

APPLICANT’S PROPOSED DRAFT ORDER

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-02A**

Z.C. Case No. 16-02A

DC Stadium, LLC

(Modification of Consequence of Consolidated PUD

@ 100 Potomac Avenue, S.W.)

December 17, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“**Commission**”) was held on December 17, 2018. At that meeting, the Commission approved the application of DC Stadium, LLC (“**Applicant**”) for a modification of consequence of the consolidated PUD application (the “**Approved PUD**”) approved in Z.C. Order No. 16-02 (the “**Order**”). The subject property consists of Lot 27¹ in Square 665 (“**Property**”). The modification request was made pursuant to § 703 of the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (the “**Zoning Regulations**”).

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Commission first approved the Approved PUD by order effective April 21, 2017, which allowed construction of an approximately 19,000-seat stadium plus associated offices, retail spaces, and plazas (“**Project**”). No other modifications or other actions had been requested for the Approved PUD prior to the modification requested in this application.
2. Construction of the stadium was substantially completed in June 2018, and the stadium began hosting soccer games in July 2018 pursuant to a temporary certificate of occupancy (“**CofO**”). The temporary CofO was issued so that the stadium could begin hosting games in accordance with the Major League Soccer schedule while a few remaining cosmetic aspects of the stadium, including mechanical screening, were being completed.

CURRENT APPLICATION

3. The modification proposed by this application changes one minor aspect of the stadium’s exterior materials in order to improve its appearance. The approved plans for the stadium identified anodized aluminum perforated metal as screening material for the mechanical equipment on top of the club and retail building along the east side (1st Street) exterior of the stadium. With this application, the Applicant requested the use of black heavy duty knitted high density polyethylene (“**HDPE**”) as the mechanical screening material in this location.

¹ The Property was previously designated as Square 603S, Lot 800; Square 605, Lots 7 & 802; Square 607, Lot 13; Square 661N, Lot 800; Square 661, part of Lots 804 & 805; and Square 665, part of Lot 24 when the Approved PUD was initially approved. The Property has since been subdivided into a new single Record Lot 27.

APPLICANT’S PROPOSED DRAFT ORDER

4. After installing the approved aluminum screening material in other locations on the stadium, the Applicant realized that the aluminum screening is not successful in obscuring the view of the mechanical equipment behind. Thus, it is largely not useful for its intended functional purpose. Accordingly, in order to provide better screening of the mechanical equipment on the east side of the stadium while under severe time constraints to open the stadium on time, the Applicant installed the HDPE since the HDPE is much more effective at obscuring the mechanical equipment behind. (Exhibit of the record (“**Ex.**”) 2.)
5. The size and location of the HDPE is the same as the previously-approved aluminum screening, the HDPE is harmonious with the color palate of the stadium, and it is compatible with the stadium’s other materials. The HDPE benefits the stadium and the surrounding area by improving the screening of the mechanical equipment that would otherwise be visible from the east. (Ex. 2.)
6. In satisfaction of Subtitle Z § 703.13, the Applicant provided a Certificate of Service that noted that ANC 6D was served with the application. (Ex. 2.)
7. The Office of Planning (“**OP**”) submitted a report on October 11, 2018, recommending that the Commission approve the application as a modification of consequence. (Ex. 4.)
8. On, ANC 6D submitted a report into the record noting that, at a regularly scheduled, duly noticed meeting of the ANC on November 19, 2018, with a quorum present, ANC 6D voted 5-1-0 to support the application with the condition that the screening not contain any advertising or letter. The Applicant agreed to the condition. (Ex. 7, 8.)

CONCLUSIONS OF LAW

Pursuant to Subtitle Z § 703.1, the Commission, in the interest of efficiency, is authorized to make “modifications of consequence” to final orders and plans without a public hearing. A modification of consequence is defined by Subtitle Z § 703.3 as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance”, and that “a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission” is listed in Subtitle Z § 703.4 as an example of a modification of consequence.

The Commission concluded that the proposed modification, as a request to modify an architectural element of the stadium, is properly a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4 and, therefore, can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2). The Commission determined that since OP had filed its report, and since the only party (other than the Applicant) to the Approved PUD - ANC 6D – had filed a response to the proposed modification, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding had been met and so the Commission could consider the merits of the proposed modification at the December 17, 2018 public meeting.

APPLICANT’S PROPOSED DRAFT ORDER

The Commission found that the proposed modification is entirely consistent with the Approved PUD, as the Applicant is proposing to modify the material of one small area of the stadium to better screen mechanical equipment.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.), to give “great weight” to the issues and concerns contained in the written report of an affected ANC. In this case, ANC 6D voted to support the application with a condition, and the Commission found that recommendation to be persuasive. The Commission is also required to give great weight to OP’s recommendations under D.C. Official Code § 6-623.04 (2018 Repl.). The Commission concurred with OP’s recommendation to approve this modification of consequence application. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the consolidated PUD approved in Z.C. Order No. 16-02 subject to the following condition.

1. The screening shall be the material (or one substantially similar) indicated in Exhibit 2E in the record and black in color, and it shall not contain any lettering or advertising.

On December 17, 2018, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter G. May, Robert E. Miller, and Michael G. Turnbull to approve; Peter A. Shapiro not present, not voting).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this order shall become final and effective upon publication in the *DC Register*; that is, on **March __, 2019**.

BY ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this order.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING