

D.C. PREPARATORY ACADEMY PUBLIC CHARTER SCHOOL

REQUESTS FOR PROPOSALS

CONSTRUCTION MANAGEMENT SERVICES

The D.C. Preparatory Academy Public Charter School in the District of Columbia is seeking competitive proposals for Construction Management Services for a new school building. The site will require renovation as it is currently a vacated warehouse which totals approximately 47,000 sf. The estimated construction costs are \$4.633 million.

A copy of the RFP can be obtained on or after November 20, 2006. All proposals must be submitted by 12:00 Noon on Monday, December 4, 2006.

To request a copy of the RFP, please call or send email to:

**Hakim Chambers
Brailsford & Dunlavey
(202) 289-4455**

hchambers@facilityplanners.com

DISTRICT OF COLUMBIA RETIREMENT BOARD ("BOARD")**NOTICE OF PUBLIC INTEREST****CERTIFICATION OF WINNER OF THE ELECTION TO SERVE AS
THE ACTIVE POLICE OFFICER MEMBER OF THE BOARD**

The District of Columbia Retirement Reform Act (Pub. L. 96-122), effective November 17, 1979, at section 121(b), (D.C. Official Code § 1-711(b)) requires the District of Columbia Retirement Board ("Board") to conduct elections of the beneficiary and participant representatives to the Board. The Board through the American Arbitration Association (the "A.A.A."), in accordance with the Rules for the Election of Members to the D.C. Retirement Board promulgated by the Board, 30 DCR 4333-4345, as amended, conducted an election for the representatives of the active District police officers.

Counting of the ballots took place on Thursday, November 9, 2006, at the A.A.A. office, located at 1776 Eye Street, N.W., Suite 850, Washington, D.C., in the presence of a Board representative, and under the supervision of A.A.A.

Pursuant to section 408.1 of the rules for the Election of Members to the D.C. Retirement Board (the "election rules") A.A.A. submitted a Certification of Results which was received on November 13, 2006. Based on this Certification and pursuant to sections 408.2 and 408.3 of the election rules, the Board hereby certifies the results of the election and declares the winner to be Darrick O. Ross, an active District of Columbia police officer.

Pursuant to section 408.4 of the Election Rules, any qualified candidate for the election may petition the Board in writing for a recount of votes within seven (7) calendar days of the date of publication of the certification of the winner. The petition must be filed at the Board's executive office located at 900 7th Street, N.W., 2nd Floor, Washington, D.C., 20001. In the absence of a request for a recount, the election results will become final and can not be appealed thirty (30) days after the above date of publication of the certification of the winner.

Please address any questions regarding this notice to:

Shireen L. Dodson, Chairman of the Board
Attn: Constance Donovan, Acting Executive Director
D.C. Retirement Board
900 7th Street, N.W., 2nd Floor
Washington, D.C. 20001

DISTRICT OF COLUMBIA REGISTER

Office of the Secretary of the
District of Columbia

November 22, 2006

Notice is hereby given that the following named persons have been appointed as Notaries Public in and for the District of Columbia, effective on or after December 15, 2006.

Adams, Denise	Rpt	Sprenger & Lang 1400 I St, NW#500 20005
Alcocer, Silvana T.	Rpt	Georgetown University 37 th & O Sts, NW 20057
Ashton, Jannese	Rpt	Johnny Riddick & Assoc 505 Cap Ct, NE#100 20002
Aydahis, Alo	Rpt	Stoladi Property Group 800 Conn Ave, NW#155 20006
Bales, Timothy	Rpt	ZAP Graphics 1052 ThJeff St, NW 20007
Barnes, Glinder D.	Rpt	Georgetown University 37 th & O Sts, NW 20057
Batts, Aleta	Rpt	F B I 935 Pa Ave, NW 20535
Buckley, Janet	Rpt	Van Scoyoc Associates 101Const Ave, NW#600W 20001
Catterton, Kelley B.	Rpt	U S A Management 1232 22 nd St, NW#600 20037
Clark, Charlesetta C.	Rpt	Morrison & Foerster 2000 Pa Ave, NW#5500 20006
Cox, Diana L.	Rpt	Jordan & Keys 1400 16 th St, NW#520 20036
Cox, Joyce E.	Rpt	A R P C 1220 19 th St, NW#700 20036

Culver, Susanne Marie	Rpt	The Barker Foundation 1066 30 th St, NW 20007
Dorsey, Doris T.	Rpt	Hawkins Delafield Wood 601 13 th St, NW#800s 20005
Dorsey, Evelyn B.	Rpt	1425 4 th St, SW#A411 20024
Dysart, Janis Joy	Rpt	Goodwin Procter 901 N Y Ave, NW 20001
Evans, Akita Smith	Rpt	Office of Human Rights 441 4 th St, NW#570N 20001
Feldman, Marilyn J.	Rpt	L A D Reporting 1100 Conn Ave, NW 20036
Fenton, Ailsa W.	Rpt	Hogan & Hartson 555 13 th St, NW 20004
Forman, Scott	Rpt	L A D Reporting 1100 Conn Ave, NW 20036
Gilbert, Patricia A.	Rpt	D O J/U S Atty Off 555 4 th St, NW#C3822 20530
Hawkins, Jacqueline	Rpt	Columbia Plaza Apts 2400 Va Ave, NW 20037
Hedgpeth, Carol L.	Rpt	Hogan & Hartson 555 13 th St, NW 20004
Hightower, Sheila M.	Rpt	D O J/U S Attorney Off 555 4 th St, NW#1111 20530
Hodges, Glenda F.	Rpt	Howard Univ Hospital 2041 Ga Ave, NW#2322 20060
Hoffman, Kathryn J.	Rpt	O'Melveny & Myers 1625 I St, NW 20006
Jacobson, Julie	Rpt	Stoiber & Associates 1621 Conn Ave, NW#200 20009

John, Elayne J.	Rpt	F B I 935 Pa Ave, NW#5712 20535
Jones, Morris	Rpt	Peoples Neighborhood FCU 4704 13 th St, NW 20011
Jones, Olivia V.	Rpt	O A G/Child Support 441 4 th St, NW#550N 20001
Knox, Kenneth S.	Rpt	Preston Gates et al 1735 NY Ave, NW#500 20006
Lewis, Cynthia	Rpt	Congressional F C U 50 Indep Ave, SW 20515
McCormick, Jessica G.	Rpt	D O J/U.S. Attorney Off 555 4 th St, NW 20530
Mitchell, Kathleen J.	Rpt	Trammell Crow 1055ThJeff St, NW#600 20007
Morgan, Evelyn C.	Rpt	1008 23 rd St, NW 20032
Mudd, Carrie E.	Rpt	D O J/Gen Counsel Off 501 3 rd St, NW#5500 20530
Peeks, Richard	Rpt	Analysis Group 1899 Pa Ave, NW#200 20006
Perry, Alison A.	Rpt	Gilbert Heintz Randolph 1100 N Y Ave, NW 20005
Rimel, Mary Ann	Rpt	Carey International 4530 Wis Ave, NW 20016
Robinson, Deborah G.	Rpt	Preston Gates et al 1735 NY Ave, NW#500 20006
Scarborough, Evelyn S.	Rpt	Wachovia Bank 1300 I St, NW12thF1 20005
Sharpe, Melissa	Rpt	Office of Human Rights 441 4 th St, NW#570N 20001

