

**BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA**

Application of Events DC
Z.C. Case No. 06-22

ANC 6D02

Applicant’s Request for Modification of Consequence

This application is filed on behalf of Events DC (“**Applicant**”) for a modification of conditions approved in Z.C. Order No. 06-22 (“**Order**”), attached as Exhibit A. The Order approved the construction of a Ballpark, adjacent development and ancillary uses, and related zoning relief in Squares 702 through 706 and Reservation 247 (“**Property**”)¹. The Property is located in the CG-4 zone.

I. Nature of Request

Pursuant to Subtitle Z § 703 of the 2016 Zoning Regulations (“ZR16”), the Applicant requests Zoning Commission (“**Commission**”) approval of a Modification of Consequence, to modify the conditions of the Order to: (i) reduce the requirement to build additional retail space around the perimeter of the Ballpark, and (ii) to impose a time limit for filing a building permit to build out existing retail space along the First Street, SE side of Nationals Park for retail, service, entertainment, or arts uses (“Preferred Uses”).

II. Background: Commission Review of the Ballpark

On May 3, 2006, the District of Columbia Sports and Entertainment Commission, now Events DC, applied to the Commission for the construction and operation of Nationals Park, pursuant to 11 DCMR §§ 1606.18 through 1606.24 of the 1958 Zoning Regulations (“ZR58”). The application comprised three discrete components: (i) a Ballpark, (ii) parking spaces, and (iii)

¹ The Property now encompasses Square 705, Lots 804 and 805

retail, service, entertainment, or arts uses (“Preferred Uses”) along the Ballpark perimeter. *See* Order at Finding of Fact 23. As related to Preferred Uses, the Applicant’s initial application included a base plan that contained approximately 15,000 square feet of gross floor area (“GFA”) of Preferred Uses (“Base Plan”). On top of the Base Plan, the Applicant proposed two alternatives (Option 1 and Option 2) that contained greater amounts of Preferred Uses than the Base Plan. Specifically, Option 1 and Option 2 contained approximately 32,000 GFA and 46,000 GFA of Preferred Uses, respectively.

In its initial application, the Applicant noted several factors that resulted in its ability to commit only to constructing the Base Plan. The factors included, among others, escalating construction costs and limitations on Ballpark financing imposed by the D.C. Council. Thus, the Applicant requested approval of the Base Plan, with flexibility to incorporate the additional Preferred Uses in Options 1 or 2 should non-governmental funding be identified.

On June 23, 2006, the Applicant submitted revised plans to the Commission. In its supplemental statement, 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 it no longer wished to pursue Option 2.

The revised plans also included two mixed-use buildings on the northern portion of the Ballpark site in place of two originally proposed standalone parking structures (“Adjacent Development”). The two mixed-use buildings were comprised of above-grade parking structures wrapped with ground-level retail, residential, and hotel uses. While the Applicant referred to the Adjacent Development scheme as its “preferred alternative,” it noted that it was dependent on a number of critical reviews, approvals and events that would not occur until after the Commission’s consideration of the application. This included approvals by the D.C. Chief Financial Officer to

ensure that the District and bond holders did not incur additional financial exposure by the Adjacent Development, approval of a land disposition by the D.C. Council, negotiation and execution of a land disposition agreement with a developer, and obtaining permanent financing. Indeed, the uncertainty caused by the above factors necessitated the Applicant to also request approval of the two standalone parking structures that were initially proposed in case circumstances arose after the Commission's approval that might preclude construction of the Adjacent Development.

On July 6, 2006, the Commission approved the Ballpark subject to conditions. Deciding not to grant the Applicant's requests for flexibility as to the amount of Preferred Uses and the standalone parking structures, the Commission's approval required construction of all 46,000 GFA of Preferred Uses that were proposed in Option 2, as well as the construction of the Adjacent Development.

III. Background: Construction of the Ballpark

Following the Commission's approval of the Ballpark, the Applicant continued to face significant construction cost escalation and funding constraints. Despite increasing costs and fast-approaching deadlines to complete the Ballpark imposed by Major League Baseball ("MLB"), the Applicant was unable to secure any additional funding beyond what had already been appropriated by the D.C. Council. In addition, the critical reviews, approvals, and events that were necessary to effectuate the Adjacent Development never materialized. As a result, in order to satisfy MLB deadlines the Applicant had to proceed with constructing the Ballpark in accordance with the Base Plan, and the two standalone parking structures were constructed on the northern portion of the

Ballpark site.² Consequently, the Ballpark has operated under a temporary certificate of occupancy that has been renewed several times over the last several years.

