



DONOHUE & STEARNS, PLC

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January 12, 2017

Via IZIS

D.C. Zoning Commission
441 4th Street, N.W., Suite 200S
Washington, D.C. 20001

Re: Z.C. Case No. 16-13 – JS Congress Holdings LLC
Applicant’s Post-Hearing Submission

Dear Commissioners:

On behalf of JS Congress Holdings, LLC (“Applicant”), please accept this post-hearing submission in support of its applications for a planned unit development (“PUD”) and related map amendment at 1109-1115 Congress Street, N.E. and 220 L Street, N.E. (Square 748, Lots 78 and 819). This submission responds to issues raised by the Zoning Commission at the hearing on January 4, 2017.

A. Affordable Housing Proffer

The Applicant proposes to increase its affordable housing proffer to equal 12 percent of the residential square footage in the project, or approximately 5,658 square feet of the net floor area. Approximately six percent of the net floor area, or 2,845 square feet, will be set aside for households earning no more than 50 percent of the annual mean income (“AMI”) and the remaining six percent (2,813 square feet) will be set aside for households earning no more than 80 percent of AMI. The Applicant has eliminated the three-bedroom unit offered in its last submission in order to achieve this deeper affordability level.

Unit	Type	Net Unit Size	AMI Level
201	1 BR	716 sf	50%
202	1 BR/D	821 sf	50%
205	1 BR	605 sf	50%
207	1 BR	703 sf	80%
302	2 BR/2BA	900 sf	80%
306	1 BR	605 sf	80%
308	1 BR	703 sf	50%
406	1 BR	605 sf	80%
Subtotal		2,845 sf	@ 50%
Subtotal		2,813 sf	@ 80%
TOTAL		5,658 sf	

As shown on Sheet 3.03 of the attached drawings, the Applicant believes that the inclusionary zoning (“IZ”) unit sizes meet the proportionality test of 11 DCMR § 2605.2. However, out of an abundance of caution, the Applicant requests minor flexibility from this provision in order to achieve the 12 percent IZ proffer stated above.

The Applicant has been able to achieve this deeper affordability level within the development parameters proposed for the PUD at 6.0 FAR and 90 feet in height. If the Applicant cannot achieve this height and density as permitted under the PUD guidelines, the Applicant can only provide the minimum eight percent IZ requirement. As discussed in greater detail below, the additional height and density is warranted by this increased affordable housing proffer, as well as the other public benefits and amenities of the project.

B. Additional Height and Density Achieved Through PUD Process Supported by Commensurate Level of High-Quality Benefits and Amenities,

As set forth in Chapter 26 of the 1958 Zoning Regulations (which govern this application), the PUD process is designed to encourage high quality development that provide public benefits. 11 DCMR § 2400.1. “The overall goal is to permit flexibility of development and other incentives, such as increased building height and density; provided, that the project offers a commendable number or quality of public benefits and that it protects and advances the public health, safety, welfare, and convenience.” 11 DCMR § 2400.2. In deciding a PUD and related map amendment application, the Zoning Commission is charged with judging, balancing and reconciling the relative value of the amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case. 11 DCMR § 2403.8.

At its January 4 hearing, the Commission commented favorably on the project design and many of its associated public benefits and amenities. However, the Commission was concerned that, on balance, these public benefits and amenities did not fully justify the proposed height of 90 feet. The Commission suggested that the proposed height may be warranted if the benefits package were enhanced and encouraged the Applicant to consider increasing the IZ component of the project and deepening the affordability levels. As described above, the Applicant has met both recommendations: the amount of square footage devoted to IZ units has been increased to 12 percent, with half the units set aside for households earning 50 percent of AMI. Taken together, the Applicant submits that the total benefits package is fully commensurate with the development incentives for the additional height and density permitted for the C-2-B District under the PUD guidelines. The key components of the benefits package are as follows:

- A high-quality development with an attractive, contextual design
- Market-rate and affordable housing not otherwise achievable under existing zoning

- An increased affordable housing proffer of 12% of the residential square footage
- A deeper affordability level offer of half the IZ units for 50% AMI households
- A LEED-Gold design
- Improved site circulation and public space improvements
- A reconfigured and enhanced alley system
- Introduction of landscaping at L Street
- \$10,000 contribution to Friends of NoMa Dogs, Inc.
- \$80,000 plus for a Capital Bikeshare Station and one-year maintenance
- First Source Employment Agreement

