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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Special Public Meeting
Case No. 16-06 [Jemal's Lazriv Water, LLC. - Capitol
Gateway Overlay Review at Square 666.]

6:18 p.m. to 8:37 p.m.
Thursday, July 7, 2016

Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220 South
Washington, D.C. 20001

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 MARCIE COHEN, Vice Chair

4 PETER MAY, Commissioner

5 ROBERT MILLER, Commissioner

6 MICHAEL TURNBULL, Commissioner

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JOEL LAWSON

13 ELISA VITALE

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

2 CHAIRPERSON HOOD: This is a special public
3 meeting of the Zoning Commission. Today's date is
4 Thursday, July the 7th, 2016. The time now is about
5 2:18 p.m.

6 Joining me are Vice Chair Cohen -- my name is
7 Anthony Hood. Joining me are Vice Chair Cohen,
8 Commissioner May, Commissioner Miller, and
9 Commissioner Turnbull. We're also joined by the
10 Office of Zoning staff, Ms. Sharon Schellin, as well
11 as Office of Planning staff, Mr. Lawson and Ms.
12 Vitale.

13 We do not take any public testimony in our
14 hearings unless we ask someone to come forward.
15 Today's special public meeting was properly noticed
16 and we have one agenda item for our special public
17 meeting this evening, Zoning Commission Case No. 16-
18 06, Jamal's Lazriv Water, LLC., CG Overlay Review at
19 Square 666.

20 I guess I pronounced that right. Lazriv.
21 Lazriv? Whatever. Whatever. L-A-Z-R-I-V. Okay.

22 Ms. Schellin, do we have any preliminary
23 matters?

24 MS. SCHELLIN: No preliminary matters. Just
25 to advise the Commission that since the hearing the

1 post-hearing submissions are at Exhibits 28 through
2 29A-3, and at Exhibit 30 we received an NCPC report
3 today that advised that they had no issues with this
4 case. Would ask the Commission to consider final
5 action this evening.

6 CHAIRPERSON HOOD: Okay. Commissioners, I
7 think -- and I can't remember exactly why we put this
8 off. I think there were some things that we were
9 looking for. But I do know that some things may not
10 have been submitted, but I do know that we pretty
11 much had to have further discussion. Maybe somebody
12 can help me with my memory.

13 MS. SCHELLIN: We were waiting for NCPC to
14 make their submission.

15 CHAIRPERSON HOOD: Oh, is that what we
16 were --

17 MS. SCHELLIN: Yes.

18 CHAIRPERSON HOOD: Oh, okay. So we have
19 that. Let me open it up for any discussions. Any
20 discussion? Vice Chair Cohen.

21 MS. COHEN: Thank you, Mr. Chairman. I just
22 want to state for the record that, you know, some of
23 the points that I was trying to push were beyond the
24 scope of the CG Overlay, and I understand that
25 tonight we will not be including several of the

1 proffers that the developer made. However, I just
2 wanted to state that I overstepped my authority. I
3 often try to push the envelope a bit and I know that
4 I need to, you know, stay within the -- as they say,
5 the lines of the drawing.

6 So I just -- and if I upset everybody I
7 apologize for upsetting you, but again there are
8 needs that the city has and I, in every way I can,
9 try to make the effort to address them. Thank you.

10 CHAIRPERSON HOOD: Okay. Commissioner May.

11 MR. MAY: Yeah, thank you. I appreciate the
12 Vice Chair's statements on this point because I did
13 feel very strongly that we did not want to overstep
14 what our basis would be for decision making on this.
15 But I absolutely agree that we need to be looking for
16 whatever opportunities we can to increase the supply
17 of affordable housing. So I mean, I agree with the
18 intention, I just you know, I disagreed on this being
19 a vehicle for that.

20 I would also say I'm a little disappointed
21 that we didn't actually see anything from the
22 applicant on the couple of points that I thought it
23 was clear they would be submitting something, the
24 drawings of the stairway towers within the courtyard,
25 and a revised LEED scorecard. I mean, I know that in

1 the draft order it states very clearly that they will
2 meet LEED Gold. And I assume that was part of the
3 testimony, but I think in testimony, what I wrote
4 down is that the applicant was going to submit a
5 revised scorecard. But neither of those are issues
6 that would keep me from voting in favor at this
7 point, but I think that maybe I need to be a little
8 bit more explicit because I really did want to see
9 images of that tower, that stair tower. And I'm, as
10 I said, disappointed that we didn't get to see it.

