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December 14, 2012

Hand Delivered

Lloyd Jordan, Chairperson
D.C. Board of Zoning Adjustment
Office of Zoning
441 4th Street, NW, Suite 200 South
Washington, DC 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18400
EXHIBIT NO. 41

Re: Case No. 18400; Jewish Primary Day School; Post-Hearing Filing,
6045 16th Street, NW ("Property")

Dear Chairperson Jordan:

At the close of the hearing for the above-referenced case, the Board asked the Jewish Primary Day School ("JPDS") to develop a noise mitigation plan to present to its neighboring property owner, Dr. Frances Welsing, in an effort to address her concerns with noise emanating from the School's play area. JPDS subsequently requested an extension of time to afford it more opportunity to work with her in developing an appropriate plan. We have sent two hand-delivered letters, copies attached in Exhibit A, to her attorney with a proposal to accommodate her concerns. However, to date, JPDS has not received any response from Dr. Welsing on the proposal it submitted for her review.

As the Board recalls, JPDS uses an outdoor play area, which fronts on 16th Street, as recreation space for its students pursuant to BZA Order No. 17700. It should be noted that the Zoning Administrator of the District of Columbia, in response to a complaint received from Dr. Welsing, has found JPDS to be in complete compliance with BZA Order No. 17700, including the strict limitations on the School's use of the play area called for in that Order.

In order to develop a mitigation plan requested by the BZA, JPDS retained a noise consultant, Douglas P. Koehn, M.S., with Miller, Beam & Paganelli, Inc., to help generate a noise mitigation plan. In response to JPDS's request for recommendations to mitigate noise impacts from the play area, Mr. Koehn produced the recommendations attached as Exhibit B. In short, Mr. Koehn recommends placing a barrier between the school and Dr. Welsing's property to the south. Accordingly, JPDS is proposing to construct a ten foot tall solid fence along the southern property line as shown on Exhibit C. The fence will consist of wooden posts, box steel beams for framing, and spacers that set the wooden panels forward by approximately one inch. The baffling of the panels is highly effective in absorbing noise from the play area. In addition

to this, there will be material below the panels that is lined with diagonal planks to further deaden noise generated on the playground. As noted in the attached letter from Mr. Koehn, the proposed barrier should provide a measurable reduction in the noise generated by the children on the playground.

As noted above, JPDS forwarded this proposal to Dr. Welsing's attorney on November 19 and again on November 30. JPDS has not received any comments or input from Dr. Welsing on this proposal.

Please note that the District of Columbia Building Code (see D.C. Building Code, Section 3110.3.3) only permits a ten foot tall fence with the express permission of the neighboring property owner; thus, JPDS can only implement this plan if Dr. Welsing consents to its implementation. Therefore, if the Board conditions its approval of the special exception application on providing the fence, JPDS asks that the Board give Dr. Welsing sixty (60) days to agree to, and sign, the fence permit application and if Dr. Welsing refuses to sign the permit application for the fence within that sixty (60) day period, such a condition to provide the fence shall expire.

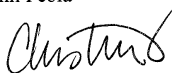
As was testified at the public hearing in this application, and as is documented in the record, JPDS has made numerous efforts to address Dr. Welsing's concerns in the past, but has repeatedly been met with silence from her. Attached, as Exhibit D, is a chronological series of the School's efforts to engage in a dialogue with Dr. Welsing to address her concerns. However, it is impossible to solve a problem when the person who professes to have such a problem refuses to enter into a dialogue in an attempt to find solutions.

Nevertheless, JPDS is committed to being a good neighbor and will continue to reach out to Dr. Welsing. JPDS will provide the proposed fence to mitigate any claimed noise impacts; however, the School does not want her silence on this matter to cause delay in moving forward with this application. Accordingly, the School asks that the Board approve this application at its public meeting on January 15 with the condition outlined above.