Shields, Brenda E.	Rpt	B E S Services 17 Miss Ave, SE 20032
Shyllon, Angela R.	Rpt	I U O E 1125 17 th St, NW 20036
Smith, Bernadette	Rpt	Cohen Milstein et al 1100 NY Ave, NW#500ET 20005
Smith, Michael S.	Rpt	Wachovia Bank 1300 I St, NW12thF1 20005
Snesko, Bernard A.	Rpt	1322 Maryland Ave, NE 20002
Stack, Margaret M.	Rpt	Himmelfarb Properties 4345 42 nd St, NW#203 20016
Stevens, Glenn W.	Rpt	Cafritz Interests 1660 L St, NW#600 20036
Szafran, Joanne	Rpt	GSA/Insp Gen Office 1800 F St, NW#5303 20405
Tindall, Nicholas	Rpt	Natl Marine Manufacturers 444 N Cap St, NW#645 20001
Williams, Angela	Rpt	OAG/Child Support 441 4 th St, NW#550N 20001
Wolford, Kim	Rpt	Olender Reporting 1522 K St, NW#720 20005
Zollman, Carmen	Rpt	Arent Fox 1050 Conn Ave, NW 20036

ZONING COMMISSION NOTICE OF FILING
Z.C. Case No. 02-38A
(Modification to First-Stage PUD, approval of Second-Stage PUD,
and approval of a Related Map Amendment)
Square 542, Lot 89
November 20, 2006

THIS CASE IS OF INTEREST TO ANC 6D

On November 15, 2006, the Office of Zoning received an application from Waterfront Associates, LLC, in conjunction with RLA Revitalization Corporation (RPARC) (the "applicant"), requesting the Zoning Commission to approve a modification to a first-stage PUD, approve a second-stage PUD, and approve a related map amendment from C-3-B to C-3-C for the above referenced property.

The property that is the subject of this application consists of Square 542, Lot 89 in Southwest Washington, D.C. (Ward 6) and is located at 401 M Street, S.W., known as Waterside Mall. The Zoning Commission approved the first-stage PUD and requested zoning change in Zoning Commission Case No. 02-38, by Order dated July 31, 2003 and published November 28, 2003.

The PUD site consists of approximately 13.41 acres and is on the north side of M Street, S.W. between 3rd and 6th Streets, S.W. The PUD is currently improved with the Waterside Mall and two high-rise towers, which include mostly vacant office and retail space. The PUD is currently zoned C-3-B/C-3-C under the first-stage PUD. The applicant is requesting that the entire site be re-zoned to C-3-C. The applicant proposes to construct a mixed-use project, consisting of office, residential, and retail uses, including an option for a grocery store. The project would contain approximately 2,526,500 square feet of gross floor area (GFA), having an aggregate floor area ratio (FAR) of 4.33, with 1,296,895 square feet of GFA devoted to office and retail and 1,229,605 square feet of GFA devoted to residential uses. The proposed residential towers on the north end would have a maximum height of 114 feet, while the existing buildings further to the south would maintain their existing height of 130 feet and be converted to apartment houses. The applicant requests flexibility to convert the residential towers on the north end to commercial uses. The office towers at the south end, abutting M Street and the newly re-opened 4th Street, have maximum heights of 114 feet, with the office towers in the center of the PUD having a maximum height of 94 feet.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION NOTICE OF FILING

Case No. 06-45

(Consolidated PUD & Related Map Amendment – Square 6123, Lots 78 & 80; Square 6125, Lots 20-25; and Square 6126, Lots 65-69 & 72)

November 21, 2006

THIS CASE IS OF INTEREST TO ANC 8E

On November 3, 2006, the Office of Zoning received an application from the D.C. Housing Authority and CEMI-NMI Highlands LLC, a joint venture between Crawford Edgewood Mangers, Inc. and New Market Investors LLC, (the “applicant”) for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Square 6123, Lots 78 and 80; Square 6125, Lots 20-25; and Square 6126, Lots 65-69 & 72 in the Washington Highlands neighborhood in Southeast Washington, D.C. (Ward 8) and is located on a vacant, 9.25-acre site generally bounded by Condon Terrace, 8th Street, 9th Street, and Valley Avenue. The property is currently zoned R-5-A. The applicant is seeking a map amendment to R-5-B.

The applicant proposes a 142-unit residential development, including townhouses and stacked two-level units on top of flat units, on a vacant portion of the site of the Highland Addition public housing complex. Currently, Highland Addition consists of 118 occupied units. The new development will replace 126 public housing dwelling units that were demolished in 1999 with a mixed-income development that will provide 112 home ownership opportunities for low-income and market-rate homebuyers, as well as 30 rental units for low-income families. The applicant proposes a 1.18 aggregate floor area ratio (FAR). The building heights will range from 25.8 feet for the two-story rowhouses to 55.2 feet for the three-and-one-half-story townhouses, and the lot occupancy will be thirty-four (34) percent. The site plan provides for 192 off-street parking spaces, some of which will be provided as integral garage units, while others will be provided within driveway space and parking pads. In addition, there will be 118 curbside parallel parking spaces created on public streets.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION ORDER NO. 03-03B
ZONING COMMISSION CASE NO. 03-03B
(Modification to Approved Planned Unit Development for
Capitol Gateway Estates)
September 11, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on July 17, 2006 to consider requested modifications to the Capitol Gateway Estates planned unit development ("PUD") approved in Zoning Commission Order No. 03-03. The Zoning Commission considered the modifications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulation ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the requested modifications.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On December 16, 2005, the District of Columbia Housing Authority and the associated private development team of A&R/THC LLC and East Capitol Gateway LLC (the "Applicant") filed a request for a modification to the approved PUD in Zoning Commission Case No. 03-03 for Capitol Gateway Estates, located on a large site on multiple squares in the vicinity of East Capitol Street and Southern Avenue, S.E. The requested modifications were to correct several inaccurate lot numbers from the second-stage PUD order and to eliminate the approved community building as specified in Condition No. 6 of Z.C. Order No. 03-03 and instead to construct 12 townhouses on the site.
2. The Commission voted to set the application down for a public hearing at its meeting on April 20, 2006. After proper notice, the Commission held a public hearing on July 17, 2006.
3. The parties in the case were the Applicant and Advisory Neighborhood Commissions ("ANC") 7C and 7E, within which the PUD is located.
4. At the conclusion of the public hearing on July 17, 2006, the Commission took proposed action to approve the requested modification.

5. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated August 31, 2006, found that the proposed modification would not adversely affect any federal interest or be inconsistent with the Comprehensive Plan for the National Capital.
6. The Zoning Commission took final action to approve the requested modification on September 11, 2006.