C. Continued Coordination with the Party Opponent

1. Solar Panels

a. Solar Panel Product Information

The Applicant has been in discussions with Mr. Fred Irby, one member the party opponent in this case, since last fall regarding the effect of the proposed PUD on his property and, in particular, about the effects on his solar panel efficiency. Mr. Irby is the owner of 1114 3rd Street, N.E. and installed solar panels on his roof in late 2015. At the Applicant's request, Mr. Irby provided product information on his solar panels, which are Canadian Solar Modules, Sunny Boy Inverters. Mr. Irby included a copy of his District of Columbia Level 1 Interconnection Application and Agreement with Pepco, which reflects a SB 4000 Inverter with name plate ratings of 4.00kKW, 4.00 kVA and 240 AC volts, and a Photovoltaic source. He also provided a copy of his Pepco Net Energy Metering Contract (for Qualifying facility of 1000 KW or less).

Mr. Irby summarized his solar panel energy savings in the form of a spreadsheet with monthly figures that we believe were from his Pepco bill, which compared utility charges for the period October 2014 to September 2015 without solar panels to the period October 2015 to September 2016 with solar panels. The chart showed that for the first year of solar panel use Mr. Irby saved approximately \$765.

b. Shadow Studies

In considering any potential impact of the proposed PUD on Mr. Irby's solar panel efficiency, the relevant comparison is utility billings with solar panels versus utility billings with solar panels potentially affected by the proposed PUD. This future utilization is undeterminable at this point, but the Applicant prepared shadow studies to assess the potential impact.

The shadow studies, which were submitted to the Commission as part of the architectural drawings as Sheet A6.01, showed the following:

- In March, the solar panels are not shaded at all between 9 AM and 1 PM, but are fully shaded at 4 PM.
- In June, the solar panels are not shaded at all between 9 AM and 1 PM, but are partially shaded at 4 PM.
- In December, the solar panels are not shaded at all between 9 AM and 1 PM, but are fully shaded at 4 PM.

Based on the Applicant's discussions with individuals experienced with solar panel energy production, solar systems such as those installed at 1114 3rd Street, NE, generally do not begin producing energy until after 10 am when the sun's azimuth angle is high enough for the panels to start absorbing energy. In the evening, production drops after 4 pm for similar reasons. Thus, based on this information, any potential impact would occur in the late afternoon in winter and early spring months. However, the solar panels would be exposed to full sun during most of the maximum energy production period of 10 AM to 4 PM. Significantly, the proposed PUD is located to the west, not the south where solar energy collection is greatest and the recommended installation direction for solar panels. Mr. Irby's energy savings calculation of \$765 annually was based on a comparison of solar panels versus no solar panels. As noted above, however, the correct comparison is the solar panel efficiency before and after construction of the PUD. Based on the shadow studies, the impact would be minimal.

c. Solar Renewable Energy Credits

Mr. Irby stated that his solar panel system has generated approximately 5 Solar Renewable Energy Credits ("SREC") since he installed his system. An SREC is equivalent to one megawatt-hour (MWh) of electricity derived from an eligible solar resource. According to the U.S. Department of Energy, as of March 2015, the market price for D.C.-sourced SRECs was approximately \$480/MWh (\$0.48/kWh).

d. Applicant Offer of Compensation for Loss of Solar Panel Efficiency

The Applicant offered one-time payment of \$5,000 to Mr. Irby as compensation for any potential loss of his solar panel efficiency attributable to the proposed PUD. The payment was based on an aggregation of the information set forth above. Assuming there is a 20 percent reduction in solar panel efficiency (which overestimates the denigration based on the shadow study information), and applying that 20 percent reduction to Mr. Irby's annual savings in the first year after solar panel installation (estimated at \$765), Mr. Irby's electric bill would increase by approximately \$153 a year after construction of the PUD project.

The shadows created by the proposed PUD would have only minimal effect on the accumulation of SRECs. Nevertheless, applying the same 20% factor to the generation of SRECs, this would result in a loss of approximately one (1) SREC per year or a monetary loss of

approximately \$480. The resulting total impact would be an approximate financial impact of approximately \$633 per year. The Applicant's offer of \$5000 paid on completion of the project would compensate Mr. Irby for just under eight years of such losses.