Sincerely,



Phil Feola



Christine A. Roddy

Attachments

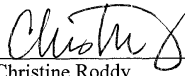
Certificate of Service

I hereby certify that the foregoing document was hand delivered on December 14, 2012 to the following:

Stephen Mordfin
Office of Planning
1100 4th Street, SW
Suite E-650
Washington, DC 20024
Stephen.mordfin@dc.gov

ANC 4A
7600 Georgia Avenue, NW, Suite 205
Washington, DC 20012
4A07@anc.dc.gov

Dr. Frances Welsing
c/o John Davis, Esq.
1629 K Street, NW
Washington, DC 20006
jwdalaw@aol.com



Christine Roddy

November 30, 2012

VIA HAND DELIVERY

John W. Davis, Esq.
1629 K Street, N.W.
Washington, D.C. 20006

Re: BZA Application No. 18400, 6045-16th Street, N.W., Jewish Primary Day School

Dear Mr. Davis:

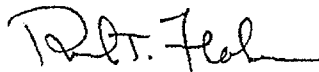
As you may know, the Board of Zoning Adjustment approved the Jewish Primary Day School's request for an extension at its public meeting on November 27, 2012. They have placed the matter on its January 14, 2013, public meeting agenda for a final decision. We anticipate that the following are the new filing deadlines for the case, but are confirming with the Office of Zoning:

- December 14: JPDS will submit its noise mitigation plan to the Board;
- January 2: Dr. Welsing may submit a response to the noise mitigation plan;
- January 8: All parties may file proposed findings of fact and conclusions of law; and
- January 14: The Board will decide the matter at its public meeting.

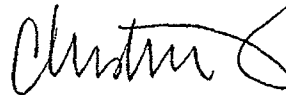
In light of JPDS' upcoming December deadline, we wanted to touch base and see if you have had an opportunity to review with your client the noise mitigation plan sent on November 20, a copy of which is attached for your convenience.. We look forward to hearing your comments and to working with you to resolve any outstanding matters of concern.

John W. Davis, Esq.
November 30, 2012
Page 2

Very truly yours,



Phil T. Feola



Christine A. Roddy

cc: Janine Goodman
Office of Planning

DCDOCS\7064740.1

November 20, 2012

VIA HAND DELIVERY

John W. Davis, Esq.
1629 K Street, N.W.
Washington, D.C. 20006

Re: BZA Application No. 18400, 6045-16th Street, N.W., Jewish Primary Day School

Dear Mr. Davis:

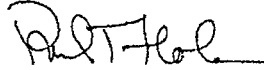
As you know, we represent the Jewish Primary Day School ("JPDS" or "School") in the above-captioned matter. Although the Zoning Administrator of the District of Columbia has found that JPDS is in full compliance with its 2008 BZA Order (BZA Order No. 17700-A), the Board of Zoning Adjustment ("BZA") requested, at its September 25th hearing, that JPDS present a noise mitigation plan in response to complaints that your client, Dr. Frances Welsing, lodged during the September 25th hearing with regard to noise emanating from the School's play area.

As a solution, JPDS proposes to construct a ten (10) foot high, solid wood fence (pressure treated pine or cedar) on School property with the upper part of the barrier lined with noise attenuating materials. The height of the barrier will extend approximately to the top of the windows on the first floor of Dr. Welsing's house. Please note that the height of this barrier is the maximum permitted by the District of Columbia Building Code (See 12 DCMR 3110.3.3) and will require Dr. Welsing's written consent prior to the issuance of a building permit for the fence.

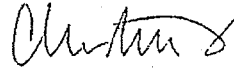
The School's noise consultant has indicated to us, and will put a letter into the record confirming such, that this solution will measurably reduce noise that reaches Dr. Welsing's house from the play area. If our request for an extension of time is granted by the BZA, we will be required to submit this mitigation plan by December 14, 2012, so we look forward to discussing this proposal with you prior to December 7, 2012 and look forward to resolving this matter expeditiously.

John W. Davis, Esq.
November 20, 2012
Page 2

Very truly yours,



Phil T. Feola



Christine A. Roddy

PTF:jco

cc: Janine Goodman
Office of Planning

DCDOCSV7064583.1

A

November 30, 2012

VIA HAND DELIVERY

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Washington, D.C. 20006

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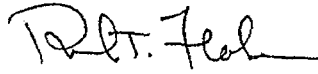
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John W. Davis, Esq.
November 30, 2012
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "Phil T. Feola".

Phil T. Feola

A handwritten signature in black ink, appearing to read "Christine A. Roddy".