The Request for Corrected Lot Numbers

7. The Applicant's statement indicated that there were two sources of errors in some of the lots indicated in Order No. 03-03. The first was simply that the retail center proposed in the original PUD has been delayed, and the plans for it were withdrawn from the original PUD. However, Lot 51 in Square 5272, which was part of the commercial site, inadvertently was not removed from Order 03-03. Accordingly, this lot should be deleted from the description of the approved PUD.
8. The second correction concerns the southern portion of Square 5246, bounded by East Capitol Street, 58th Street, 57th Place, and Clay Street, N.E. The southern part of this square is also part of the future commercial part of the PUD, but the northern part is within the approved, residential PUD. Two lots at the boundary between the residential and commercial areas should have been listed in the residential PUD: Lots 50 and 66. With these additions, the correct listing of the applicable lots will be Square 5246, Lots 50-56 and 66-78.
9. A companion correction is needed with respect to Square 5246 as shown on the zoning map that accompanies Order No. 03-03. The listing of PUD lots in Square 5246 to the right of the map states, "41-78." However, Lots 41-49 and 57-65 should be excluded, because these lots are south of the residential boundary line and will be part of the future commercial PUD. The revised listing should be "Square 5246, Lots 50-56, 66-78." A corrected version of the zoning map for Square 5246 was submitted by the Applicant for adoption in this proceeding.

The Requested Modification to Condition No. 6

10. Condition No. 6 in Order No. 03-03 states, "The community center building shall be constructed according to the plans submitted as exhibit 27 of the record. The building shall have a height not to exceed 25 feet and a gross floor area not to exceed 16,000 square feet. The site shall provide 33 off-street parking spaces." The site for the community center building was in Square 5280 and oriented to the southeast corner of the intersection of East Capitol Street and 56th Place, S.E.
11. The Applicant's written submissions and testimony at the public hearing in this proceeding requested that 12 townhouses are proposed to be constructed on the site identified in Condition No. 6, rather than the community center building. The Applicant

- indicated that the community center was not needed or financially supportable because nearly all of the functions that were intended to be housed in the building had already been located elsewhere or would be accommodated elsewhere.
12. The East Capitol View Community Development Corporation ("CDC") and the East Capitol View Center for Change were intended to be the lead occupants in the community center building. The CDC had programmed space for offices, classrooms (including computer training), and a conference room.
 13. The CDC also managed the Community Supportive Services Program, which provided counseling and training in life skills for former public housing residents. This HOPE VI program no longer receives funding, as its mission is substantially complete. The space for the supportive services program and the CDC's office space related to it, are no longer needed.
 14. The CDC is currently located in a townhouse and will move to the rental tower building at 5929 East Capitol Street, S.E. (one block to the east of the community center site) in the forthcoming Capitol Gateway Towers PUD application as its permanent location in Capitol Gateway Estates.
 15. The Center for Change and its Youth Services Program also now have their own building, so that they no longer require space in a community building.
 16. The other major function that was proposed for the community building was a child development center. The daycare provider previously identified has relocated permanently to the Wheeler Creek community, reflecting in part the fact that there is no demand for daycare services until there are residents at Capitol Gateway Estates. A daycare center for the Capitol Gateway Estates PUD will be located within the 10-acre retail-residential component of the site to be developed, after PUD approval, on the north side of East Capitol Street in Square 5276, directly across East Capitol Street from the rental towers. The daycare space will be designed to the specifications of the selected daycare provider.
 17. The Applicant's architect presented the plans for the proposed 12 townhouses that will occupy the site formerly slated for the planned community center. He indicated that they will be typical of the 62 townhouses approved as part of the larger Capitol Gateway Estates PUD and that associated landscaping will also be typical of the overall PUD pattern. The houses will be three stories high and will include both rental and ownership units.
 18. Ten townhouses will front along East Capitol Street (Lots 207-216), and two semi-detached dwellings will front on 56th Place (Lots 205 and 206). Residences along East Capitol Street will be set back at least 30 feet from the curb, with front access provided by a three-foot-wide concrete sidewalk. These residences will have rear-loaded garages, accessed from a 15-foot-wide private alley. The semi-detached pair of houses on 56th

Place will be set back 20 feet from the curb and will have front-loaded garages because of the open space behind these lots and south of Lot 205.

19. The Applicant indicated that there is an interior lot behind the townhouses fronting on East Capitol Street that will be devoted to open space. At present there are no specific plans for equipment, structures, or fencing, and the Applicant's preference is to leave the decision as to the long-term character of the space to be decided by the homeowners' association. A future application for a modification of the PUD will be needed to accommodate any changes in the treatment and use of the open space, such as with respect to landscaping, the installation of any fencing, and controls on public access.

Office of Planning Report

20. By report dated June 30, 2006, the Office of Planning ("OP") recommended approval of the Application, noting that constructing the 12 townhouses in place of the community center "meets the PUD standards outlined in § 2403 and is in accordance with the intent of the Zoning Regulations and the 2nd stage PUD." (p. 2) OP testified that it preferred that the open space referenced by the Applicant be maintained as accessible to the public.

Advisory Neighborhood Commissions 7C and 7E

21. Neither ANC 7C nor 7E filed a report on this Application.

Public Testimony

22. There was no testimony by individuals or organizations at the public hearing.

CONCLUSIONS OF LAW

1. Under § 2409.9 of the Zoning Regulations, any modification to a PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Zoning Commission. The proposed modification shall meet the requirements for a second-stage application, except for minor modifications and technical corrections as provided for in § 3030 of the Zoning Regulations. This application was accordingly processed as a second-stage application.
2. The Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the second-stage approval. Accordingly, the Commission grants approval to this second-stage application in accordance with § 2408.6 of the Zoning Regulations.
3. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the issues and concerns of the affected ANCs. Neither of the affected ANCs submitted a report in this proceeding.

4. The requested modifications are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the requested modification to the PUD. The approval is subject to the following amendments to Z.C. Order No. 03-03:

1. Amend the listing of lots and squares in Findings of Fact and in the Decision section of Order No. 03-03 so as to eliminate Lot 51 in Square 5272 and to add Lots 50 and 66 in Square 5246, and revise the last sentence of Finding of Fact No. 1 in Order No. 03-03 to read as follows: "The property is identified as Lots 50-66 and 66-78 in Square 5246; Lot 53 in Square 5279; Lots 99-114 and 118-204 in Square 5280; and Lots 36-92, 96-98, and 101-139 in Square 5281 (the "PUD Site")."
2. Revise the first paragraph in the Decision section of Order No. 03-03 to read as follows: "In consideration of the Findings of Fact and Conclusions of Law stated herein, the Zoning Commission orders **APPROVAL** of the second-stage (final) PUD for property located near East Capitol Street and Southern Avenue, S.E., specifically Lots 50-66 and 67-78 in Square 5246; Lot 53 in Square 5279; Lots 99-114 and 118-204 in Square 5280; and Lots 36-92, 96-98, and 101-139 in Square 5281."
3. Adopt the corrected Zoning Map for Square 5246 that accompanies this Order.
4. Condition No. 6 in Z.C. Order No. 03-03 authorizing construction of a community center building is deleted and is replaced by the following new Condition No. 6:
 - "6. Pursuant to Zoning Commission Order No. 03-03B, on the site of the originally approved community center building in Square 5280, 10 row dwellings and two semi-detached dwellings and associated open space shall be constructed in accordance with the plans submitted as Exhibit 21 of the record, provided that any changes made to the site plan dated July 17, 2006 shall require approval of the Zoning Commission."
5. Amend the development tabulation in Condition No. 4 of Order No. 03-03 to show that the PUD now includes 124 semi-detached dwellings and 72 rowhouses, and a total of 238 dwelling units.
6. Amend Condition No. 5 of Order No. 03-03 to provide that "there shall be a minimum of 238 on-site and curbside parking spaces."