As currently constructed, the Ballpark contains approximately 17,000 GFA of space along First Street, SE that is available for Preferred Uses. At the time of completion, the neighborhood surrounding the Ballpark was still in the very early stages of revitalization, and thus the market for retail use was weak. As such, tenant interest in occupying the Preferred Use space along First Street, SE was scarce for a number of years following completion of the Ballpark. As the neighborhood has matured around the Ballpark, potential tenants have favored ground-floor retail space located in developments containing a mix of uses with more active surroundings. Thus, while the Capitol Riverfront neighborhood has sprouted numerous developments that contain vibrant ground-floor levels with a wide range of lively retail, service, and entertainment uses, the Preferred Use space at the Ballpark has remained vacant. The location of the Preferred Use space across from DC Water facilities also has been challenging. However, the potential for the space will improve with the redevelopment of the DC Water parcels.

It is noteworthy that in 2019 the Applicant developed conceptual plans for the construction of a large entertainment use at the southeast corner of the Ballpark that would have satisfied the conditions of the Order, and potentially jumpstarted tenant interest in the existing Preferred Use space. The Applicant was even able to secure D.C. Council approval of a development agreement for construction of the entertainment use by the Washington Nationals, including \$3.6 million of funding from Events DC to be applied to construction costs.³ Unfortunately, the COVID-19 pandemic soon followed the D.C. Council's approval and, like numerous other existing and

² Subsequent to the Commission's approval, the D.C. Council passed the Ballpark Parking Completion Amendment Act of 2007 (D.C. Act 17-0085) which amended the Comprehensive Plan to exempt from zoning the two standalone parking structures on the northern portion of the Ballpark site.

³ CA23-0255 – Proposed agreement with the Washington Nationals Stadium LLC (<https://lims.dccouncil.us/Legislation/CA23-0255>)

proposed retail developments, the Applicant's proposed entertainment use was put on hold for the foreseeable future.

The Applicant is submitting this modification request as the D.C. Department of Consumer and Regulatory Affairs has indicated it is unwilling to issue another temporary certificate of occupancy while the Applicant continues to identify ways to satisfy the Order, as written. Therefore, the Applicant has decided to pursue the subject modification, as well as the build out of the existing Preferred Use space. While the entertainment use may be a viable project at some time in the future, there is no immediate plan to proceed. For that reason, the Applicant is seeking to modify the conditions of the Order to reduce the Preferred Use requirement to what is currently constructed along First Street, and to remove a condition relating to the Adjacent Development in light of the D.C. Council's action to exempt the northern portion of the Ballpark site from zoning. Should the aforementioned entertainment use or other opportunity to expand Preferred Uses on the Ballpark Site arise in the future, the Applicant will return to the Commission to seek approval of another modification. Finally, to ensure that the Applicant diligently pursues the built out of the existing Preferred Use space, the Applicant is proposing to add a requirement to the Order that will require submission of a building permit application for said build out within a specified time period.

IV. Modification Request and Applicant's Satisfaction of the Standards for Approving a Modification of Consequence

Subtitle Z § 703 of ZR16 establishes the standards and requirements for approval of a Modification of Consequence, without a public hearing. Section 703.4 notes that examples of Modifications of Consequence

[i]nclude, 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 (emphasis added in bold).

The proposed modifications in this application are consistent with the standards for a Modification of Consequence.

For the reasons set forth above, the Applicant requests to modify the following two conditions of the Order, as follows:

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 SE 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. 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.~~

V. Service on Parties

The only other party in Z.C. Case No. 0-22 was ANC 6D, who is being served with this application pursuant to Subtitle Z § 703.13.

VI. Conclusion

The Applicant acknowledges the extremely unique circumstances present in this case that have led to the subject modification now currently before the Commission. As a consequence of these circumstances, the Ballpark has been unable to secure a permanent certificate of occupancy. While certainly unfortunate, at this point the only remedy that can immediately resolve the problem and allow issuance of a permanent certificate of occupancy for the Ballpark is a modification to

the Order. The Applicant is, and always has been committed to ensuring that the Ballpark is an active participant in the enlivenment of the Capitol Riverfront neighborhood, and will work diligently toward the build out of the existing Preferred Use space along First Street, SE.

Thank you for your consideration of this matter.

Respectfully submitted,
GOULSTON & STORRS PC

/s/ _____
Allison C. Prince, Esq.

Certificate of Service

I hereby certify that copies of the foregoing document and attachments were sent to the following by email on July 29, 2022:

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