

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



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 16-13C  
Z.C. Case No. 16-13C  
JS Congress Holdings, LLC  
(Modification of Consequence to PUD @ Square 748, Lots 78 and 819)  
October 22, 2018**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public meetings on September 17, 2018 and October 22, 2018, to consider an application by JS Congress Holdings, LLC ("Applicant") for a modification of consequence to a consolidated planned unit development ("PUD") approved by Z.C. Order No. 16-13 for the property at 220 L Street, N.E. and 1109-1115 Congress Street, N.E., and more particularly identified as Square 748, Lots 78 and 819 ("Property"). The modification of consequence request was made pursuant to Subtitle Z, Chapter 7, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). For the reasons stated below, the Commission approves the application.

**FINDINGS OF FACT**

**A. The Applications, Parties, Hearing, and Post-Hearing Filings**

1. Pursuant to Z.C. Order No. 16-13, dated June 12, 2017, and effective September 1, 2017 ("16-13 Order"), the Commission approved an application for consolidated review of a PUD and a related Zoning Map amendment from the C-M-1 Zone District to the C-2-B Zone District for the Property, and for a portion of the alley to be closed, in order to permit the redevelopment of the Property with a mixed-use building that has approximately 64 residential units and approximately 3,825 square feet of PDR uses. The proposed building will have a maximum height of 90 feet and density of a 6.0 floor area ratio ("FAR").
2. As part of the PUD, the Applicant is devoting 12% of the building's residential gross floor area ("GFA") to affordable housing. Eight percent of that affordable housing will satisfy the inclusionary zoning ("IZ") requirement; the remaining four percent is part of the PUD's public benefits package. Half of the IZ requirement (four percent) will be located on site. The other half of the IZ requirement and the affordable housing proffer will be provided at an off-site location to be constructed in conjunction with D.C. Habitat for Humanity.
3. As set forth in Condition B.1 of the 16-13 Order, the Applicant shall dedicate: (a) a minimum of four percent of the project's residential gross floor area to households

earning up to 80% of the area mean income (“AMI”), and (b) a minimum of eight percent of the Project’s residential gross floor area to households earning up to 50% of the AMI at an off-site location consistent with the 16-13 Order. The on-site 80% AMI affordable units (1,815 square feet of GFA) and 1,893 square feet the off-site location at 50% AMI (3,708 square feet GFA total) shall satisfy the minimum IZ set-aside requirement, and shall be maintained in accordance with all applicable requirements of Chapter 26 of the Zoning Regulations. The remaining off-site affordable units offered at 50% AMI (approximately 2,607 square feet of GFA) shall also be governed by restrictive covenants with D.C. Habitat for Humanity. The Applicant has the flexibility to vary the location and unit layout of the on-site IZ units provided the percentage of square footage devoted to IZ units is consistent with condition B.1 of the Order. The off-site IZ units and affordable units shall be a minimum of 900 square feet each, shall be single-family residences or flats; and shall be located within the boundaries of ANC 6C, 6A, 6E, 5D, or 5E. The Applicant may locate the off-site IZ units and affordable units in other areas of Ward 5 or Ward 6 upon approval from the Commission as a consent calendar item.

4. In order to assist with the construction of the off-site IZ and affordable dwelling units at the off-site location, Condition B.2 of the Order requires the Applicant to pay D.C. Habitat for Humanity \$625,000 no later than six months after a favorable resolution of the petition for review by the D.C. Court of Appeals in Case No. 17-AA-1048. (See Z.C. Order 16-13B at 4.) The D.C. Court of Appeals dismissed the case on December 4, 2017, and issued its final mandate on December 26, 2017. The payment would have been due no later than June 26, 2017. However, Z.C. Order No. 16-13B, which adopted the modification to Condition B.2, did not become final and effective until July 13, 2018.

## **B. Modification Request**

1. On July 31, 2018, the Applicant filed an application with the Commission seeking a modification of consequence to Z.C. Order No. 16-13B to modify Condition No. B.2 of the Order to extend the deadline to pay the \$625,000 to DC Habitat for Humanity to December 31, 2018.
2. Due to high prices and limited inventory in the housing market, the Applicant and D.C. Habitat for Humanity have had difficulty finding a suitable location to construct the off-site IZ and affordable housing. At the time of this application for modification of consequence, D.C. Habitat for Humanity was under contract for a site that meets the requirements of the PUD Order, was completing due diligence, and anticipated closing on the property by August 31, 2018. The Applicant would make an equity contribution to Habitat for Humanity for the purchase price, with the balance of the \$625,000 payment to be provided no later than December 31, 2018. This extended deadline will allow the Applicant and D.C. Habitat for Humanity to meet the affordable housing requirement ahead of the issuance of building permits.

3. The Applicant does not propose any changes to the approved PUD plans with this modification request.
4. At its public meeting on September 17, 2018, the Commission determined that this application was properly a modification of consequence within the meaning of 11-Z DCMR § 703.4, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1. The Commission scheduled the matter for decision on October 22, 2018 to allow Advisory Neighborhood Commission (“ANC”) 6C the opportunity to comment on the modification request.
5. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service, which noted that ANC 6C was served with the application. ANC 6C elected not to take a position on this modification request.
6. The Office of Planning (“OP”) submitted a report on September 11, 2018. The OP report recommended approval of the application to modify Condition B.2 of Order 16-13 to December 31, 2018.

### **CONCLUSIONS OF LAW**

1. Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make “modifications of consequence” to final orders and plans without a public hearing. A modification of consequence means “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.” (11-Z DCMR § 703.3.) Examples of modifications of consequence “include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.” (11-Z DCMR § 703.4.)
2. The Commission concludes that the modification requested and as described in the above Findings of Fact, is a modification of consequence and therefore can be granted without a public hearing.
3. Pursuant to this modification, the relief granted to the Applicant rests within the four corners of Subtitle X, § 301.3 and does not resort to granting relief beyond the plain meaning of any regulation.
4. The Commission finds that the proposed modifications are entirely consistent with the Commission’s previous approval. The Applicant is only proposing to modify Condition No. B.2 of the Order to extend the deadline for payment of the \$625,000 to DC Habitat for Humanity to December 31, 2018. That modification does not diminish or detract from the Commission’s original approval of the PUD project. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) to give “great weight” to the issues and concerns of contained in the written report of an affected ANC. ANC 6C meets the definition of “affected ANC” as set forth in 11-B DCMR § 100.1. Since ANC 6C did not

address this modification of consequence, there is no recommendation to consider. The Commission is also required give great weight to the recommendations of OP. (*See* D.C. Official Code § 6-623.04 (2012 Repl.).) The Commission concurs with OP's recommendation to approve this modification of consequence application.

### **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 a modification of consequence to the consolidated PUD project approved in Z.C. Case No. 16-13 as follows.

The conditions in Z.C. Order No. 16-13 remain unchanged except the following condition replaces Condition No. B.2 of Z.C. Order No. 16-13:

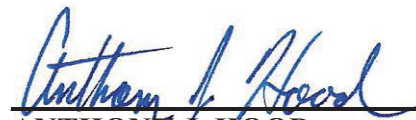
Prior to the issuance of a building permit, the Applicant shall provide proof to the Zoning Administrator that it has paid \$625,000 to D.C. Habitat for Humanity no later than December 31, 2018, that D.C. Habitat for Humanity has the off-site housing location under its control, that each of the off-site units will consist of a minimum of 900 square feet and two bedrooms, and that the units will be constructed as single-family residences or flats.

On October 22, 2018, upon the motion of Vice Chairman Miller, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the D.C. Register; that is, on December 21, 2018.

### **BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.



**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**



**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**