For the reasons stated above, the Commission concludes that the Applicant has met the burden of proof, and it is hereby **ORDERED** that the application is **GRANTED**.

The Zoning Commission **APPROVED** the application at the close of the public hearing on July 17, 2006, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; John G. Parsons, having not participated, not voting).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on September 11, 2006 by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; John G. Parsons, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on _____.

ZONING COMMISSION ORDER NO. 06-22
Z.C. Case No. 06-22
(Construction of a Major League Baseball Ballpark – District of Columbia Sports and
Entertainment Commission)
July 6, 2006

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on June 26, 2005, to consider an application by the District of Columbia Sports and Entertainment Commission (“DCS.E.C” or “Applicant”), pursuant to 11 DCMR § 1606, for the construction and operation of a Ballpark, which includes a mixed-use development, and ancillary uses in Squares 702 through 706 and Reservation 247 (the “Ballpark Site”) (for use by the Washington Nationals Baseball Club and for entertainment and associated uses. Although the sports stadium and the attached mixed-use development technically comprise one building, the stadium portion will be referred to in this Order as “the Ballpark” and the attached mixed-use development will be referred to as “the Adjacent Development”.

For the reasons stated below, the Commission, on July 6, 2006, voted to grant the application including the Applicant’s request to waive the requirement of 11 DCMR § 1606.7 that all parking within the Ballpark Site be located underground. The waiver is only as to 925 above-ground parking spaces to be located within the Adjacent Development as shown on the Applicant’s plans. All other parking must be underground. In that regard, the Commission denied an alternative request to construct approximately 1,111 parking spaces within two above-ground parking structures at the same location where the Adjacent Development is proposed. Similarly, the Commission denied a request to construct approximately 300 below-grade exposed parking spaces on the southern portion of the site.

As to the provision of ground floor preferred uses governed by 11 DCMR § 1606.14, the Commission is requiring that the Applicant devote 46,000 square feet of gross floor area to such uses along the Ballpark’s perimeter (as shown on the Applicant’s plans depiction “Option Two”) and granted a variance from the requirement that the areas devoted to Preferred Uses have a minimum floor to ceiling height of 14 feet.

The Commission also denied a request for a variance from the requirement of 11 DCMR § 1606.16 that each “building or structure located on the portion of South Capitol Street that lies within the Ballpark Site shall be set back for its entire height and frontage not less than fifteen (15) feet.”

A full discussion of the facts and law relied upon by the Commission follows.

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FINDINGS OF FACT

The Applicant

1. The Applicant is the District of Columbia Sports and Entertainment Commission, an independent agency of the District of Columbia government. The Applicant is responsible for the management and operation of Robert F. Kennedy Memorial Stadium, the DC Armory, and their adjacent facilities and for presenting and promoting sports, entertainment and special events in the District and the Washington, DC, metropolitan area.
2. The Applicant cited the Ballpark Omnibus Financing and Revenue Act of 2004 (D.C. Law 15-320; 52 DCR 1757) as authority for it to develop, construct, and lease the Ballpark

The Property and Surrounding Neighborhood

3. The property that is the subject of this application is in Squares 702 through 706 and Reservation 247 (the "Ballpark Site"). The term "Ballpark Site" is also used in 11 DCMR 1606.1 to describe these properties.
4. The Ballpark Site is zoned CG/CR, which permits the construction and operation of a ballpark subject to the approval of the Zoning Commission, 11 DCMR §§ 1606.1 and 1606.18.
5. The property within the Ballpark Site is owned by the District of Columbia, with the exception of the approximately 2 acres of Reservation 247, a federally-owned parcel, which is the subject of a transfer of jurisdiction between the federal and District governments that pre-dates the proposed change of use for this site.
6. The total area of the Ballpark Site is approximately 852,907 square feet and is bounded by South Capitol Street on the west, N Street, S.E. on the north, First Street, S.E. on the east, and Potomac Avenue, S.E. on the south.
7. To the east of the Ballpark Site is a pumping station operated by the District of Columbia Water and Sewer Authority. To the south is a concrete mixing and batching plant, the site of which is the subject of a planned unit development application. To the north and west is a mix of low-density residential and commercial uses, as well as a bus garage owned and operated by the Washington Metropolitan Area Transit Authority.
8. The Naval Yard Metro Station is located at M and Half Streets, S.E., one block north of the Ballpark Site.
9. The Ballpark Site is within the Anacostia Waterfront Initiative ("AWI") area. The vision of the AWI is of a clean and vibrant waterfront with a variety of parks, recreation

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opportunities, and places for people to meet, relax, encounter nature, and experience the heritage of the waterfront. The AWI also seeks to revitalize surrounding neighborhoods, enhance and protect park areas, improve water quality and the environment, and, where appropriate, increase access to the water and maritime activities along the waterfront.

10. The Ballpark Site is on the western edge of the Near Southeast Target Area, which is undergoing rapid transition. The Zoning Commission has already given approval to a number of separate development projects, including the Southeast Federal Center site, and the Hope VI Arthur Capper / Carrollsburg site, and the US Department of Transportation Headquarters.
11. The District Department of Transportation ("DDOT") is currently managing the Environmental Impact Statement process for the reconstruction of South Capitol Street. The street is envisioned as a grand and lively urban boulevard in the tradition of Pennsylvania Avenue and Connecticut Avenue, serving residents and visitors as a principal gateway to the U.S. Capitol, the Anacostia waterfront and the Southwest, Southeast, and Buzzard Point neighborhoods. The impact of the Ballpark on this vision cannot be overstated.

The Application, Hearing, and Decision

12. On May 3, 2006, the Applicant filed an application for the construction and operation of a ballpark, pursuant to 11 DCMR §§ 1606.18 through 1606.24. The Application was amended on June 23, 2006 and supplemented on June 29th ("the application").
13. The Office of Zoning scheduled a public hearing for June 26, 2006. The Commission provided proper and timely notice of that public hearing on this application by publication in the *D.C. Register* on May 19, 2006, and by mail to Advisory Neighborhood Commission ("ANC") 6D and owners of property within 200 feet of the Ball Park Site.
14. ANC 6D, the Advisory Neighborhood Commission within which the Ballpark Site is located, was automatically a party in this proceeding.
15. The Commission received no requests for party status.
16. Pursuant to 11 DCMR § 1606.24, the Commission held a meeting on May 25, 2006 to offer preliminary comments on the application. At that meeting, the Zoning Commission raised concerns about certain aspects of the application, particularly the above-ground parking structures and a projection into the South Capitol Street setback to accommodate four observation platforms. The Commission suggested that the DCS.E.C rethink or modify these and other aspects of its proposal.