Christine A. Roddy

cc: Janine Goodman
Office of Planning

DCDOCS\7064740.1

November 20, 2012

VIA HAND DELIVERY

John W. Davis, Esq.
1629 K Street, N.W.
Washington, D.C. 20006

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Dear Mr. Davis:

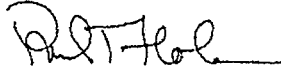
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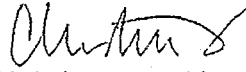
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John W. Davis, Esq.
November 20, 2012
Page 2

Very truly yours,



Phil T. Feola



Christine A. Roddy

PTF:jco

cc: Janine Goodman
Office of Planning

DCDOCS\7064583.1

B



October 25, 2012

Marshall R. Green
Director of Finance and Administration
Jewish Primary Day School of the Nation's Capital
6045 16th Street NW
Washington, DC 20011

**RE: JEWISH PRIMARY DAY SCHOOL OF THE NATION'S CAPITAL
Noise Mitigation Measures for School Athletic Field**

Dear Mr. Green:

Miller, Beam & Paganelli, Inc. offers the following recommendations for mitigating noise of children playing on the JPDS athletic field to the neighboring residential property.

In evaluating the following recommendation, it is helpful to understand that the decibel scale upon which sound level measurements are based is logarithmic. Therefore, a three decibel change (increase or decrease) is equal to a factor of two change in energy (such as changing an audio amplifier from 5 watts to 10 watts, or vice versa). However, to the human ear this change is only slightly perceptible. A change of 10 dB represents a factor of 10 change in energy (5 watts to 50 watts, or vice versa). This change is perceived to be twice (or one-half) as loud. The A-weighted decibel level (dBA) is the most universally used single number rating for human reaction to sound. The dBA scale approximate the ear's response to sound by discounting the low and highest frequency sounds where our ears are less sensitive and emphasizing the middle to high frequencies where our ears are most sensitive.

Attenuating the noise traveling across the property boundary and to the neighbor's rear yard and house is achieved with a noise barrier. To be effective at mitigating noise, a barrier must be solid and without gaps for the sound to pass through. The barrier should be made of a material with a minimum nominal 2 lb/sq ft face weight. Options include metal, masonry, or a solid wood fence with a minimum 3/4" thickness. A barrier is only effective when it breaks the direct sound transmission path, which is essentially the same as one's line of sight. Conversely, if one can see the noise source over a barrier, then the barrier is providing no noise reduction.

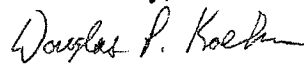
There is currently a wood fence along the property line between the field and the neighbor's property. Overall, the barrier is fairly solid and sufficiently dense, though there are some gaps that would need to be sealed if the existing fence is to be optimized for acoustical performance. To effectively block the noise transmission path, ideally the barrier would be as tall as the top of main floor window height of the neighbor's house. Therefore, one option for reducing the noise at the neighbor's house and yard is to increase the barrier's height and ensure that it is fully solid. It is

likely that a building code variance would be required to erect a barrier of this height, as it would exceed a standard fence height.

An added option for improving the barrier's effectiveness is to treat the upper barrier height (nominal 3-4 feet) with an absorptive material. The treatment helps to absorb some of the acoustical energy as it diffracts over the top of the barrier. One relatively inexpensive option would be to use a 2" thick fiberglass ductliner, held in place and protected with galvanized hardware cloth, chicken wire, or preferably galvanized flat lath, with the coated side exposed. Ductliner should be capped on top and not touch the ground at the bottom to reduce water penetration. Alternate options include weather resistant absorptive panels such as Kinetic Model KNP. A generic wood barrier detail is included. Additional details can be provided as necessary.

