

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :
:
JEMAL'S JUDGE LLC : Case No.
: 06-21
:
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Monday,
December 4, 2006

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No.
06-21 by the District of Columbia Zoning
Commission convened at 6:30 p.m. in the
Office of Zoning Hearing Room at 441 4th
Street, N.W., Washington, D.C., 20001, Carol
J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN Chairperson
ANTHONY J. HOOD Vice-Chairperson
GREGORY JEFFRIES Commissioner
JOHN PARSONS Commissioner (NPS)
MICHAEL G. TURNBULL Commissioner (AOC)

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
DONNA HANOUSEK	Zoning Specialist
ESTHER BUSHMAN	General Counsel

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
JOEL LAWSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the
minutes from the Public Hearing held on
Monday, December 4, 2006.

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P-R-O-C-E-E-D-I-N-G-S

6:29 p.m.

CHAIRPERSON MITTEN: Good evening, this is a public hearing of the Zoning Commission of the District of Columbia for Monday, December 5, 2006. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioner Mike Turnbull and if we're lucky we'll get done before we're joined by any other Commissioners.

The subject of this evening's hearing is Zoning Commission Case No. 06-21 and this is a request by Jemal's Judge LLC for approval of a consolidated Planned Unit Development and related map amendment for property located in the block bounded by 6th, 7th, L and M Streets, N.W. and known as Lots 50, 51, 800 and 859 and Square 449.

Notice of today's hearing was published in the D.C. Register on September 1, 2006 and copies of that hearing announcement are available to you in the wall bin by the door.

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This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3022 and the order of procedure will be as follows. We'll take up preliminary matters followed by the presentation of the applicant's case, a report by the Office of Planning, a reported by the affected Advisory Neighborhood Commission, in this case it's 2-C, organizations and persons in support and organizations and persons in opposition.

All persons appearing before the Commission are to fill out two witness cards; they look like this, these cards are on the table by the door. Upon coming forward to speak to the Commission please give both cards to the reporter who's sitting to our right.

Please be advised that this proceeding is being recorded by the court reporter and is also being webcast live; therefore we ask you to refrain from making any disruptive noises in the hearing room and I'd ask you to turn off all beepers and

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cell phones for the same reason.

The decision of the Commission in this case must be based exclusively on the public record and so to avoid any appearance to the contrary the Commission requests that persons present not engage the members of the Commission in conversation during a recess or at any other time and Mrs. Schellin and Ms. Hanousek will be available to answer any questions you might have.

So I'd ask anyone who's planning on testifying this evening if you would now rise, raise your right hand, direct your attention to Mrs. Schellin and she will administer the oath.

MRS. SCHELLIN: Do you solemnly swear or affirm that the testimony you'll give in this evening's proceeding will be the truth, the whole truth and nothing but the truth? Thank you.

(WITNESSES SWORN.)

CHAIRPERSON MITTEN: Thanks and I would note for the record that we've been joined by Commissioner Jeffries. And Mr.

Glasgow did you have any preliminary matters?

MR. GLASGOW: Yes ma'am I did. I wanted to know whether the Commission was amenable to us resting on the record with respect to this case and then asking any questions that you may have?

CHAIRPERSON MITTEN: I believe we are and we may have a few questions for you but I don't think we need a formal presentation. So let's move right into that then. Questions from the Commission for the applicant?

I had two questions that I wanted to ask. One is in the revised drawings I didn't see a revised landscaping plan even though we have landscaping along L Street has now become a more integral element. Is that something that we could get into the record? Push the button. I didn't go through all that part of my introduction so if you would just state your name for the record.

MS. HERNANDEZ-AYALA: My name is

Colline Hernandez-Ayala, I am senior project manager with GTM Architects.

As to the landscape plan I'd like to have Greg Osband our landscape architect on the project address that question.

CHAIRPERSON MITTEN: Okay. I need you to turn the mike on.

MR. OSBAND: Good evening. I'm Greg Osband, I work for A. Morton Thomas & Associates. I'm a registered landscape architect. I've worked on this plan.

I wanted to first make sure that we're all addressing the same plan. I don't know which exhibit, if this is the exhibit that in front of the Commission that I have in my hand.

CHAIRPERSON MITTEN: When we set the case down we had a landscaping plan that was L1.