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17. The Commission held a public hearing on this case on June 26, 2006. Commission members present were Vice Chairperson Anthony J. Hood and Commissioners Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull.
18. The DCS.E.C was represented by Mark H. Tuohey, III, Chairman of the Board; William N. Hall, Chairman of the Baseball Committee of the DCS.E.C; and Allen Y. Lew, Chief Executive Officer of the DCS.E.C.
19. The Applicant also presented the testimony of Joe Spear, Susan Klumpp, and Duncan Kirk from HOK Sports, Alan Harwood of EDAW, the Applicant's environmental consulting firm, and Louis Slade of Gorove/Slade, the Applicant's traffic consultant.
20. The testimony of other witnesses is summarized at the conclusion of these finding.
21. On June 29, 2006, the Applicant provided supplemental materials that offered more detailed renderings of portions of the Ballpark.
22. At a special public meeting held July 6, 2006, the Commission granted the application, together with a partial waiver of the requirement for underground parking, and a variance from the minimum floor to height requirement for retail uses. The Commission denied a waiver of the requirement for underground parking to permit 1,111 parking spaces in two exposed parking garages and 300 exposed parking spaces at the Ballpark's south plaza. Lastly, the Commission denied a variance to permit the four observation platforms to intrude unto the 15 foot set back area on South Capitol Street.

The Proposed Development

23. There are three discrete aspects to the application: (a) the Ballpark; (b) the location of parking spaces; and (c) extent of retail, service, entertainment, or arts uses ("Preferred Uses") along the Ballpark perimeter.

The Ballpark

24. The footprint of the Ballpark would occupy approximately 500,000 square feet within the central portion of the Ballpark Site and would have a capacity of 41,000 seats.
25. The Ballpark would have a total square footage of about 1.2 million square feet. This results in a floor area ration ("FAR") of about 1.4. The FAR computation includes an office "annex" adjacent to the planned new South Capitol Street / Potomac traffic circle at the south-west corner of the Ballpark Site.
26. The Ballpark would have a maximum height of 110 feet measured to the top of the roof canopy.
27. The proposed height and FAR are within matter-of-right limits.

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28. Certain program elements within the Ballpark would be oriented to allow for non-game-day use, including a restaurant, conference center, Washington Nationals ticket office, and perimeter retail.
29. The Ballpark's orientation from home plate to center field will be towards the northeast. This orientation provides the best fit of the Ballpark onto the shape of the site, and it allows the principal outfield opening to orient towards the Navy Yard Metro Station, from where many, if not most, patrons will arrive to the site.
30. The site plan provides for ample pedestrian sidewalks around the Ballpark. Entrances to the Ballpark would be provided from each surrounding street, with principal entry openings onto a plaza at Half Street S.E. to the north, and onto Potomac Avenue S.E. and the Anacostia Riverfront to the south, funneling people towards the Metro station and the planned entertainment/retail district along Half and First Streets S.E. and along the waterfront, and away from existing residential areas.
31. A south plaza would be partly hard and partly soft landscaping.
32. The Ballpark's façade materials include glass, metal, stone, and masonry.
33. The Ballpark will promote the use of best practice environmental design, including stormwater management and recycling practices.
34. The Applicant's plans depict a projection extending into the fifteen foot set back area required by 11 DCMR § 1606.16. The projection consists of the outermost portion of an internal pedestrian ramp connection between the various levels of the Ballpark. The projection would be up to 15 feet in depth from the façade, and would start at a height of 15 feet above the sidewalk. The projection is depicted in Exhibit G of the Applicant's June 29, 2006 submission.
35. The stated purpose of the projection is to offer Ballpark patrons a view of South Capitol Street and the Capitol Dome.
36. The projection is not required as a result of any exceptional condition affecting the property.
37. Whatever nominal value this projection might add to a visitor's experience is outweighed by its interference with the views of those on South Capitol Street.
38. These platforms will also pose significant danger to pedestrians in this area from objects that might fall or be tossed from these areas. The clear line of sight these platforms will have to the Capitol presents a clear security risk.

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39. The scoreboard would be located in the northeast corner of the Ballpark Site. The defined height will be 80 feet to the top of the scoreboard (as measured from South Capitol Street). This location is as far from South Capitol Street as possible, which allows the scoreboard to be partially screened by the rest of the Ballpark from motorists and pedestrians on South Capitol Street.
40. Field lighting utilizing a band of lights will be incorporated into the uppermost roof canopy. This will reduce light spill, minimize the need for lights on standards, and will minimize the visibility of the lights themselves, particularly as seen from outside the structure. These will be augmented by two free-standing light towers in areas of the outfield not covered by the canopy roof.
41. Consistent with the requirements of Major League Baseball, the playing field must have high intensity light (250 foot candles) directed towards the pitching mound. However, the Commission accepts the conclusion of EDAW, the Applicant's environmental consulting firm, that horizontal light spill will be limited to an area adjacent to the open northeast end of the Ballpark, where light levels would reach 5 to 6 candles. Light levels in the existing residential areas west and northwest of the Ballpark would not increase over existing nighttime levels of 2 to 3 candles.
42. Although the vertical effect of the Ballpark's lighting, known as "night glow", will temporarily reduce the ability to observe the nighttime sky in the immediately adjacent areas, the view of the Capitol Dome will not be significantly diminished from most vantage points.
43. The most significant external signage will be a naming rights sign on the Potomac Avenue elevation, at a height of 62 feet above the plaza below. The lettering proposed would be 17 feet tall and visible from the proposed new bridge, the waterfront, and from Potomac Avenue.. This naming sign is depicted in Architectural Sheet 40 of the Applicant May 18, 2006 submission
44. Another naming rights sign will be located twenty feet above the turnstiles on the Half Street plaza.
45. The potential adverse impact of the proposed signage will be mitigated by a condition controlling the number, location, and lettering of the naming rights signs.
46. The Applicant has submitted a Preliminary Transportation Operations Plan ("PTOP"), which sets forth goals and timeframes towards the creation of a final Transportation and Operations Plan. As envisioned, the final plan (which will take approximately two years to complete) will include traffic mitigation and traffic flow measures designed to encourage use of alternative forms of transportation and measures designed to address traffic flow and pedestrian, parking, and vehicular conflicts.

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47. The PTOC concluded that most patrons would arrive to the Ballpark by mass transit, but that the Ballpark would still have a parking demand of 4,500 spaces for both Ballpark patrons and employees. In addition to the 1,225 parking spaces that will be constructed on the Ballpark Site, additional spaces are expected to become available through adjacent private parking facilities and remote parking areas.
48. The Applicant and DDOT have entered into a Memorandum of Agreement ("MOA"), delineating the Applicant's commitment to devising and using its best efforts to obtain funding for improvements to Ballpark traffic operations, and infrastructure.
49. Pursuant to the MOA, the Applicant is to provide DDOT with a final Traffic Operations Plan no later than April 30, 2007. DDOT has the absolute right to modify the draft plan. Prior to DDOT consenting to any building permit, the Applicant must provide information that addresses streetscape and public realm design, street tree and storm water management, and traffic and parking management, including "detailed plans for the location of parking facilities".

Parking

50. Section 1606 of the Zoning Regulations, which governs the Ballpark use, does not specify a minimum parking requirement, but allows no more than 1,225 parking spaces within the Ballpark Site. The 1,225 parking spaces equates to the minimum number of spaces required under the District's contract with Major League Baseball.
51. The Zoning Regulations further provides that all such parking must be underground. 11 DCMR §1606.7.
52. The Applicant proposes to locate 1,225 parking spaces within the Ballpark Site and has requested the Commission to approve two alternatives for doing so, both of which would require partial or total relief from § 1606.7.