11 CHAIRPERSON HOOD: Commissioner Miller.

12 MR. MILLER: Thank you, Mr. Chairman. So
13 following up on the comments. Well, in the draft
14 order's discussion of the applicant's offers in
15 response to the ANC's requests on affordable housing,
16 the dog park, and construction management, which the
17 Vice Chair just -- and Commissioner May referenced,
18 are either not within our purview or are not
19 specifically called out in the CG Overlay review
20 standards.

21 But I would like to see if there is majority
22 support for adding a sentence where that's discussed,
23 where we decline to make them conditions of the
24 order. But I wonder if I could just offer, for my
25 colleagues' consideration, some I think benign

1 language which would at least acknowledge that the
2 applicant did make those offers in response to the
3 ANC's request.

4 So I would -- I mean, I recognize that these
5 items don't fall into the specific CG Overlay review
6 standards set forth in Section 1610.3 of the Zoning
7 Regs, but I believe that the applicant's
8 responsiveness to ANC's concerns generally and the
9 specific concerns articulated in this case, helped
10 demonstrate that the applicant has met the general
11 standard in Section -- in the special exception
12 review standard that special exception should be
13 granted when, quote, "The special exceptions will be
14 in harmony with the general purpose and intent of the
15 Zoning Regulations and zoning maps, and will not tend
16 to adversely affect the use of neighboring property
17 in accordance with the Zoning Regulations and zoning
18 maps."

19 I mean, clearly this ANC at least, thought
20 that these issues, which the applicant offered to
21 address, would help mitigate against any adverse
22 neighborhood impact.

23 So with that in mind I would just offer for
24 your consideration, just adding a sentence at the end
25 of each paragraph which declines to add those items

1 as specific conditions but would add the following
2 sentence at the end of each paragraph, one at the end
3 of paragraph 62 on page 14, and one at the end of
4 paragraph 8 on page 15. They're the same sentence,
5 they're the same paragraph essentially. So the
6 additional sentence would read, after we decline to
7 add the condition, is quote, "However, the Commission
8 appreciates the applicant's responsiveness to the ANC
9 on these items and encourages the ANC and the
10 applicant to reach a separate agreement on these
11 items." Unquote. I don't think that would overstep
12 our purview or do any harm. It just would
13 acknowledge that the applicant was responsive to the
14 ANC's concerns and that they, if they want to deal
15 with it, if the ANC wants to deal with it, they need
16 to deal with it separately with the applicant.

17 CHAIRPERSON HOOD: Let me, Commissioner
18 Miller, let me respond to that. My concern of even
19 adding that now is because the sequence of events.
20 The applicant actually did not actually come down and
21 raises their hand and offer that. It actually came
22 from us first and I think we're setting the wrong
23 precedent. Especially with the Capitol Gateway.

24 I'm perfectly fine with the way the order is
25 written in front of me as far as alluding to the ANC,

1 the way it's written on page 13 and 14, or what's
2 been provided. So I am not inclined to be in favor
3 of adding that, especially with the sequence of
4 events. I don't know what others feel. Commissioner
5 May?

6 MR. MAY: Mr. Chairman, I would agree with
7 you. I feel very strongly we should not include such
8 language. You know, I certainly agree that it's
9 benign in intent, but I actually fear that it has the
10 potential to confuse matters for the ANC. Not just
11 this ANC, but ANCs in general, when we start to get
12 into PUD-like discussions in the context of
13 relatively straightforward special exception or
14 variance relief. And the design review under the
15 Capitol Gateway is certainly a component of that.

16 You know, there is nothing in the language of
17 the CG Overlay or in any of the special exception or
18 variance conditions that speak to any kind of
19 neighborhood amenities except to the extent to which
20 something like this might be necessary to mitigate an
21 adverse effect with the relief that's being granted.

22 And I do not see that as the case here, and I
23 think it undermines the decision making clarity of
24 this commission when we muddy the waters in any way,
25 shape, or form like this, and I don't think that

1 we're serving the applicant or the ANCs or the
2 community in general when we muddy the waters like
3 that.

