



DONOHUE & STEARNS, PLC

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November 13, 2017

Via Email: zcsubmissions@dc.gov

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 200S
Washington, D.C. 20001

Re: Z.C. Case No. 16-13 JS Congress Holdings, LLC
Opposition to Union Market Neighbors Motion to Re-open the Record,
and Reconsider and Modify the Approved Order

Dear Chairman Hood and Members of the Commission:

On behalf of JS Congress Holdings, LLC, the applicant in the above-referenced matter ("Applicant"), we hereby oppose the request of Union Market Neighbors ("UMN") to re-open the record in Z.C. Case No. 16-13. UMN has not provided any rationale as to why the late filing is justified or why the Applicant and Advisory Neighborhood Commission ("ANC") 6C, the sole remaining parties to the proceeding, are not prejudiced by the motion. Accordingly, the request should be denied.

Under the Commission's rules of practice and procedure, any request to re-open the record "**must demonstrate good cause and the lack of prejudice to any party.**" See 11-Z DCMR § 602.6 (2016) (emphasis added). While UMN provides several pages of information, none of it explains the tardiness of its request. Significantly, both parties will be prejudiced by re-opening the record. Each spent an extraordinary amount of time refining the project design and developing the community benefits to assure a high-quality PUD that complemented the NoMA neighborhood. The Zoning Commission also devoted many hours of time reviewing documents, hearing testimony, and evaluating the proposal, consistent with its published rules and regulations. District agencies, particularly the Office of Planning and the District's Department of Transportation, likewise committed many resources to reviewing the project and preparing reports. The very purpose of the administrative process is to provide predictability, certainty and fundamental fairness to all parties and potential participants. It is fundamentally *un*fair for a community organization that could have participated in the proceedings to try to re-open the record more than ten months after the conclusion of the hearing, and over two months after

publication of the written order. Such dilatory action undermines the time and efforts of the parties, the Commission and the District agencies expended on the project and would only serve to create uncertainty on the finality of Commission actions.

Importantly, UMN is not and never has been a party to the proceedings. It could have participated in the PUD proceedings before the Zoning Commission but chose not to. Notice of the public hearing was published in the *D.C. Register* on September 1, 2016, and ANC 6C considered the application at its meetings on October 4 and 13, 2016. Notices of the public hearing were also provided to Martin Luther King Jr. Public Library and were posted on the property prior to the hearing. In short, there is no reason why UMN should not have been aware of the hearing and could not have participated in the hearing. Accordingly, there is no basis for re-opening the record to allow information that could have been part of the original proceeding.

Additionally, UMN's motion should also be rejected because it ignored the express provisions of the Commission's rules that prohibit a motion to re-open the record to be accompanied by the substantive information it wishes to introduce. The Commission's rules of procedure provide that the record in a contested case proceeding is closed at the end of the hearing, unless otherwise directed by the Commission. *See* 11-Z DCMR § 602.1 (2016). The rules further provide that any supplemental materials received by the Commission after the close of the record that bear upon the substance of the application shall be returned and not accepted *unless accompanied by a separate request to re-open the record.* 11-Z DCMR § 602.6 (emphasis added). Here, UMN did not separate out the substantive materials it wishes to include in the record but rather attached them directly to its motion to re-open the record. The Form 153 submitted by UMN has specific instructions that clearly prohibit a requester from including any substantive information.¹ In direct contravention of the Commission's regulation and Form 153, UMN provides over 11 pages of substantive information as part of its request to re-open the record, which support its rehearing request, not the motion to re-open the record. The Commission should strike these materials from the record and deny the motion to re-open the record on this basis, as well.

Should the Commission accept the motion to re-open and allow UMN's submission, the Applicant reserves the right to supplement the record and provide its opposition to those materials within seven days.

Respectfully submitted,

DONOHUE & STEARNS, PLC

By: 
Mary Carolyn Brown

¹ The Form 153 instructions on page 1 emphasize in bold text that "[t]he document(s) that you are requesting the record to be reopened for must be submitted separately from this form (see instructions). No substantive information is to be included on this form."

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cc: Joel Lawson, OP
Stephen Cochran, OP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Applicant's Opposition to the Request to Re-Open the Record was served by U.S. mail or email this 13th day of November, 2017, on the following²:

Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, D.C. 20013-7787

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By: 
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² While a party opponent participated in the case, his subsequent withdrawal (see Exhibit 53) leaves the ANC as the only remaining party to be served.