The Structured Parking Alternative

53. The first alternative is to locate 1,111 above-ground parking spaces in two large stand-alone structures situated opposite each other at northernmost part of the Half Street plaza, which will serve as the principal entrance to the Ballpark.
54. The remainder of the 1,225 parking spaces proposed (114 spaces) would be located beneath a grass-covered area at the southern portion of the Ballpark site.
55. The garages would be designed to accommodate 36,000 square feet of retail uses and to screen parked vehicles from the view of spectators in the concourse level and within the seating bowl. There would be no significant ground floor retail on the portion of the east structure that abuts the Half Street plaza, and the retail facing First Street is interrupted by

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a garage entrance. The structures would not be reinforced so as to permit the construction of uses attached to their uppermost level.

56. The above-grade parking structures would interject two square blocks of mundane architecture into an area intended to be pedestrian-oriented and a showplace for cutting edge building design. In the space where residential, hotel or commercial uses should be, there will be rows of parked vehicles on game days and empty spaces at most other times. Taken together, these factors will limit opportunities for the area surrounding the Ballpark to become the vibrant retail and entertainment district as planned.

The Wrapped Parking Alternative

57. As an alternative to the two exposed parking garages, the Applicant proposes to reduce the number of above-ground parking spaces at the northern portion of the Ballpark Site from 1,111 to 925 and to "wrap" those spaces within a large mixed-use development, (the "Adjacent Development").
58. Along N Street, the above-grade parking would be fully wrapped by retail and residential uses.
59. On First and South Capitol Streets, parking would also be wrapped by retail, and sales office uses, a lobby, and amenity space.
60. Above street level, parking would extend out to South Capitol Street, but would be clad in ways to eliminate openings for ventilation, and to match a residential character. Along First Street S.E., the ground level parking would also be hidden behind other uses.
61. In addition, the Adjacent Development would include 8 levels of residential uses with approximately 672 units of housing totaling approximately 725,000 square feet. There will be 63 units set aside for affordable housing, which is roughly 10.5% of the total. Of these, 10% would be priced at 80% AMI; 5% would be at 60% AMI, and 5% would be at 30% AMI.
62. There would also be a 180-room boutique hotel use facing 1st Street S.E. totaling approximately 92,000 square feet, 26,000 square feet of street level retail along N Street, and baseball-oriented retail facing the ballpark entry plaza.
63. In addition to the 925 parking spaces that would be devoted to the Ballpark use, the Adjacent Development would contain 1 ½ levels of underground parking for residential, retail, and hotel uses (approximately 700 spaces).
64. Above grade, the mass of the Adjacent Development would be broken in two halves, or towers.

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65. The Adjacent Development would be located within a slightly larger footprint than the exposed garages.
66. Because the Adjacent Development would be connected to the Ballpark through an above-grade conditioned pedestrian bridge, the two uses would constitute a single building.
67. The total FAR of the combined building (i.e. the Ballpark and the Adjacent Development) would be 2.95 (2,515,478 of gross floor area divided by a lot size of 852,907 square feet), which is within the matter-of-right limit.
68. The architecture of the Adjacent Development compliments that of the Ballpark, but also represents a bold and welcomed departure from what has become the standard look of new apartment houses.
69. The Adjacent Development will augment and enhance the Preferred Uses to be located at the Ballpark's perimeter. In contrast to the exposed parking structures, the Adjacent Development will further the economic development of this area, by offering a mix of uses that will draw District residents and visitors to this area throughout the year, not just on game days.
70. In order to maintain the 1,225 parking spaces originally proposed, the Applicant would increase the number of parking spaces in the southern portion of the site to 300. Although some of the parking spaces would be below-grade, none would be "underground" (i.e. covered over by the ground") as required by § 1606.7. The area that was to be a lawn would now be exposed, except for tent-like tensile structures.
71. This disposed parking area would disrupt the visual continuity of the Ballpark at this location.
72. As to this parking location, the Applicant has identified no exceptional condition of the property or practical difficulty resulting from any such condition that would prevent it from strict compliance with the underground parking requirement of 11 DCMR § 1606.7. Indeed, the fact that the Applicant proposed underground parking for this area, albeit for a lesser number of vehicles, argues against the existence of any impediment to strict compliance.

Preferred Uses

73. The Applicant proposed to construct 32,000 square feet of gross floor area devoted to Preferred Uses around the Ballpark perimeter, ("Option One"). The uses would be located mainly on First Street S.E., with some retail also on South Capitol Street, and facing the plaza at N Street.

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74. The Applicant also sought approval to construct an additional 18,000 square feet of Preferred Uses ("Option Two") should the necessary funding be identified. The additional 18,000 feet would be achieved by pushing out the depth of the Preferred Uses along First Street closer to the building restriction line.
75. Options One and Two are depicted on Sheets A1 and A4, respectively, in Tab 2 of the Applicant's May 19, 2006 submission.
76. Under either option, the Preferred Uses would occupy at least 20% of the Ballpark's perimeter as required by the first paragraph of 11 DCMR § 1606.14.
77. Portions of the areas devoted to Preferred Uses have less than the 14 feet of minimum floor to ceiling height required by 11 DCMR § 1606 (d).
78. The average depth from the exterior façade in towards the center of the building for the 32,000 square feet of gross floor area devoted to Preferred Uses under Option One is 37.3 feet, which is less than the 40 foot minimum required under 11 DCMR § 1606.14 (e). However, the average depth of the 46,000 square feet of Preferred Uses to be provided under Option Two exceeds that requirement.
79. In providing for the height of the Preferred Uses, the designers were limited by economic considerations related to the operational costs of the facility and by the need to accommodate necessary infrastructure.

Testimony of Elected Officials

80. The Mayor of the District of Columbia, the Honorable Anthony A. Williams, testified at the public hearing in favor of the Ballpark and Adjacent Development, which he considered to be a catalyst for development in the area. He nevertheless urged that the Commission to permit the construction of the exposed parking garages in the event that Adjacent Development could not proceed as planned. Councilmember Sharon Ambrose offered similar testimony. Councilmember Marion Barry presented testimony concerning the Ballpark and the many challenges it posed.

ANC Report

81. By written report dated June 15, 2006. ANC 6D expressed its unanimous opposition to the application based upon the placement of parking structures above-ground, the absence of an "environmental plan", and the lack of both a traffic plan and a pedestrian plan that includes the surrounding neighborhood.
82. Andy Litsky, Chairman of ANC 6D, testified in opposition to the application. Chairman Litsky urged the Commission to reject structured parking on the northern portion of the Ballpark Site. Chairman Litsky stated that the ANC believes that as much space as

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possible on the Ballpark Site should be devoted to providing positive community amenities, which could not be accomplished by using the northern portion of the site for above-ground parking.

83. Mr. Litsky noted that the ballpark would have the largest footprint of any building along the Anacostia River, yet there exists no clearly articulated environmental plan. He also emphasized the lack of a Traffic Operations Plan and described the Applicant's Preliminary Traffic and Operations Plan as being "narrow in scope and flooded with inconsistencies."

