

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



ZONING COMMISSION ORDER NO. 16-02A

Z.C. Case No. 16-02A

DC Stadium, LLC

(PUD Modification of Consequence @ Square 665, Lot 27 [100 Potomac Avenue, S.W.]

December 17, 2018

Pursuant to public notice, the Zoning Commission for the District of Columbia (“Commission”) held a public meeting on December 17, 2018, at which the Commission considered the application of DC Stadium, LLC (“Applicant”) for a modification of consequence (“Application”) of the consolidated planned unit development (“PUD”) approved by Z.C. Order No. 16-02 for Lot 27¹ in Square 665 (“Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”), to which all subsequent citations refer unless otherwise specified. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

1. By Z.C. Order No. 16-02, effective April 21, 2017, the Commission approved the PUD, which authorized the construction of an approximately 19,000-seat stadium plus associated offices, retail spaces, and plazas.
2. The Application is the first request to modify the PUD.
3. The Application proposed one minor change to the exterior screening material for a portion of the stadium in order to improve its appearance: to use heavy-duty, black-knitted high-density polyethylene (“HDPE Screening”), as specified in Exhibit (“Ex.”) 2C, to screen the mechanical equipment on top of the club and retail building along the east side (1st Street) exterior of the stadium instead of the anodized aluminum perforated metal screening approved by the Order (“Aluminum Screening”). (Ex. 2B.)

¹ Z.C. Order No. 16-02 identified the site of the PUD as Square 603S, Lot 800; Square 605, Lots 7 and 802; Square 607, Lot 13; Square 661N, Lot 800; Square 661, part of Lots 804 and 805; and Square 665, part of Lot 24, but Exhibit 97F1 of the record for Case No. 16-02 redefined the PUD boundary to include closed portions of Potomac Avenue, and R, S, and 1st Streets, S.W. The Property was subdivided into a Record Lot 27, recorded with the Office of the Surveyor in Subdivision Book 211 at page 158, effective September 27, 2016.

4. After having installed Aluminum Screening elsewhere in the stadium, the Applicant realized that it failed to function as a visual screen of the mechanical equipment. The Applicant then determined that installing HDPE Screening in the same location and of the same size as the approved Aluminum Screening would substantially increase the effectiveness of the visual screening of the mechanical equipment and so achieve the intent of the Aluminum Screening. (Comparison of photos of installed HDPE Screening and Aluminum Screening [Ex. 2D, 2E.]) The Applicant chose HDPE Screening as harmonious with the color palate and materials of the stadium.
5. The Applicant substantially completed the construction of the stadium pursuant to Z.C. Order No. 16-02 by June 2018, and the stadium began hosting soccer games in July 2018 pursuant to a temporary certificate of occupancy that allowed the hosting of games in accordance with the Major League Soccer schedule while a few remaining cosmetic aspects of the stadium, including mechanical screening, were being completed.
6. 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 Screening.
7. The Applicant served the only other party to the case, Advisory Neighborhood Commission (“ANC”) 6D, as attested by the Certificate of Service submitted with the Application. (Ex. 2.)
8. The Office of Planning (“OP”) submitted a report on October 11, 2018, agreeing that the Application qualified as a modification of consequence and recommending approval of the Application. (Ex. 4.)
9. ANC 6D submitted a written report stating that, at a regularly-scheduled, duly-noticed meeting on November 19, 2018, with a quorum present, ANC 6D voted to support the Application with the condition that the screening not contain any advertising or lettering. (Ex. 8.)
10. The Applicant agreed to ANC 6D’s condition barring advertising on the HDPE Screening. (Ex. 7.)

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 redesign or relocation of architectural elements and open spaces from the final design approved by the Commission” as an example of a modification of consequence.
4. The Commission concludes that the Application qualifies as a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, since it is a request to modify an architectural element of the stadium, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
5. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 6D.
6. The Commission determines that because OP and ANC 6D, the only party other than the Applicant to the PUD approved by Z.C. Order No. 16-02, had filed responses to the Application, 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 Application at the December 17, 2018 public meeting.
7. The Commission finds that the modification proposed by the Application is consistent with the PUD approved by Z.C. Order No. 16-02 because the Applicant is proposing to modify the screening material approved for one small area of the stadium without reducing the size or changing the location of the screening in order to achieve the original goal of visually screening rooftop mechanical equipment.

“Great Weight” to the Recommendations of OP

8. D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8 require the Commission to give “great weight” to the recommendations contained in the OP Report. The Commission found OP’s recommendations that the Application qualified as a modification of consequence and to approve the Application persuasive and concurred in that judgment.

“Great Weight” to the Written Report of the ANC

9. D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) and Subtitle Z § 406.2 require the Commission to give “great weight” to the issues and concerns contained in the written report of an affected ANC. The Commission found persuasive ANC 6D’s support for the Application, subject to a condition prohibiting any advertising on the HDPE Screening and concurred in that judgment.
10. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Official Code § 2-1401 *et seq.* (2007 Repl.)).

DECISION

In consideration of the record and 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 HDPE 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, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, 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 *D.C. Register*; that is, on May 17, 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