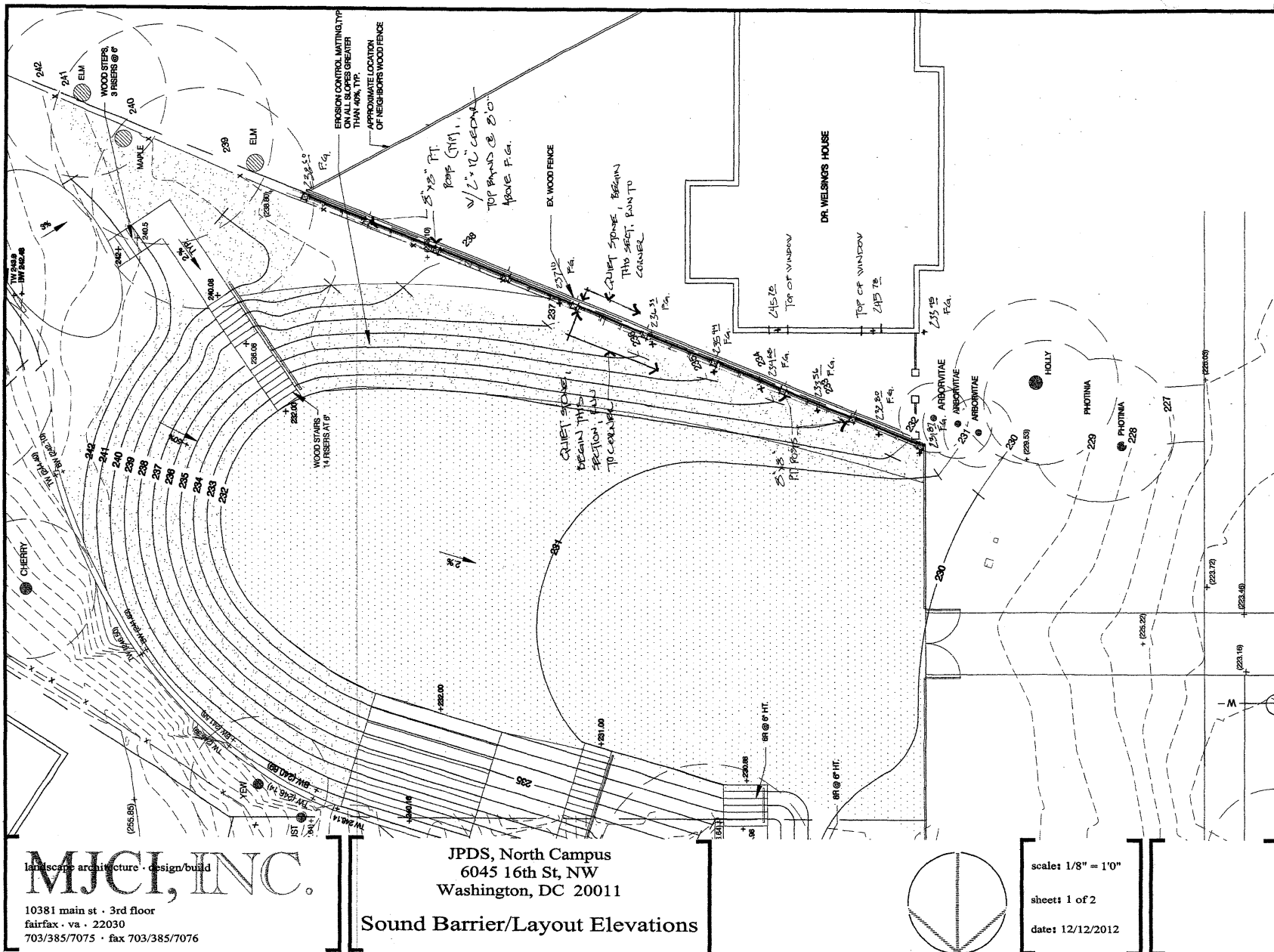
Typically, a solid barrier that fully blocks the line of sight to the source will provide at least 5 dBA of reduction and upwards of 10 dBA or more.