Government Reports and Testimony

The District Department of Transportation (DDOT)

84. DDOT filed a report with the Commission on June 19, 2006. The report noted that while the application offers some general comments "on dispersal of parking facilities, protection of neighborhood parking and streets from Ballpark-generated traffic, traffic control for pedestrian safety, and special signal timings during Ballpark events, there is no meaningful detailed description of *how* these goals will be achieved" (emphasis supplied).
85. As to traffic demand, the report noted, "the roadway network around the Ballpark is seriously constrained and cannot support a high incidence of automobile travel to games and events." DDOT concluded that it was critical that the Applicant provide facilities and incentives to encourage travel by alternative modes including walking, biking, and public transit.-
86. DDOT, like the ANC, was concerned over the absence of a detailed transportation and operations plan, which it believed was "critical to resolving many of the issues described in this memorandum". Nevertheless, in view of the time constraints involved, DDOT indicated that it would support the application if it there existed a Memorandum of Agreement "that specifies the Applicant's commitments for devising and funding improvements to transportation operations and infrastructure."
87. At the hearing, Kenneth Laden, testifying on behalf of DDOT, indicated that the Memorandum of Agreement submitted to the Commission by the Applicant satisfied DDOT's concerns.

The Office of Planning

88. The Office of Planning ("OP") filed a report with the Commission on June 19, 2006, which stated its general support of the proposal. The report concluded that the proposed Ballpark would further the goals and objectives of the District's Elements of the Comprehensive Plan and the Capitol Gateway Overlay District. OP was, however,

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- unable to recommend that the Zoning Commission approve the Application because of the above-grade parking structures, which it concluded were “contrary to the wording and intent of the Overlay and other planning initiatives for the area.” OP was also concerned with the level of retail uses proposed under Option One.
89. In response to the Applicant’s amended application, which included the Adjacent Development, OP submitted a Supplemental Report dated June 26, 2006. The Supplemental Report indicated that Applicant’s revised proposal “significantly change[d] the form of development on the site and the degree to which the development conforms to the regulations and guidelines of the Capitol Gateway (CG) Overlay District and other planning efforts for the Ballpark area.” OP nevertheless expressed concern with the change to parking on the South Plaza, because it would replace the lawn panel with partially exposed parking that would be visible from the Frederick Douglass Bridge. The report did not provide an analysis of the stand-alone parking structures because the facilities were not the Applicant’s preferred alternative, and because “these structures generally are not consistent with the intent of the CG Overlay goals and guidelines.”
90. Ellen McCarthy, the Director of the Office of Planning, and Joel Lawson, its Associate Director for Planning and Development, testified on behalf of OP. The witnesses emphasized their support for the Ballpark, the Adjacent Development, and the retail opportunities provided along First Street either in Option One or Option Two of the application.
91. On July 5, 2006, OP submitted a post-hearing supplemental report in which it again reiterated its lack of support for the exposed parking on the South Plaza area of the Ballpark Site, finding that the introduction of the tent-like structures would do little to reduce the visibility of parked vehicles. OP stated its general support for the affordable housing provisions of the new development, the environmental measures described by the Applicant to be implemented at the Ballpark, and the MOU between the Applicant and the DDOT.

CONCLUSIONS OF LAW

On November 4, 2005, the Zoning Commission for the District of Columbia published ZC Order No. 05-08, in which it gave notice of its final adoption of rules governing the use and area requirements for a major league baseball Ballpark to be located on Squares 702 through 706 and Reservation 247, defined therein as the “Ballpark Site”. Six months later, the Applicant filed an application for approval of a ballpark on that site. A major amendment, described as a “Supplement”, was filed less than two weeks before the hearing.¹

¹ An application may not be modified less than twenty days before a hearing, 11 DCMR § 3013.8. Although the Applicant did not request leave to modify its application, the Commission permitted the amendment in the public interest.

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The application asked for relief from the requirement that any parking within the Ballpark Site be underground. The Applicant also sought variances from the depth and height requirements for Preferred Uses and to allow an interior ramp to extend into the 15-foot set back established for South Capitol Street. This Order will first address the zoning relief and variance requests.

Relief from the Requirement of Underground Parking

Section 1606 established no minimum parking requirement within the Ballpark Site. The District's contract with Major League Baseball did. In that agreement, the District promised to construct 1,225 parking spaces on site, of which 300 would be reserved for team personnel, and the remaining 925 for season ticket holders and persons with disabilities. All of these parking spaces were to be constructed prior to Opening Day 2008.

Consistent with its contractual obligation, the Applicant proposes to construct 1,225 parking spaces within the Ballpark Site, and offers two alternatives for doing so. The first alternative is to construct 1,111 parking spaces in two above-ground structures at the Half Street plaza. The garages would not be structurally able to support development above their uppermost level and retail uses would be interrupted by garage entrances. The remaining 114 parking spaces would be located completely underground at the South Plaza.

As an alternative to the exposed garages, the Applicant proposes to wrap 925 parking spaces in an attractive mixed-use development, which will include a significant amount of residential uses, a hotel, and additional ground floor retail. The parking spaces would be effectively hidden from the Ballpark's spectators. The Applicant refers to this development as its "Preferred Alternative". The Commission concludes it is the only viable choice.

The standard by which to judge the Applicant's request for relief from the underground parking requirement is set forth in 11 DCMR 1606.7, which allows the Commission to approve above-ground parking upon a showing of:

- (a) Practical difficulty with the provision of underground parking; and
- (b) Compliance with the provisions of §§ 1606.19 and 1606.20.

The Applicant cites the Council's cap on public funding for Ballpark construction, the escalating costs of materials, and the small amount of time left before April 2008 as the circumstances constituting practical difficulties to the construction of underground parking. Although the Applicant offered scant detail to support these assertions, it does seem clear that the Council's cap will not allow for the construction of both a first-class Ballpark and significant portions of underground parking. The increase in the cost construction materials has no doubt made matters worse. To quote the Mayor's testimony, "we are where we are."

Although practical difficulty may exist with respect to underground parking at the northern portion of the site, the Applicant has not explained, let alone demonstrated, why these same

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circumstances make underground parking at the South Plaza impractical. No such circumstances existed at the time of the Applicant's initial filing, because its plans showed 114 vehicles covered over by a lawn. Its amended Application showed a total of 300 vehicles below grade, but not covered by ground surface. While this increase in parking spaces was obviously related to the reduction of parking at the northern portion of the site, there is no similarly evident reason for replacing lawn cover with a parking pit at the south, and none was offered. If vehicles are to be located at this portion of the site, they must be located underground with accessible plaza or landscaped area above, as shown in the original plans.

The finding of practical difficulties for the provision of underground parking at the northern portion of the site does not end the inquiry. The Applicant was required to demonstrate that the proposed above-ground parking complied with the provisions of §§ 1606.19 and 1606.20. The Applicant made no real effort to make this showing with respect to the exposed parking garages, perhaps because such a showing was not possible.

The Commission need only address the first criteria of § 1606.20, which requires that any proposed building must "help achieve the objectives of the CG Overlay District as set forth in § 1600.2." Among other things, § 1600.2 indicates that the CG Overlay was created to "assure the development of the area with a mixture of residential and commercial uses" and to "[e]ncourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses". The parking structures will not only fail to "help achieve" these ends, they will act as an impediment. While the structures would provide for ground floor retail, the placement of such uses is problematic and interrupted by garage entrances, particularly at the Half Street plaza and along First Street. While the architects have tried to enliven these structures, they would, if constructed, be hinder broader planning efforts by taking up space that should be filled with more vibrant residential, hotel, or commercial uses.