MR. OSBAND: Yes, that's correct. And dated April --

CHAIRPERSON MITTEN: And that was dated 4/12/06.

MR. OSBAND: Yes.

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CHAIRPERSON MITTEN: And my understanding was that some of the revisions affected the landscaping plan but we didn't have a revised L1. Is that my misunderstanding or is that correct?

MS. HERNANDEZ-AYALA: I can address that.

CHAIRPERSON MITTEN: Okay.

MS. HERNANDEZ-AYALA: The revisions submitted addressed the facade on L Street and previously the elevation drawings of the building did not show in elevation the landscaped elements. So that drawing now in elevation brings up in two dimensions what is shown on the plan.

CHAIRPERSON MITTEN: Oh okay. So there's no change to the landscaping?

MS. HERNANDEZ-AYALA: There's no change.

CHAIRPERSON MITTEN: Okay. That was just my misunderstanding.

And then there's one element of the burden of proof that I'd like the applicant to articulate, which is an asking

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for the waiver on the minimum size for a PUD in this zone. One of the things is that we have to find that the project is of exceptional merit so could you just speak to that?

MR. SUER: Good evening Madam Chair and Members of the Commission. For the record my name is Steven E. Suer, the Director of Zoning and Land Use Services with the law firm of Holland & Knight.

The test has a couple of parts to it. One is that at least a certain percentage of the property be residential; in this case it's all residential so we meet that piece of it.

The other one is that the project be of exceptional merit and in the best interest of the city or country. This project has three components in it that I think qualify it to meet that test.

No. 1 is the historic preservation element that deals with the preservation of the James Essex House, a house originally built in 1855 with a one-

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story addition behind it to the west.

It's one of the oldest structures in that neighborhood, it's been vacant and in disrepair for a long time and in the plans before you see that that is to be renovated and restored, converted to use as three dwellings so that the element of historic preservation is one facet of what makes the project exceptional and in the best interest of the city. It is in the best interest of the city and we've cited some sections in the comprehensive plan to preserve those elements which have been designated as historic and in this case to restore it to a much more satisfactory condition than the existing condition.

The second is the in-fill development around the existing house. There is a one-story commercial but vacant structure immediately to the north of it and then two vacant lots.

The project as a whole is charitably an eyesore in the neighborhood and what we are going to do is construct to

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the north and then have an open courtyard and then construct another wing on the west side of the property. That will result in 17 additional residential units so between the three in the existing and the 17 new, we would have 20 new residential units in that neighborhood which is the second thing we think is of exceptional situation and of the best interest of the city to provide another anchor of residential on that corner where frankly nothing's been for quite a while.

The third element of the test, or the third piece of the response, is to contrast this to the alternative mechanism for what we're trying to accomplish here.

We had originally thought of whether this project could proceed using a whole bunch of variances before the Board of Zoning Adjustment and that would have required FAR variances, lot occupancy and a whole bunch of other things in order to make that work.

We looked at that and we talked to the Office of Planning and the conclusion

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that we came to was while there might be some elements that would support the three part variance test, that OP was more comfortable with us presenting a plan to the Zoning Commission, explaining what it was we were about and not having to try to get to is there an exceptional situation or condition, is there a practical difficulty and so forth.

So as a procedural matter, rather than proceed to the BZA and ask for variances which the Board has sometimes been known to have difficult with, it was put the case squarely in front of the policy makers here and explain what it is we want to do and why we want to do it and we think that qualifies this as a PUD as well.

CHAIRPERSON MITTEN: Of exceptional merit.

MR. SUER: Yes.

CHAIRPERSON MITTEN: Thank you. Okay. Anyone else have questions? Mr. Turnbull?

MEMBER TURNBULL: I just had

one. On this development you're offering there's one affordable housing unit?

MR. GLASGOW: That's correct.

MEMBER TURNBULL: Any location in the property where it's going to be?

MR. GLASGOW: It depends upon the square footage we know and then the question is whether or not, depending upon some of the unit mix, whether it would be one unit or two units. We're looking at whether, how that breaks out because we have a square footage requirement and I think it's slightly less than 1,000 square feet. It's like 985 square feet.

MEMBER TURNBULL: Right.

MR. GLASGOW: And we have some units that are in the 400 to 500 square foot size so we're looking at whether it should be one or --

MEMBER TURNBULL: Two.

