Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

January 9, 2006

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D.C. OFFICE OF ZONING
2006 JAN 10 AM 10: 59

Mr. Geoffrey Griffis
Chair
Board of Zoning Adjustment
441 4th Street, NW
Suite 210-S
Washington, DC 20001

RE: Appeal No. 17391
Hearing Date: January 10, 2006

Dear Mr. Griffis:

Advisory Neighborhood Commission 3D held its regularly scheduled meeting on January 4, 2006, at Sibley Memorial Hospital's Ernst Auditorium with a quorum (5) present at all times. Notice of the meeting appeared in the Northwest Current on December 28, 2005 and January 4, 2006, and meeting notices were posted in the ANC area. Written notification of the meeting date, time and location were mailed to all parties whose matters would be taken up by the Advisory Neighborhood Commission. The commission voted 6-0-0 to support the Appeal of Diana deBrito and Jonathan Gottlieb, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs (DCRA) to issue building permits (B455009), (B451175), (B452735), (B451175), and (B452577) authorizing the construction of a principal dwelling other structures and fences. Appellant alleges that DCRA erred by allowing the permits for said construction to be issued in violation of 12 DCMR § 3110.3.3 and 12 DCMR § 3110.1.3, 11 DCMR §405.9, 11 DCMR § 404, and 11 DCMR § 2503.2. The subject property is located in the R-1-A District at premises 2620 Foxhall Road, NW (Square 1397, Lot 1031).

On November 29, 2005, Advisory Neighborhood Commission 3D appeared before the Board of Zoning Adjustment to support Jonathan Gottlieb's request for a continuance. The Chair of the Board of Zoning Adjustment advised the commission to invite Mr. Gottlieb to make a full presentation on the merits of his case at its next regularly scheduled meeting. Mr. Gottlieb appeared before the commission on January 4, 2006 to present his appeal. Appearing with Mr. Gottlieb was Kallioppi (Kathy) Dematatis, a neighbor and property owner on Dexter Street.

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Mr. Gottlieb informed the commission that new construction on the Ludwig compound does not preserve the current density of the neighborhood; soil has been imported to raise the level of the property by about 12 feet causing the house and structures in the side yard to loom over neighboring properties; retaining walls have been built and back filled with soil to create elevated platforms on which the house, swimming pool and tennis court are erected; wood fences have been erected atop the retaining walls that surround the side and rear of the property that exceed height standards and are cutting off light and air to the Gottlieb property; and, erosion from the imported soil is causing silt to be deposited atop the root systems of trees in the Gottlieb and other neighboring rear yards.

Mr. Gottlieb cited the piecemeal manner in which permits for construction at 2620 Foxhall Road were obtained. He noted that the level of the property has been substantially elevated during construction and that structures have been pushed out to the side and rear edges of the property. Exhibits furnished by the Appellant illustrate that a retaining wall was necessary to contain the elevated earth that now acts as a platform on which the house, accessory buildings and tennis court are constructed. The height of the fence atop the retaining wall in the side yard exceeds the seven foot height allowed under Title 12, §3110.3.3. Walls with fences have been placed within the 10 foot area that is considered the "party line;" and cut off light and air to adjacent neighbors. As a result of the newly elevated property, Mr. and Mrs. Ludwig enjoy a spectacular view from their home of Virginia, but it is at great expense to the quality of life of neighbors down below. Neighbors view an unfinished cement retaining wall complete with wire mesh and exposed rebar. This is topped with a solid wood fence that ensures no air or light will extend into neighboring properties. (See Appellants Exhibits C and D.) Overall, the massing of structures at the rear of the Ludwig property is in contradiction to the Wesley Heights Overlay with is intended to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area; and to preserve resulting loss of air and light, and the harmonious design and attractive appearance of the neighborhood. The cement retaining wall that is facing adjacent neighbors is in no way an attractive feature of this development. A recent case involving a mechanically stabilized earth structure below Dexter Terrace is currently awaiting the release of its BZA Order. The similarities of several aspects of the two cases are notable as are the resulting impacts to neighbors.

