

GOVERNMENT OF THE DISTRICT OF COLUMBIA



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-13E**

Z.C. Case No. 16-13E

JS Congress Holdings, LLC

(Modification of Consequence of Consolidated PUD

@ Square 748, Lots 78 and 819 [220 L Street, N.E. and 1109-1115 Congress Street, N.E.]

July 29, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held public meetings on July 8, 2019 and July 29, 2019, to consider an application (the “Application”) by JS Congress Holdings, LLC (the “Applicant”) for a Modification of Consequence to change Condition B.2 of Z.C. Order No. 16-13 that approved a consolidated planned unit development (“PUD”) for the property at 220 L Street, N.E. and 1109-1115 Congress Street, N.E., and more particularly identified as Lots 78 and 819 in Square 748 (the “Property”). The Commission considered the Application pursuant to Subtitle Z, Chapter 7, of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations” to which all references refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Background

1. By Z.C. Order No. 16-13, the Commission approved a consolidated PUD for the Property (the “Approved PUD”).
2. Condition No. B.2 of Z.C. Order No. 16-13 required the Applicant, *inter alia*, to pay D.C. Habitat for Humanity (“Habitat”) \$625,000 (the “Habitat payment”) by October 31, 2017 to construct off-site affordable housing as a part of the affordable housing provided pursuant to the Approved PUD.
3. In Z.C. Order No. 16-13A, the Commission approved a revision to Condition No. A.4 of Z.C. Order No. 16-13 to clarify the flexibility granted the Applicant to exceed the maximum IZ off-site concentration to conform with the plans for the Approved PUD.
4. In Z.C. Order No. 16-13B, the Commission approved a revision to Condition No. B.2 of Z.C. Order No. 16-13 Order to extend the deadline for the Habitat payment to “no later than six months after a favorable resolution of the petition for review by the D.C. Court of Appeals (No. 17-AA-1048).”

5. In Z.C. Order No. 16-13C, the Commission approved a subsequent revision to Condition No. B.2 of Z.C. Order No. 16-13, as modified by Z.C. Order 16-13B, to extend the deadline for the Habitat payment to December 18, 2018.
6. On December 20, 2018, the Applicant made an initial payment toward fulfillment of the Habitat payment in the form of an \$85,000 equity contribution to Habitat to assist in the purchase of the property on which the off-site affordable housing would be constructed. (Exhibit [“Ex.”] 2A.)
7. In Z.C. Order No. 16-13D, the Commission approved another revision to Condition No. B.2 of Z.C. Order No. 16-13, as modified by Z.C. Order No. 16-13C, to extend the deadline for the Habitat payment to June 30, 2019.

Parties

8. The only party to Z.C. Case No. 16-13 is Advisory Neighborhood Commission (“ANC”) 6C, which is the “affected ANC” as defined by Subtitle Z § 101.8, as the Property is located within ANC 6C’s boundaries.¹

The Application

9. The Applicant filed the Application with the Commission on June 13, 2019, requesting a further revision of Condition No. B.2 of Z.C. Order No. 16-13, as revised by Z.C. Order No. 16-13C, to require the Habitat payment be made by December 31, 2019.
10. The Application did not propose any other changes to Z.C. Order No. 16-13 or to the Approved PUD.
11. The Applicant stated that recent changes in the lending policies of the Applicant’s lender, which were outside of the Applicant’s control, delayed the closing of its construction financing, thus risking the Applicant’s ability to make the Habitat payment by the June 30, 2019 deadline. (Ex. 2.)
12. The Applicant stated that it had already filed applications for the necessary raze, sheeting and shoring, foundation-to-grade, and full building permits to construct the Approved PUD, in satisfaction of the December 27, 2019 deadline to file permit applications. (Ex. 2.)
13. The Applicant submitted a Certificate of Service attesting that it had served the Application on ANC 6C, its chair, the chair of the ANC’s Zoning Committee, and the Single Member District Commissioner for the Property on July 23, 2019. (Ex. 5.)
14. The Office of Planning (“OP”) submitted a report dated July 1, 2019 opining that the Application qualifies as a Modification of Consequence and recommending that the Commission approve the Application. (Ex. 4.)

¹ Although the Commission granted party status to a party in opposition, that party withdrew its request. (Ex. 53 in Z.C. Case No. 16-13.)

15. ANC 6C did not submit any response to the record. The Applicant provided a copy of a July 8, 2019 email from the Vice Chair of ANC 6C, stating that the ANC would take no action on the Application. (Ex. 5.)

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make “modifications of consequence” to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.”
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” as an example of a Modification of Consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 6D.
5. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify a final condition, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission therefore scheduled its consideration and decision on the Application for its July 29, 2019 public meeting in order to provide the ANC additional time to respond to the Application.
7. The Commission concludes that the proposed modification to Condition No. B.2 of Z.C. Order No. 16-13 requested in the Application is consistent with, and does not detract from or diminish, the Commission’s decision in Z.C. Order No.16-13 because there have been no changes in material facts on which the Commission relied in approving said order and because the Applicant will still make the Habitat payment prior to the issuance of a building permit.

“Great Weight” to the Recommendations of OP

8. Pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP.
9. The Commission notes OP’s lack of objection to the Application being considered as a Modification of Consequence and finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

“Great Weight” to the Written Report of the ANC

10. Pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) and Subtitle Z § 406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)
11. As the ANC did not file a written report to the record, there are no issues or concerns to which the Commission can give “great weight.”

DECISION


In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant’s request for a Modification of Consequence to Z.C. Order No. 16-13, as modified by Z.C. Order Nos. 16-13A and 16-13D, to modify Condition No. B.2 as follows (deletions in **bold and strikethrough**; additions in **bold and underlined**):

- B.2. 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 **June 30 December 31**, 2019, 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.


All other conditions and provisions of Z.C. Order No. 16-13, as modified by Z.C. Order No. 16-13A, remain effective and unaltered.

VOTE (July 29, 2019): 5-0-0 (Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 1, 2019.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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.