4 So I would be strongly opposed to any change
5 to the order to that effect, and would not be willing
6 to vote for it.

7 CHAIRPERSON HOOD: I think, though, in this
8 case maybe it's something at some point in time we
9 can go to the Office of Planning, Commissioner. I
10 don't know if you have the votes for that but I think
11 at some point maybe we can revisit what we do in
12 Capitol Gateways and probably have a hearing and go
13 to the Office of Planning and let them look at it.
14 But this Commission, and I was here for that,
15 particularly legislated and wrote the Capitol Gateway
16 regulations and that's kind of where I stand, so.

17 Commissioner Turnbull, did you want to add
18 something, then I'll go back to Commissioner --

19 MR. TURNBULL: Well, I'm not really that
20 opposed to it. I mean, we add things to our orders
21 that are benign in other ways where we talk about
22 contractors reaching an MOU or an MOA regarding
23 construction management agreements and other things.
24 I don't think --

25 MR. MAY: But not in Gateway cases, Capitol

1 Gateway cases, or special exceptions. I mean, in
2 PUDs, yes. But this is not a PUD.

3 MR. TURNBULL: That's true. Well, okay. I
4 mean, if that's -- if we're going to be very
5 hardnosed about it then I think we really need to
6 look at the Capitol Gateway issues then, and revisit
7 that whole aspect because I don't think it's -- I
8 think we've left something out along the way, then.

9 CHAIRPERSON HOOD: Well, that was a different
10 time and that was some years ago, and I think we need
11 to be, Commissioner Turnbull, the way I see it, we
12 need to be predictable. When an applicant comes down
13 in front of this commission they need to know what's
14 expected, and I think that this applicant met the
15 test of what we had in writing for them to do in the
16 Capitol Gateway.

17 If we're going to change the rules we need to
18 have that vetted and do it in that manner. That's
19 just kind of where I am. Again, this is not a PUD.
20 This is -- I know in PUDs, yes. I would agree. We
21 push the envelope. We push, we push all the time and
22 I think we should. But this is a different sequence
23 of regulations that the Zoning Commission uses for
24 basically design review.

25 MR. TURNBULL: No, I understand that, but I

1 just again, I think looking at the long range issues
2 that still may be out there we may want to revisit
3 this and just have another look at this in the
4 future.

5 CHAIRPERSON HOOD: I would agree.
6 Commissioner Miller.

7 MR. MILLER: Thank you, Mr. Chairman. I
8 appreciate your willingness to revisit the Capitol
9 Gateway Overlay review standards because in my mind
10 whenever something calls out for residential uses,
11 which if it does call for a mixture of uses,
12 including residential in a Capitol Gateway, I think
13 it's implicit -- not implicit. I think it's explicit
14 in the Comprehensive Plan to direction, and then the
15 Inclusionary Zoning regulations we have that economic
16 diversity, affordable housing, is a civic priority.
17 I think that's the words in the Comp Plan.

18 And so I think whenever something is calling
19 out for residential, economic diversity of that
20 residential is a critical component. And if we have
21 to be explicit in every single overlay to make that
22 beyond what's already in the Comp Plan and beyond
23 what's in the Inclusionary Zoning regulations, which
24 does not apply to this particular project because
25 this was a conversion, as I recall, from an office to

1 a residential, which is something we're going to look
2 at when we get to our Inclusionary Zoning case I hope
3 next week, or the week after.

4 But this applicant, I agree, met all the
5 standards of the design review that are explicitly
6 there. This applicant went beyond what was required
7 and I think when you go above and beyond, I don't
8 think it was necessarily from prodding from us. He
9 said, it's the right thing to do, as I recall. Not
10 doing it because we asked him to think about it. He
11 said, it's the right thing to do and I want to do it.

12 So I'm just taking him at his word. I think
13 the applicant's positive good behavior and dealing
14 with neighborhoods should be rewarded. But I realize
15 I don't have three votes on that so I will withdraw
16 this item at this time.

17 CHAIRPERSON HOOD: Thank you. Without
18 getting into it, we can all sit here and review the
19 transcript and also review the video and see how the
20 sequence of events took place. I actually have done
21 that just for disclosure, so I know how that came up.
22 I think that Mr. Millstein is very amenable. He's
23 been amenable. They tried to make it work. Douglas
24 Development has always tried to make it work even
25 when we pushed back on them. And I think as the Vice

1 Chair mentioned, I think you said one of his parents
2 would be very proud of him. After that was signaled
3 to him to try to move that way.

