Commission concludes that Nationals Park, as constructed, has been the primary catalyst in the wholesale revitalization of the surrounding Capital Riverfront neighborhood, and has greatly exceeded the positive impacts on the surrounding neighborhood that were envisioned by the Commission in its original Order.

GREAT WEIGHT TO THE RECOMMENDATIONS OF OP

9. The Commission must give “great weight” to the recommendations of the OP pursuant to § 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 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).)
10. The Commission notes OP’s lack of objection to the Modification Application being considered as a Modification of Consequence and finds persuasive OP’s recommendation that the Commission approve the Modification Application. The Commission agrees with OP’s understanding that any future re-development of the two standalone parking structures on the north side of the Property, which were exempt from zoning by the Act following the Commission’s approval of Nationals Park under the Order, would be subject to Commission review and approval.

GREAT WEIGHT TO THE WRITTEN REPORT OF THE ANC

11. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court

of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)

12. As set forth in the ANC Report, ANC 6D opposes the Modification Application because:
 - The Applicant’s plan should be processed as a Modification of Significance as it will significantly impact upon ANC 6D residents who reside in and may even own property adjacent to Nationals Park and will have no opportunity to address their concerns if processed as a Modification of Consequence;
 - The Applicant’s plan will alter parking requirements of the Order, impacting transportation and traffic safety; and
 - The Applicant’s plan will significantly diminish the previously agreed to list of community benefits in the Order by providing less than 36% of the agreed upon retail, services, entertainment or arts uses surrounding (not within) Nationals Park.
13. The Commission disagrees with ANC 6D that the Modification Application will significantly impact ANC 6D residents who reside in the area and may own property adjacent to Nationals Park. The Modification Application does not propose any expansions or additions to Nationals Park, nor does it propose any changes to existing pedestrian, vehicular, or bicycle access or circulation. Thus, it is the Commission’s opinion that had the request been processed as a Modification of Significance, any concerns expressed by residents at the public hearing would either be concerns over traffic and/or operational issues related to the existing ballpark, or concerns over the factors that were out of the Commission’s control that resulted in Nationals Park not being constructed fully in accordance with the Order. Considering that the Modification Application does not propose any physical changes to Nationals Park, the Commission concludes that any such input would not be germane or beneficial to the Commission review of the current request, and thus the Commission concludes that it correctly determined that the Modification Application can be approved as a Modification of Consequence. As a party to the Original Application, the Commission is required to provide ANC 6D an opportunity to comment on the Modification Application, which the Commission has done and has afforded the comments provided by ANC 6D the great weight to which they are entitled.
14. The Commission disagrees with ANC 6D that the Modification Application will alter parking requirements of the Order, thus impacting transportation and traffic safety. As already stated, the Applicant’s request does not propose any physical changes to Nationals Park. In addition, the request does not propose any changes to the transportation aspects of Nationals Park, including existing access and circulation and the amount of vehicular parking. As constructed, pursuant to the Act, Nationals Park contains approximately 1,325 vehicle parking spaces and will continue that way despite the requested modifications to the conditions of the Order. As such, the Commission concludes that the Modification Application will have no impact on the parking requirements of the Order. The Commission further concludes that the Modification Application will not cause any additional impacts on transportation and traffic safety around Nationals Park. The Commission acknowledges the ANC’s concerns over transportation and traffic issues that occur during Nationals Park events. While those ongoing issues are not relevant to the Modification Application, the

Commission fully expects that the Applicant will continue to work with ANC 6D and the community on addressing any issues that may arise during Nationals Park events, transportation or otherwise.

15. The Commission disagrees that the Modification Application will significantly diminish the previously agreed to list of community benefits in the Order. The Commission's review of Nationals Park was a design review and not a Planned Unit Development. As such, the Order does not contain a list of required community benefits that must be provided by the Applicant.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Modification Application's request for a Modification of Consequence to the conditions in Z.C. Order No. 06-22, to (a) reduce the requirement to construct additional Preferred Use space around the perimeter of Nationals Park from 46,000 GFA to a minimum of 17,000 GFA, (b) remove the requirement to wrap 925 above-grade parking spaces on the north side of the Property with the Adjacent Development, and (c) impose a time limit of no later than six months from the effective date of this modification order for filing a building permit to build-out existing Preferred Use space along the First Street, SE side of Nationals Park.

Conditions 1 and 2 of Z.C. Order No. 06-22 shall be modified as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):


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~~ **a minimum of 17,000** square feet of gross floor area space to be devoted to Preferred Uses around the Ballpark perimeter. **The Applicant shall submit an application for a building permit to build out the existing 17,000 square feet of gross floor area of Preferred Use space along First Street, S.E. by no later than six months from the effective date of this modification order. in accordance with Option Two as depicted on Sheet A4 in the Options Appendix of the Applicant's May 3, 2006 application.**
2. **The number of vehicle parking spaces contained within the Ballpark Site shall not exceed 1,325 spaces, as authorized pursuant to the Ballpark Parking Completion Amendment Act of 2007 (D.C. Act 17-0085).** 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.~~

All other conditions of Z.C. Order No. 06-22 shall remain unchanged and in effect.


VOTE (October 27, 2022): 3-0-2

(Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**; Joseph S. Imamura, not present, not voting; 3rd Mayoral appointee seat vacant)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 06-22A shall become final and effective upon publication in the *D.C. Register*; that is, on March 3, 2023.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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.