MR. GLASGOW: Yes, one or two.

MEMBER TURNBULL: Okay. Well that's interesting. I just wanted then to just clarify, on the change on the elevation

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looking at the courtyard where you have the
Essex House on the right, I guess it's
A2.01. The change -- I just want to go back
to the original. I mean I think it's a
subtle change, I mean I think you went to
some more masonry by the stairs going up.
Am I looking at --

CHAIRPERSON MITTEN: Yes.

MEMBER TURNBULL: It's
basically masonry by the stairs. You added
more brick to blend in with the adjacent
structure primarily?

MS. HERNANDEZ-AYALA: Primarily
we were addressing the comment related to
pedestrian friendly facade.

MEMBER TURNBULL: Right.

MS. HERNANDEZ-AYALA: So we
continued the brick paving that is being
restored at the sidewalk. We've continued
that up the stairs to the courtyard space.

MEMBER TURNBULL: Okay. Thank
you. Those were my questions.

CHAIRPERSON MITTEN: Thank you.
And I'd also like the record to reflect that

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Mr. Parsons has now joined us. We're just asking questions of the applicant so that if you have any we'll let you jump in. Anyone else have a question?

VICE CHAIR HOOD: Madam Chair, the only thing I would ask Mr. Suer just to expand upon the exceptional merit. I would ask that that be put in the findings -- for a second review. I heard it tonight but I would like to study it before final action.

CHAIRPERSON MITTEN: Well and I believe that we have testimony, written testimony from Mr. Suer that that's submitted --

VICE CHAIR HOOD: Is it in here? It's in here? Okay.

CHAIRPERSON MITTEN: Did you have any questions Mr. Parsons? I know I'm catching you on the fly. Okay. Thank you very much.

Now we're ready for the report by the Office of Planning. Mr. Mordfin?

MR. MORDFIN: Good evening Madam Chair and Members of the Commission. I'm

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Stephen Mordfin and the Office of Planning stands on the record and is available for any questions.

CHAIRPERSON MITTEN: Very good.
Any questions for Mr. Mordfin?

MEMBER JEFFRIES: Yes, I have a question. The applicant spoke about why they put it before the Zoning Commission versus the BZA and, you know, just looking over it I mean variances, I mean lot occupancy, rear yard, I mean it's a nice looking project. And I may have asked this during the set-down but I'm still trying to get my arms around why the Zoning Commission?

And I know that Mr. Suer sort of spoke about some things but just from the Office of Planning's perspective if you could sort of talk a little bit about that.

MR. MORDFIN: I think from looking at this is that in order to get the variance you have to prove hardship and what's unusual about the property. And it is a rectangular piece of property. There's

not a whole lot that's unusual about it. It does have an historic building on it that cannot be removed but other than that the property doesn't have anything that's really spectacular about it that makes it difficult to develop.

And when you have to go for variances and prove hardship and what's unusual about this property so that you can't conform to all of their requirements, when you go to the BZA that becomes difficult for a project like this on a piece of property like this. Whereas coming to the Zoning Commission as a PUD you can request those things as relief, you don't have to prove hardship, and in exchange for that you offer some benefits or amenities to ameliorate the situation caused by the request.

MEMBER JEFFRIES: So you think it would just be difficult for this applicant to make the case of hardship to the BZA?

MR. MORDFIN: I think it would

be a difficult case because the property is not that unusual.

MEMBER JEFFRIES: Okay.

MR. MORDFIN: It doesn't have a lot of things about it that would make it difficult to develop.

MEMBER JEFFRIES: Okay. Thank you.

CHAIRPERSON MITTEN: Anyone else have questions for the Office of Planning? Okay.

MEMBER PARSONS: Now that I've caught my breath I do have a question.

CHAIRPERSON MITTEN: Okay. For the applicant?

MEMBER PARSONS: The applicant, yes thanks. I wanted to talk about the parking entrance and trash enclosure and the sectional aluminum garage door with reflective glazing. Worst case is we're talking about a mirrored glazing here. What is reflective glazing?

MS. HERNANDEZ-AYALA: The glazing on that roll-up garage door would be

reflective glass so it would not be clear glass that you could see through, it will be reflective glass.

The goal was to create something that looked more like a storefront so that we wouldn't have a solid wall there at the pedestrian level, to create more of a pedestrian-friendly space there.