In sum, the Applicant's parking structure alternative is a poor use of this critical area of land imaginable. It would squander a one-time, irretrievable opportunity to create a vibrant, year-round retail and entertainment district at this site. This is not a fallback position, as the Applicant suggests, but a retreat from good planning and land use, which this Commission will neither countenance nor approve.

In contrast, the Adjacent Development proposed at this same location easily complies with all of the criteria of §§ 1606.19 and 1606.20. Rather than inhibit the creation of a year-round retail and entertainment district, this development together with the Ballpark would act as a catalyst. For these reasons, the Commission grants the Applicant's request to construct 925 above-ground parking spaces to be wrapped on the north, west, and east sides with residential and retail uses located within the Adjacent Development. No other type of above-ground parking on the Ballpark Site is permitted.

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Variance Relief

The Applicant has requested variances from the minimum floor to ceiling height and depth of Preferred Uses, required by § 1606 (d) and (e), and to permit a circulation / observation tower to extend into the 15 foot setback on South Capitol Street established by § 1606.16. However, the Preferred Use depth variance is no longer needed. Although the Applicant had committed to providing 32,000 square feet of gross floor area devoted to Preferred Uses, and indicated it would add another 18,000 square feet should funding become available, the Commission is requiring that all 46,000 square feet be constructed.

The Commission would not ordinarily mandate a requirement of this kind. However, this is a unique application, and the Applicant is not a private entity, but part of a municipal corporation that has made a policy decision to cap public funding for this project. It is not for the Commission to second-guess that determination. But neither is the Commission bound to consider that cap, or the applicant's priorities in meeting that cap, as an absolute constraints on its prerogatives. In this case, the Commission believes that the full 46,000 square feet of Preferred Uses at the Ballpark's perimeter is needed to ensure the successful development of retail and entertainment uses to its north.

The additional 18,000 square feet of Preferred Uses will extend the average depth of these uses to more than the 50 foot minimum required by § 1606.16 (e), thereby eliminating the need for variance relief and ensuring the provision of practical and operational retail space. The Commission therefore need only consider the variance from the minimum height requirement, along with the requested projection into the South Capitol Street setback.

Variances from the strict application of the Zoning Regulations may be granted where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property." D.C. Official Code § 6-641.07(g)(3) (2001). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *Id.*

The establishment of a modern baseball Ballpark in an urban setting is an exceptional condition in and of itself. Trying to squeeze such a facility into an area as small as the Baseball Site required an imaginative use of available building space, which is clearly on display in this design. The architects could not furnish the needed amount of perimeter retail and also provide needed infrastructure without a reduction of some portions of the retail height to less than 14 feet. The reduction of height to 13 feet in some portions of the retail space is relatively small and will neither harm the public nor impair the intent of the regulations for this site.

The same cannot be said of the proposed setback projection, which was entirely a matter of choice. In response to a Commissioner's suggestion that there must have been some physical

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constraint that required the projection, the Applicant's witnesses adamantly maintained that the projection existed only to enhance the experience of Ballpark visitors. There is no exceptional condition of the property that necessitates this projection and no practical difficulty to the Applicant will result from its elimination. Moreover, these unattractive platforms would interrupt the South Capitol Street streetscape and impair the views of those on the sidewalk. This portion of South Capitol Street is not intended to become irrelevant on those days and months when baseball is not being played. It is intended to be a monumental boulevard during all seasons. Whatever enjoyment Ballpark patrons might derive from these areas is outbalanced by the detrimental impact on the pedestrians below, both in terms of aesthetics and safety. In the latter regard, it only takes a quick look at the rendering titled "view from South Capitol ramp" in the Applicant's June 29, 2006 submission to understand the security risks posed by these platforms.

The Applicant's request for a variance from the South Capitol Street setback requirement is denied and its request for a variance from the minimum floor to ceiling height for Preferred Uses is granted.

Having now defined the Ballpark to include the Adjacent Development and 46,000 square feet of Preferred Uses around the Ballpark's perimeter, the Commission approves the application to construct and operate this Ballpark. The Ballpark will meet the specific requirements of § 1606, except for the two aspects (above-ground parking and retail height) for which a waiver and variance has been granted, and complies with the requirements of §§ 1606.19 and 1606.20.

Both the Ballpark and the Adjacent Development represent exemplary architectural design that will result in a lively and safe streetscape, not just on game days, but throughout the year. It has been designed to be compatible with plans for the surrounding area and to minimize Ballpark noise and light spill to existing neighborhoods to the west.

The Preliminary Traffic Operation Plan sets forth the measures needed to minimize parking and traffic conflicts and vehicular and pedestrian conflicts on the neighborhood and the United States Capitol and to provide for safe and convenient movement to and through the Ballpark Site so as to minimize potential impacts on both the neighborhood and the United States Capitol. These measures will be implemented through a final Traffic Operations Plan that must be approved by DDOT pursuant to a Memorandum of Agreement.

The Ballpark will promote the use of best practice environmental design, including stormwater management and recycling practices. The Commission encourages the Applicant to include green roofs on the concourse restaurant, the portion of the Ballpark adjacent to the scoreboard and the preferred use space along First Street/Potomac Avenue.

Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309.10(d)(3)(a)), the Commission must give great weight to the issues and concerns raised in the written report of the affected Commission. In addition, the Commission is required under § 5 of the Office of Zoning

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Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04(2001)) to give great weight to Office of Planning recommendations.

Both OP and the ANC 6D expressed concerns that exposed parking structures would be a poor use of the land adjacent to the Ballpark. The Commission found this advice persuasive and therefore denied the Applicant's request for relief from the requirement of underground parking based upon the use of such structures. For the reasons stated in this Order, the Commission did not find the ANC advice persuasive with respect to traffic and parking issues, finding that the Preliminary Traffic Operations Plan and the Memorandum of Agreement will fully address Ballpark-related parking and traffic issues. The Commission also finds that the ANC's environmental concerns will be resolved as part of the building permit process. Lastly, the Commission agreed with OP that the area surrounding the Ballpark would benefit from an increased amount of retail around the Ballpark perimeter and generally agreed with OP's recommendation that the Ballpark, as described herein, should be approved.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia orders **APPROVAL** of the Application for the construction and operation of a Ballpark, the Adjacent Development, and ancillary uses in Squares 702 through 706 and Reservation 247, except with respect to the zoning relief and variances denied. This approval is subject to the following conditions:

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 square feet of gross floor area space to be devoted to Preferred Uses around the Ballpark perimeter 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.
3. Parking areas that are not hidden from the public's view shall be clad in ways to eliminate openings for ventilation and to match a residential character.
4. There shall be no more than two principal external naming rights signs. One sign may be mounted approximately 62 feet above the entrance on Potomac Avenue with lettering no more than 6 feet high. A second sign may be located on the N Street entrance just above the turnstile canopy approximately 20 feet above the plaza.

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5. The Applicant is required to comply fully with the provisions of the Human Rights Act, and this Order is conditioned upon full compliance with those provisions. 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.

On July 6, 2006, the Commission voted to **APPROVE** the Application by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, John G. Parsons and Michael G. Turnbull to approve; Carol J. Mitten, not present, not voting), except that Vice Chairman Hood voted in opposition to the requirement that the Applicant provide the additional Preferred Uses depicted in Option Two.

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on _____.

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