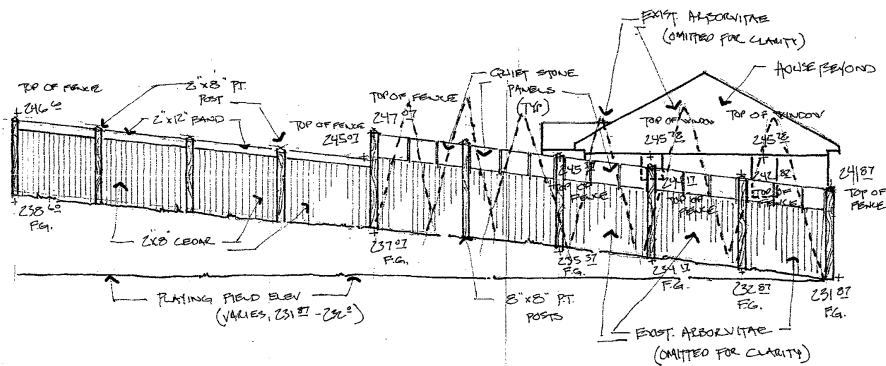
Sincerely,



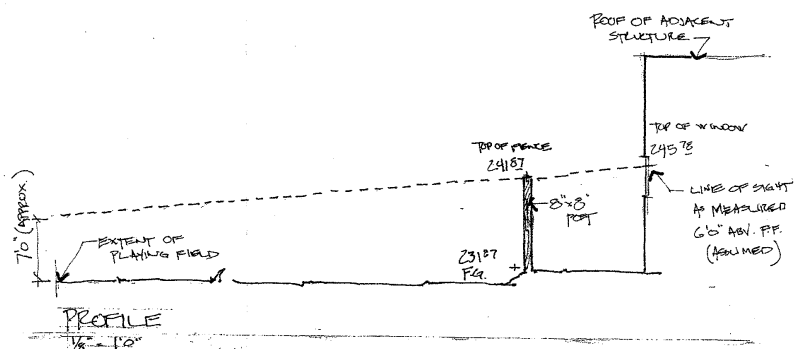
Douglas P. Koehn, M.S.
Senior Consultant

C

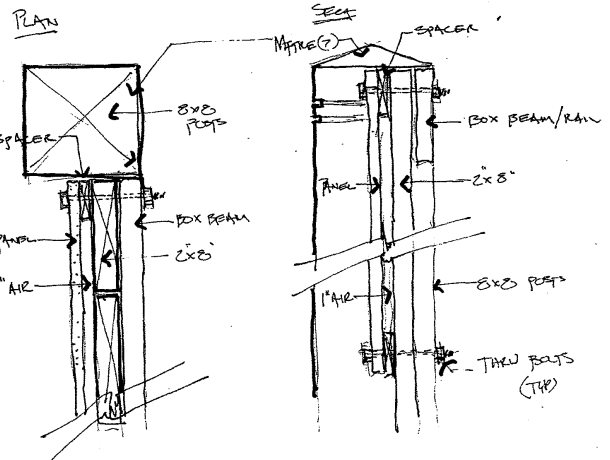
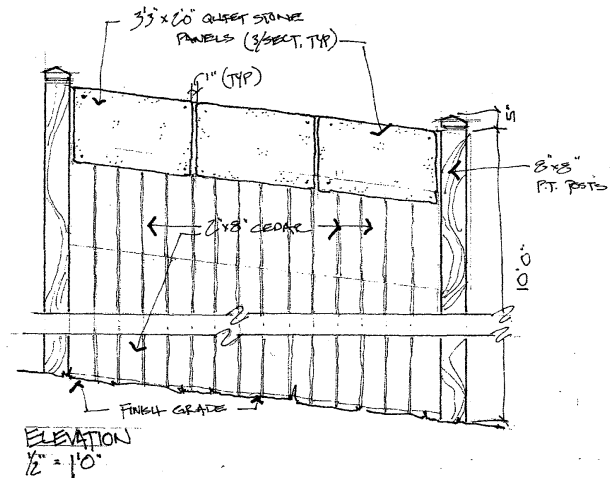




ELEVATION
1/8" = 1'0"



PROFILE
1/8" = 1'0"



DETAILS
TO SCALE

MJCI, INC.
landscape architecture • design/build

10381 main st • 3rd floor
fairfax • va • 22030
703/385/7075 • fax 703/385/7076

JPDS, North Campus
6045 16th St, NW
Washington, DC 20011
Elevation/Profile/Details

scale: as noted
sheet: 2 of 2
date: 12/12/2012

D

Timeline for interactions with Dr. Welsing

January 11, 2008 - JPDS meets with Dr. Welsing before the hearing at the BZA - an agreement is reached about what kind of trees we will plant in our property.

Feb. 19, 2008 - BZA ruling, granting JPDS the zoning for the playground, according to the plans we submitted and which were approved, but with serious limitations and conditions:

- Change the grade and trees for noise abatement

- Limit the number of students in the playground to 65 at any given time

- Very limited hours of use of the playground (10:00 to 2:30, and 3:30 to 4:30, Mon-Fri), of which we sue 10:30 to 2:30, and sometimes not even that. We are not allowed to sue the playground for after hour/weekend activities, i.e. sports, picnics, school events.

Fall 2009 - Construction in the playground begins in earnest.

Oct. 2, 2009 - Dr. Welsing's attorney contacts JPDS attorney to ask about trees being planted /removed. JPDS attorney answers, suggests a meeting, no response. Dr. Welsing does not attend the November ANC meeting. Four trees on JPDS property are determined to not be able to withstand the work, they are removed. Twelve new trees are planned to be planted in their stead.