MEMBER PARSONS: Well would people see themselves walking by?

MR. HERNANDEZ-AYALA: Yes they would.

MEMBER PARSONS: So this is a mirrored finish if you will?

MS. HERNANDEZ-AYALA: You could describe it as such.

MR. MILLSTEIN: If I may Commissioner, Paul Millstein, Douglas Development for the record, when I envision a mirrored finish glass I think of a car dealership down retail corridors where it's truly like a mirror in your home or something.

That's not the intent of this

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glass. It has some reflectivity but it's not like a mirror in a home that you'd use for dressing.

MEMBER PARSONS: Okay.

MR. MILLSTEIN: It's very, very opaque, it's barely noticeable, it's a very subtle glass. And what we should really do is get a sample of the glass and submit a sample but it's not to look like a car dealership -- if you understand what I mean by that reference. Much, much less --

MEMBER PARSONS: Well you know reflective glass is used in windows of buildings to reflect the trees and so forth and we were worried at set-down about this whole facade.

MR. MILLSTEIN: Sure. Much less than a mirrored finish. It's not a mirrored finish at all. It's reflective but not mirrored.

MEMBER PARSONS: More of a frosted kind of --

MR. MILLSTEIN: Exactly. Yes.

MEMBER PARSONS: All right.

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Thank you very much.

MR. MILLSTEIN: You're welcome.

CHAIRPERSON MITTEN: Okay. I would just note, I don't think we have anyone here representing another government agency but we do have a DDOT report in the record and they note no objections and that is Exhibit No. 16.

And then is there anyone here representing the ANC? Okay. We don't have a report from the ANC in the record but the Office of Planning did note in their report that apparently the ANC 2-C did vote in support.

MR. GLASGOW: I think we do have a -- when we had our statement in support of the application so it's back in the record. It's early in the record. We went early to the ANC.

CHAIRPERSON MITTEN: Oh it is? Okay.

MR. GLASGOW: Under Tab F.

CHAIRPERSON MITTEN: Okay. Sorry. I was looking in the more recent

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submission so that's dated -- it's not dated.

MR. GLASGOW: Yes, it's not dated at the top but it says when their meeting occurred.

CHAIRPERSON MITTEN: Okay. So this is December 7th a year ago?

MR. GLASGOW: That's correct.

CHAIRPERSON MITTEN: Okay. Thanks. So we have them on record. And then we also have the Mount Vernon Square Neighborhood Association. And is there anyone who would like to testify in support? Anyone who'd like to testify in opposition? Okay. Mr. Glasgow, it's back to you.

MR. GLASGOW: All right. Thank you. And I'd like to ask one more thing to thank you for and that would be if we could get a bench decision. We understand that we do need to submit the sample or a photograph into the record of the glass.

CHAIRPERSON MITTEN: That would be helpful. I think in addition to the photograph an actual sample would be good in

this particular case, but I think that's something that could come in between proposed action and final action. We're in a better mood for a bench decision tonight than I think we were the other night. But I respect you a lot for asking.

MEMBER JEFFRIES: It was bold.

CHAIRPERSON MITTEN: So if my colleagues are amenable then I would move that we approve Case No. 06-21 for the relief that is being sought and for the amenities and benefits that are being proffered, specifically and notably the 985 square feet of affordable housing and two units would, as we were heavily lobbied in the IZ case to give flexibility on number of units even though they might be smaller, so two units would be good. So I'd ask for a second.

VICE CHAIR HOOD: Second.

CHAIRPERSON MITTEN: Any further discussion? Then all those in favor please say aye.

(Ayes.)

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CHAIRPERSON MITTEN: Those
opposed please say no? Mrs. Schellin?

MRS. SCHELLIN: The staff will
record a vote 5-0-0 to approve proposed
action in Zoning Commission Case No. 06-21,
Commissioner Mitten moving, Commissioner
Hood seconding, Commissioners Jeffries,
Parsons and Turnbull in favor.

CHAIRPERSON MITTEN: Thank you.
And it would be helpful but not required to
get a draft order before we take final
action along with the material samples.

So I think that's all the
business we have this evening and I thank
you all and we're adjourned.

(Whereupon, the Zoning Commission
of the District of Columbia Public Hearing
went off the record at 6:48 p.m.)