

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

FEBRUARY 7, 2006

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL G. TURNBULL	Commissioner (AOC)
KEVIN HILDEBRAND	Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
JERRILY R. KRESS	Director (FAIA)
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on February 7, 2006.

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P R O C E E D I N G S

10:28 A.M.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our Public Meeting of February 7, 2006.

This is, of course, the Board of Zoning Adjustment for the District of Columbia and my name is Geoff Griffis, Chairperson. Joining me today is the Vice-Chair, Ms. Miller and Mr. Etherly, our other Member will be out in a brief second.

Representing the National Capital Planning Commission with us is Mr. Mann. And representing the Zoning Commission, Mr. Hildebrand, the first case. We will have other Zoning Commissioners on each of the cases depending on who actually participated in the hearing on the particular case.

Copies of today's hearing agenda are available for you. You can see where the decision is on the agenda that you are here and interested in.

I will make a quick note that, of course, this is our public meeting. We are in deliberative session. All the cases that we will go through this morning have already been heard. The

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1 Etherly. Also in support of the motion, Mr. Griffis
2 and Ms. Miller. We have -- as a resulting vote,
3 actually 4 to 0 to 1 because Carol Mitten is
4 participating, but not present and not voting.

5 CHAIRPERSON GRIFFIS: Thank you, Mr.
6 Moy, appreciate that.

7 Why don't we move directly ahead then to
8 the next application?

9 MR. MOY: This will be Application No.
10 17404 of Wilbur Mondie, pursuant to 11 DCMR 3103.2,
11 for a variance from the lot width and lot area
12 requirements under section 401.3, to allow the
13 construction of four flats (two-family dwellings) in
14 the R-4 District at premises 410, 412, 414, and 416
15 Richardson Place, N.W. That's in Square 507, Lots
16 810, 812, 8414 and 816.

17 Staff would note here that the Applicant
18 has amended his application to request relief under
19 Section 410 and has revised plans to construct a
20 single building of four single-family dwelling units
21 on a consolidated lot, to include Lot 811 to Lots
22 812, 813, 814 and 815.

23 On January 24, 2006, the Board completed
24 public testimony on the application and scheduled
25 its decision on February 7, 2006. The Board

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1 requested a number of post-hearing documents. With
2 respect to filings, the Board has received a filing
3 from the Applicant, dated January 31, 2006, in
4 response to the Board's request for additional
5 information. That is identified in your case folder
6 as Exhibit 39.

7 Secondly, the Board has also received,
8 as requested, a filing from Mr. LaCour on behalf of
9 Richardson Place Focus Group. That's dated February
10 1, 2006. This document is identified as Exhibit 40.
11 Following, there is a series of filings from Mr.
12 LaCour that segue from his earlier filing,
13 identified as Exhibit 38 which is a letter dated
14 January 27, 2006 where he requested the Board
15 postpone a decision in the case.

16 The following filings, Staff would just
17 identify as Exhibit Nos. 34, 35 and 37. Staff notes
18 that this original filing which is Exhibit 38 is a
19 preliminary matter.

20 And that concludes the Staff's briefing,
21 Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Good. Thank you
23 very much, Mr. Moy. Mr. Moy, I appreciate you going
24 through all of the -- the summation of the record,
25 but also those additional submissions that we do

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1 have into the record, some which, I must say, were
2 quite complexing in their statements. And I don't
3 think we'll delve too far into some of those, but
4 let's go directly into the heart and fact of the
5 case in this.

6 As we are well aware, there was some
7 changing of the application and what we were looking
8 at. However, I think we're fairly definitive on
9 what is being proposed in terms of the development,
10 but also in terms of the relief sought.

11 Some of the pieces that I think were of
12 concern or confusion to the Board is whether this is
13 properly before us for relief under 410. I want to
14 speak essentially to that first, but then I think we
15 can continue on in deliberation on this case and the
16 other elements.

17 Ms. Mitten just brought up that perhaps
18 we take on the first request for postponement of
19 this decision until a text amendment is taken up by
20 the Zoning Commission. And forgive me for breezing
21 by that because I think this is going to be very
22 quick to say that I would not support a postponement
23 of the decision on the principal fact that this
24 application is vested under our current regulations.
25 There would be nothing that would require it, unless

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1 the Zoning Commission did not allow previously
2 applied for applications to run, meaning they'd have
3 to step back in a history if they were to take up
4 and change the regulations and say that all those
5 that have come before this need to now change.

6 I don't see that happening in this
7 specific case, based on that aspect. Nor do I
8 understand when that would actually come to the
9 Zoning Commission. Well, there it is.

10 Others have comment on that?

11 VICE-CHAIR MILLER: Well, I would just
12 say that I'm not in favor of postponing it either
13 because that wouldn't affect my decision in this
14 case.

15 CHAIRPERSON GRIFFIS: Okay, very well.
16 Any further discussion on that then? On any other
17 elements of the case?

18 Moving ahead then and looking at 410 and
19 again in the same section that we're very familiar
20 with in today's deliberation, but also in previous
21 deliberations. I think we have seen it in numerous
22 cases. There was some concern and confusion of
23 whether this was applicable and I dare say that I do
24 not believe the intend of 410 was written to
25 undertake such an application. That being numerous

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1 lots that would need to be subdivided into a single
2 lot and then our review would then be re-subdivided
3 out. I think the intent -- whether it be in the R-4
4 or the R-5, I will not reach at this point. But the
5 intent was to look at providing a flexibility in
6 larger lots that would be able to come into the
7 density and dimension requirements of the overall
8 zone that was put in and I don't think it's
9 applicable in this case.

