

February 23, 2007

Dear Joe,

I am happy to give you some information about the experience of the adjacent neighbors during the construction of the National Cathedral School athletic center. As you may know, I am an ANC commissioner but I was not on the Commission when the project was reviewed by the Board of Zoning Adjustment. I am one of the adjoining neighbors to the property and I was involved from that perspective and later, during the construction, as an ANC commissioner.

There were many things we learned from this project, but one of the most important lessons I can pass along to you is that if a proposed project is to be built below the water table there should be hydrology studies to determine the depth of the water table and how long it takes the sample sites to recharge. The samples should be at different locations around the site and they should be permanent, if possible, but at a minimum established long enough to capture data over a period of weather changes.

The water issue was significant on the NCS project since the structure was built 19 feet below the water table. Dewatering apparatus were permanently placed at the four corners of the project. The impact of the dewatering is often unpredictable. I talked to many hydrologists who explained to me that the effect can be experienced as far as a mile from the site and that it often takes a year or more for impacts to be seen. Typical effects are sticking doors, cracks in walks and outside steps, cracks in walls and general settling that would normally occur over many years, if not decades, occurring over a few months. Some jurisdictions have laws that allow residents to recoup damages related to dewatering but the District of Columbia does not have such a law.

If there are houses in close proximity to the construction site it is very important to have preconstruction surveys done on each home. A preconstruction survey determines the status of the house prior to construction and enables you to have a benchmark for evaluating whether any damage has occurred due to the construction. You must anticipate whether the proximity of residences to construction will likely result in some damage. We have a block of semi-detached houses that are sited close to the street and directly across from the NCS construction site. The street separating the houses from the construction is not a bus route and is restricted for trucks over 1 1/4 tons. The construction trucks, including hundreds and hundreds of dump trucks, were considerably heavier than anything our neighborhood had experienced. The equipment carrying trucks were very large and often drove over the curbs in order to maneuver into the site. Typically, drivers of trucks carrying excavation materials or fill repeatedly banged rear truck gates to shake off any remaining dirt; the noise and vibration from this practice is rivaled only by the noise and vibration associated with the trucks dropping off the curb into the street. (While the city can measure the noise levels we found that the threshold is high and the effort to bring inspectors to the site at the right time is difficult). Depending

on the type of construction there can be considerable vibrations from pile driving or other construction techniques.

An agreement with the owner of the property that they will finance the surveys, give you copies of the surveys, and pay for any legitimate damage caused by construction is necessary to protect residents whose homes may suffer construction-related damage. We did not have such an agreement during the NCS construction, but damage was reported to the school throughout the project. School representatives periodically viewed the damage, which in some cases progressed. There was a range of damage, but most of it involved wall cracks, outside walkway and steps damage, tile grout damage (in one case tiles were split), light fixtures falling and breaking, and in the house directly across from the construction driveway there were cracks in the cement basement floor due to underground water levels rising. In addition, several homeowners experienced wet basements for the first time.

(During one period of construction a group of contiguous homes a block from the construction site had storm drain back-ups that flooded basements with sewage. Needless to say they were alarmed and angry. After having everything checked out in their homes and finding their storm water and sewer hook-ups intact and clean, we turned to the construction. After locating the underground piping maps from WASA, we suspected the Cathedral had a waste pipe hooked into the storm sewer. WASA investigated and that was exactly the situation. The Cathedral was required to disconnect the pipe, which they had indicated in permit applications they would do at the beginning of the project, but they had neglected to do. At that time, it wasn't known that this pipe connected to the main storm water pipe. The homeowners absorbed the costs of the clean-up and the home checks. This is not as unique a situation as you might expect, and it is something that you should check out with the District Dept. of Health, Environmental Health Division before construction begins...then monitor during construction.)

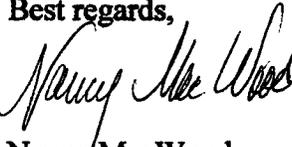
Without preconstruction surveys it was very difficult to convince NCS that the construction was causing the damage even though they had watched the damage occur over the 18 months of construction. Finally, more than a year after construction ended, the Protestant Episcopal Cathedral Foundation agreed to reimburse 6 or 7 residents who had consistently complained about damage for the repairs to their homes. Since then the ANC has required institutional applicants for a special exception involving major construction near residences to agree to conduct preconstruction surveys.

Living through a large construction project is unpleasant at best. There is dirt, noise, traffic and activity that impacts quiet residential areas for the period of construction. Those are perhaps inevitable consequences and the city does have regulations to control them to some extent, but our experience is that inspections are unsatisfactory. My final advice would be to negotiate a construction management agreement. Prior to the NCS project they wrote a draft construction agreement. The ANC amended it, but because the language was so vague the school could always argue that there was flexibility in the agreement for whatever they wanted to do. We lived through 6-day workdays for half of

the construction period. While some residents want a project to be over more quickly, I found that many more residents want some relief from the constant noise and activity. One benefit of a construction management agreement, in addition to limiting work days and times, is the opportunity to determine truck routes. There is very little patience for construction trucks traveling on neighborhood streets when they could be on arterials or minor arterials. Drivers will seek the quickest route and try to avoid all traffic signals. A construction management agreement can determine the approved routes, and require the owner to add a truck route stipulation in the construction contract, hopefully with penalties. The Department of Transportation can on occasion be convinced to post signs prohibiting trucks where you don't want them. The police can enforce the truck routes if there are city signs. In addition, the MPD truck unit can periodically stop trucks traveling to a construction site to determine that the trucks are safe, within weight limits, and the drivers are properly licensed. It is very important that this agreement be negotiated so that provisions reflect the concerns and interests of neighbors and the agreement doesn't simply state what the city construction laws limit.

If the BZA approves conditions on a special exception for a construction project they can be enforced by the Zoning Administrator, who has the ability to revoke permits if there are violations of the zoning order. The current BZA, I believe, is antagonistic to conditions related to construction. They raise a court decision that challenged some of the conditions attached to a campus plan order that the court found unenforceable. In my opinion, the standard for a special exception that relies on the applicant persuading the BZA that there will not be adverse impacts on the near residents leads to mitigating conditions where adverse impact is found. The construction-related issues are surely viewed by residents as adverse impacts.

This is a long letter, but I hope it is helpful. It is very difficult to have resident's interests well represented during a major construction project. Success is more likely if you know what to anticipate and what other neighborhoods have negotiated or convinced the BZA to require. Please let me know if I can help you further.

Best regards,

Nancy MacWood