4 So I think we've got to really be careful,
5 moving that. But these are may, neither here nor
6 there. I think we need to revisit that. I would
7 agree with you, Commissioner Miller. I don't think
8 that I disagree with it. But I think that the rules
9 are set and the predictability of what's supposed to
10 be presented in front of this commission was
11 presented. So yes, I think we probably need to
12 reexamine it because I'm not sure what year -- Mr.
13 Lawson, what year did we do the Capitol Gateway? I
14 think I was here.

15 MR. LAWSON: Good evening, Mr. Chair. You
16 reviewed Capitol Gateway over a series of years and
17 amendments. I think the last one would have been,
18 I'm just kind of guessing maybe 2008, 2009.

19 CHAIRPERSON HOOD: When was the first one?
20 When did we first start it?

21 MR. MAY: I can tell you --

22 MR. LAWSON: The process started in, I think,
23 1996.

24 CHAIRPERSON HOOD: Okay. I wasn't here.
25 Good. So I didn't come until '98. Okay, so.

1 MR. MAY: No, but I think -- I mean, there
2 was a -- I think the bulk of it was done between
3 2001, 2004 when I was here.

4 MR. LAWSON: The main portion of the Capitol
5 Gateway was, if my memory is right, was approved in
6 2004.

7 MR. MAY: Right.

8 MR. LAWSON: Correct.

9 CHAIRPERSON HOOD: Okay. So I think out of
10 this I think Commissioner Miller has a point that
11 maybe we need to reexamine this, look at this,
12 because anytime you have constitution of the bylaws I
13 think the record is you do it every 10 years. And
14 it's been 12 now. Things do change, circumstances
15 have changed, and we need to probably get some
16 language. Commissioner, I'm going to look to you to
17 -- maybe we can push Office of Planning. And then we
18 could maybe set up a hearing. I'm sure that we just
19 did the ZR-16, but you know, we could probably figure
20 a way to get this done, okay? Or to look at it. At
21 least have a discussion on it.

22 MR. MILLER: Thank you, Mr. Chairman.

23 CHAIRPERSON HOOD: And Vice Chair, do you
24 want to correct me on something?

25 MS. COHEN: No. No, no, no, no, no. And I

1 never correct you, I just you know, differ
2 occasionally.

3 I just really think this developer will, as
4 he said, do the right thing. On the other hand, I do
5 believe -- I did review the transcript.

6 I also believe that we should revisit the CG
7 Overlay. It's time. So I would move ahead with this
8 particular draft zoning order and again, hope
9 everybody does the right thing in the future.

10 CHAIRPERSON HOOD: Okay. Anything else on
11 this case, colleagues? Okay. If not I would move
12 that we approve Zoning Commission Case No. -- also,
13 we do have the NCPD report as noted in Exhibit 30.
14 But I will move that we approve for final action,
15 Zoning Commission Case No. 16-06. I'm not going to
16 go over the name, Jamal's Lazriv, I'm not going to do
17 that, Water, LLC. - Capitol Gateway -- somebody is
18 going to call up after this over and tell me how to
19 pronounce that. Capitol Gateway Overlay review at
20 Square 666. Six, six, six.

21 MR. MILLER: Second.

22 CHAIRPERSON HOOD: I should let somebody else
23 do that motion. Okay. It's been moved and properly
24 seconded. Any further discussion?

25 [Vote taken.]

1 CHAIRPERSON HOOD: Ms. Schellin, would you
2 record the vote?

3 MS. SCHELLIN: Yes. Staff records the vote
4 five to zero to zero to approve final action in
5 Zoning Commission Case No. 16-06, Commissioner Hood
6 moving, Commissioner Miller seconding, Commissioners
7 Turnbull, May, and Cohen in support.

8 CHAIRPERSON HOOD: All right. Ms. Schellin,
9 do we have anything else for this special public
10 meeting?

11 MS. SCHELLIN: No.

12 CHAIRPERSON HOOD: We're going to take five
13 minutes. I'm going ask those who are coming for the
14 hearing to come forward and get set up. We need
15 about five minutes to do the conversion.

16 So anything else, Ms. Schellin?

17 MS. SCHELLIN: No.

18 CHAIRPERSON HOOD: Okay. So with that I want
19 to thank everyone for this participation in this
20 special public meeting. This special public meeting
21 is adjourned.

22 [Special public meeting adjourned at 6:37
23 p.m.]

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25