2. Alley Closing Process

At the suggestion of the Commission, the Applicant has provided Mr. Irby with information on the protections afforded the public in alley closing processes by supplying him with a copy of a recorded alley closing covenant for the development in Square 369. That project closed one north-south alley and created two public access easements on two different streets to enhance circulation in the square. The covenant demonstrates how the general public can continue to access their property through the dedication of easements. A copy of the email to Mr. Irby is attached.

3. Discussions with Other Members of the Party Opponent

The Applicant has reached an agreement with Mrs. Helen Darden of 1116 3rd Street, N.E., and she submitted a letter to the record in support of the PUD project on January 4, 2017. The Applicant has also reached an agreement with Ms. Arita Johnson and requests that the Commission leave the record open to receive a letter from her.

D. Response to Commission Questions on Elements of the Project Design

1. Alley Lighting

The Applicant proposes to install lighting on the exterior of the building along the east and north sides to illuminate the rear of the building along the alley and the public access easement. The location and size of the proposed fixtures are shown on Sheet A.301 (first floor plan) and Sheet A4.02 and A4.03 (building elevations). As shown on the attached cut-sheet, the fixture has zero uplight and qualifies as a "nighttime friendly" product, meaning it is consistent with the LEED criteria for eliminating wasteful uplight.

2. Mitigation of Open Area at Five-Foot Easement

In order to mitigate the "canyon effect" created by the retaining wall where the Applicant will have a reciprocal easement with the property owner to the east at L Street, the Applicant will install a gate at the five-foot easement area. Details are shown on Sheets A3.01 (first floor plan), A4.02 (south building elevation), and A4.07 (elevation of five-foot easement, retaining wall and gate).

3. Retail Signage

The chart on Sheet A4.08 of the drawings has been clarified to show what is permitted as a matter-of-right under the D.C. Building Code for retail signage and what the Applicant proposes to

allow as part of the PUD project. Two enlarged elevations have been added to show the maximum size allowed as part of this PUD at both the L Street and Congress Street PDR spaces.

E. Supplemental Information Suggested by OP

Although not requested by the Commission, the Office of Planning suggested that the Applicant provided additional information on the range of PDR and PDR-related uses for the site and further explanation of the constraints imposed on the project if the rear yard setback were met.

1. Proposed Language Governing PDR Uses.

The Applicant proposes the following condition to control PDR and PDR-related uses in the project:

The PDR or PDR-related uses that shall be provided in the PUD may include:

- a. *Production, distribution or repair of goods including accessory sale of related products;*
- b. *Uses encompassed within the Arts, Design, and Creation use category in 11 DCMR § 100.2, but not including a museum, theater, or gallery as a principal use;*
- c. *Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage, including Union Kitchen;*
- d. *Design-related uses, including media/communications, computer system and software design; fashion design; graphic design; or product and industrial design;*
- e. *An urgent care center;*
- f. *A neighborhood hardware and/or paint store; or*
- g. *A package distribution center.*

2. Typical Dwelling Unit Depth in Relation to Rear Yard Relief

At the hearing, the Applicant described how it would be difficult to comply with the required rear yard depth or set back a portion of the upper floor because it would result in sub-standard unit layouts. The only portion of the site that is wide enough for an efficient double-loaded corridor is the north half. Even that portion, however, is not wide enough to provide a reasonable dwelling unit depth on both the east and west sides of the building and provide a compliant rear yard. An ideal dwelling unit depth is between 28 to 32 feet from exterior wall to corridor wall. This depth allows a living room at the exterior window wall at approximately 18 to 21 feet deep. The kitchen with a typical depth of nine to 11 feet would be “inboard” to the living room. Here, the proposed PUD only provides a depth of 23 feet with rear yard relief. If the Applicant were to provide a compliant 15-foot rear yard, the dwelling unit depth would only be 17 feet, ten inches. While it is possible to a dwelling unit work in that depth as a unique layout, it

would be a burden to have all of the dwelling units that shallow. A unit depth of less than 18 feet could not compete with market-rate units in the area and could not financially support the PUD project amenities and public benefits. Thus, rear yard relief is being requested.

F. Conclusion

The Applicant appreciates the opportunity to provide this supplemental information and respectfully requests favorable action on the applications.

Respectfully submitted,

DONOHUE & STEARNS, PLC

By: 
Mary Carolyn Brown

Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Applicant's Post-Hearing Submission was served by email or first-class mail this 12th day of January, 2017, on the following:

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By: 
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