Nov. 10, 2009 - Dr. Welsing's complains at the BCA meeting. JPDS is notified and JPDS responds to ANC member (Marian Bennett) and neighbor (Tom Black) who ask about the trees.

Nov. 19, 2009 - JPDS follows up with fax to Dr. Welsing explaining the tree situation.

Nov. 20, 2009 - Dr. Welsing calls Marshall, sends faxes questioning the trees and asking to move a few. JPDS complies.

Dec. 1, 2009 - Dr. Welsing raises questions at the ANC meeting. Several JPDS representatives are present and respond to the issues she raises.

Dec. 8, 2009 - JPDS receives a letter from Muriel Bowser's office requesting information after Dr. Welsing filed a complaint. JPDS responds.

Dec. 22, 2009 - JPDS sends letters to Muriel Bowser and Dr. Welsing with a recount of all the information on our compliance with the ruling and all the info re trees

Feb. 2, 2010 – Janine Goodman communicates with ANC representatives to reiterate the facts.

Feb. 25, 2010 - Date for a meeting with Dr. Welsing, school representatives, and Habieba Snow Israel, that Dr. Welsing cancels at the last moment

March 1, 2010 - Habieba acknowledges that Dr. Welsing cancelled the meeting and that we will not have anything new to report at ANC meeting.

Late March, 2010 - Meeting with lawyers, JPDS landscape architect and two of Dr. Welsing's; not very productive.

March 23, 2010 - JPDS lawyer suggests that JPDS engage an arborist (recommended by Dr. Welsing's people) to determine if the construction is damaging her plants and shrubs. JPDS does.

April 19, 2010 - The report is clear that JPDS is not creating any damage, has some suggestions JPDS implements.

April 28 and 29, 2010 - JPDS communicates with Tom Black and Janine updates ANC at meeting September 2010 - Playground is put to use according to BZA ruling.

Nov. 5, 2010 - JPDS received letter dated on Oct. 6, from Dr. Welsing with cc to attorney and Dr. Vernon (?) complaining of the noise level.

Nov. 9, 2010 - Naomi Reem responds, referring to JPDS' compliance with the ruling. No response.

Dec. 7 - JPDS receives letter from different attorney, reiterating complaints and asking for meeting.

Dec. 14 - JPDS attorney responds, explaining that JPDS is in compliance and offering a meeting. No response.

July 1, 2011 -- Received letter from Dr. Welsing, informing JPDS of her PTSD (continued) diagnosis July 7, 2011 - Naomi Reem responds, stating compliance

Aug. 3, 2011 - JPDS receives letter from Office of Zoning, notifying us of Dr. Welsing's complaint and asking us to remit answers to a questionnaire by August 15.

Aug. 15, 2011 - JPDS attorney submits answers. Sometime in the process, JPDS is invited to a meeting, which Phil Feola, Marshall Green, and Naomi Reem attend.

September 26, 2011 - JPDS receives letter from DC Office of Zoning, explaining that JPDS is in compliance and leaving a few things open, inviting Dr. Welsing to submit another request. JPDS do not hear of any follow up.

April 2012 - JPDS closes on the purchase of the property on 6017, Dr. Phillips notifies Dr. Welsing of sale.

May 4, 2012 - JPDS notifies Dr. Welsing of BZA application, by phone and, at her request, by certified letter.

May 21 - JPDS receives a copy of Dr. Welsing's letter to the Mayor of DC and others, which was received by the ANC on May 18 (although letter is dated March 27).

May 21 - JPDS hosts community meeting to talk about the BZA application. Dr. Hunter, the "Chairperson of the Committee for the Defense of Dr. Frances Cress Welsing" comes to the meeting. Several board members talk to him and invite dialogue. Dave Wilson, ANC commissioner is present too. Mr. Wilson agrees to mediate the dialogue.

June 5 - ANC 4A meeting. Dr. Welsing doesn't attend. JPDS gets unanimous support for application from the ANC commissioners. JPDS talks to Dave Wilson, who has contacted Dr. Hunter and tells JPDS that Dr. Hunter is waiting to hear from Dr. Welsing about getting together to discuss the issues. Dr. Hunter does not get back to Mr. Wilson to this day.

July 10 - JPDS receives a request for clarification on the buffer zone from the DCRA.

July 24 - JPDS sends response to the DCRA

August 9, 2012. Lawsuit papers are delivered by courier to JPDS.