Mr. Gottlieb cited his attempts to obtain information from Mr. Ludwig prior to construction. He was consistently told the Ludwigs would work with him and neighbors but plans were not complete. Then communications shut down and neighbors have been forced to obtain copies of permits and plans through DCRA. This is often a lengthy and expensive process that requires constant vigilance, multiple trips across town to Blue Boy for copies of plans and permit review at DCRA. The burden is transferred from DCRA onto adjacent property owners who must realize and report findings within a 60 day timeframe. In a case where multiple permits have been issued a very heavy burden of proof is placed on neighbors, not to mention the cost of filing an appeal, hiring an attorney and any necessary expert witnesses.

Twelve Dexter Street properties, included in the Wesley Heights Overlay District, boarder the Ludwig Estate, which abuts but is not included in the overlay. Many of these properties are experiencing drainage and water problems as a result of the elevated site and lack of proper stormwater management on the Ludwig property. Silt runoff is a regular occurrence. The roots of trees and shrubs in yards, especially the Gottlieb yard, are in danger of being smothered because of silt compaction on their roots and too much water. Mrs. Dematatis noted that runoff onto adjacent properties has been dramatically increased and the only relief neighbors received when they brought it to the attention of the Ludwigs was two bales of hay placed along the rear of the property.

The permits obtained in this case do not clearly reflect what has taken place on the Ludwig property nor are the ensuing impacts reflected from one permit to the next. The initial permit (B451175) to allow site work and grading for future single family dwelling, construct a new 12' block retaining wall entirely on owner's land at rear of property and fill and construct tennis court as per plans" indicates there will be significant construction but it does not indicate the overall property will be raised by 12 feet, the impacts that will result or that an additional permit will be obtained (B452735) several months later to revise the original permit and change the structural design of the tennis court. Not until two years later could neighbors know a wood fence would be installed atop the retaining wall in the side yard. This construction project has been done in layers and only now is the full impact known. The Office of the Zoning Administrator does bear responsibility when applicants are allowed to check the box over and over that indicates there will be no permit requests for the next three years; but, additional permits were requested within a matter of months. There is a need for more thorough review of applications, whether multiple permits have been issued for the same project, the cumulative effect of the development; and, less reliance on third party inspectors who are usually employed by the developer.

The BZA and the ANC continue to struggle with the effects of permits issued by DCRA that are revised and revised. It is unrealistic to believe that any abutting property owner is going to spend endless hours hunting down permits and plans and then wait for inspectors to arrive only to learn that the inspection request has been "denied." It is impossible to know the sequence of events in this case because time has passed since the initial permit was issued. But, it is possible to know that there has been a significant cumulative effect that is impacting the twelve neighbors whose properties border the Ludwig Estate.

The appeal filed by Mr. Gottlieb does fall within the jurisdiction of the Board of Zoning Adjustment under Title 11 § 2503.3 which states, "A fence or retaining wall constructed in accordance with the DC Building Code may occupy any yard required under the provisions of this title." The matter before the board is whether or not the retaining walls and fences are constructed in accordance with the DC Building Code, whether they satisfy the requirements of Title 11 with regard to height and whether or not these structures and other structures on the property are in accord with the provisions of the Wesley Heights Overlay District that includes the properties on Dexter Street that abut 2620 Foxhall Road, NW.

As noted in the opening paragraph, written notification of the January 4, 2006, ANC meeting was mailed to Mr. and Mrs. Ludwig. Neither they nor their representative appeared at the meeting. Two neighbors appeared in support of the appeal and Mrs. Kathy Dematatis spoke in support of the appeal filed by Mr. Gottlieb. No one was there to oppose the appeal.

Therefore, Advisory Neighborhood Commission 3D asks that its considerations be given the "great weight" to which it is entitled under DC Law.

Sincerely,

Alma H. Gates

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Chair, ANC 3D

cc: Jonathan Gottlieb

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