10 However, if it was to proceed in this
11 case, to go through the application of that and the
12 relief sought under 410 as the Applicant was given
13 the opportunity to address or to further change, to
14 address this, I think that, in effect, will fail on
15 several other levels under 410 requirements and let
16 me set the stage at that point and I'll take further
17 deliberation from others or I will take it back up.

18 VICE-CHAIR MILLER: That's why I really,
19 I said that the text amendment doesn't affect my
20 decision because I think that this provision, in
21 general, isn't intended to apply to more than one
22 lot which we have in this case. So I concur with
23 you on that, if I understood you correctly and also
24 I think that it doesn't meet the lot occupancy
25 requirements. I think that if -- we discussed this

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1 -- or we explored this at length at the hearing,
2 which lot occupancy standard applied and I think
3 it's the one that applies to all other structures,
4 having to be a certain percentage and it didn't meet
5 that.

6 CHAIRPERSON GRIFFIS: Interesting. No,
7 I understand your point. I'm not sure I agree with
8 it, but others?

9 (No response.)

10 I think I agree with perhaps the
11 outcome, but I don't agree with the specifics and
12 that is under 1410.01, this section allows for our
13 review that several principal structures be viewed
14 as a single building. It says specifically for the
15 purposes of this title. We're creating essentially,
16 for 410, we're creating a theoretical building.
17 It's a theoretical building and it's interesting
18 that then that we would go back to then looking at a
19 single building what other requirements -- I'm not
20 sure I -- I'm not sure that I am persuaded that that
21 is what you're supposed to do in 410, but rather,
22 look at the principle structure and then all of the
23 parameters that are limitations or requirements on
24 that, principal structure. Those should be complied
25 with.

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1 What it comes down to is on a larger
2 site, if you are trying to do all those at once, all
3 these row dwellings on a single site, it would be
4 precluded with our regulations because they would be
5 principal structures on a single lot and that's
6 where 410 would then take that up, take that
7 theoretical building under its -- under 410, and
8 then prescribe certain things directly to it which
9 is where we get to.

10 It's interesting that you've fallen on
11 the density which is one of the area requirements
12 and which I think is interesting.

13 I go to some of the other area
14 requirements in it and I think that this again,
15 starts -- well, that this fails in terms of 410.16
16 an that is if you look at the surrounding area and
17 there were numerous questions from the parties in
18 opposition and also from the Board of that is how is
19 this within character to the surrounding area and
20 this is even more a concern of this specific area
21 because of how this block is serviced through the
22 alleys and such and we have some similarities in
23 materials and I don't disagree there. We have
24 similarities in the frontage on the property line,
25 but the similarities there end. And I think that

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1 the impact is not necessarily catastrophic because
2 it doesn't match exactly what's happening in the
3 adjacencies. But rather, I think it was
4 persuasively shown that if the size of this and the
5 density of this is allowed to proceed that it would
6 be detrimental to the surrounding area, based on all
7 of the specific elements which I can get into if
8 need be, that were brought to the Board's attention
9 in part of the record.

10 Those are the ones that impact the
11 present character and the future development of the
12 neighborhood.

13 Ms. Miller?

14 VICE-CHAIR MILLER: Okay, I want to be
15 more specific because I have located my source, at
16 least. I'm looking at page 4 of Office of Planning
17 report where they talk about lot occupancy and I'm
18 referring to the lot occupancy for the structure
19 that's going to be built on all the lots as a whole.
20 Okay?

21 CHAIRPERSON GRIFFIS: The theoretical
22 one building.

23 VICE-CHAIR MILLER: The theoretical one
24 building. And what is it? It has to comply with
25 lot occupancy requirements in an R-4 zone and so we

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1 were looking at well, what is it? And so my
2 conclusion is it falls in the category of all other
3 structures which has the maximum percentage of lot
4 occupancy at 40 percent and the lot occupancy of
5 this building is supposed to be 59.4 percent.

6 CHAIRPERSON GRIFFIS: But if you built
7 one of them at a time, what would the lot occupancy
8 be?

9 VICE-CHAIR MILLER: I don't know. We're
10 looking at it as a whole.

11 CHAIRPERSON GRIFFIS: Under 410.

12 VICE-CHAIR MILLER: Under 410.

13 CHAIRPERSON GRIFFIS: So 410 creates
14 this theoretical building.

15 VICE-CHAIR MILLER: Right.

16 CHAIRPERSON GRIFFIS: Which is a
17 combination of single principal structures. For me,
18 and my reading of 410, it's another animal. It
19 isn't all of the structures. It doesn't fall into
20 those characterizations. It did in its principal
21 nature and then as you combine those, in order to
22 combine them to develop it, all at once and having
23 its frontage to the street, in order to do that,
24 then we have additional requirements in 410.

25 VICE-CHAIR MILLER: It has to be

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1 something and it's not a row dwelling.

2 CHAIRPERSON GRIFFIS: It is.

3 VICE-CHAIR MILLER: It is?

4 CHAIRPERSON GRIFFIS: Yes. Several row
5 dwellings.

6 VICE-CHAIR MILLER: The whole thing is a
7 row dwelling?

8 CHAIRPERSON GRIFFIS: No, there are
9 several row dwellings that are combined into a
10 single building in order to construct it on a single
11 lot of record under 410.

12 VICE-CHAIR MILLER: It may be comprised
13 of single row dwellings, but it becomes something
14 other than that when they're put together. That's
15 why I think it falls in the category of all other
16 structures.

17 CHAIRPERSON GRIFFIS: Right, but see, I
18 don't think it does because 410 created that
19 theoretical building -- that ability to have a
20 theoretical single building. And the requirements
21 in order for you to look at it as a single building,
22 those requirements are then stated under 410. 410
23 doesn't say okay, now that you have a single
24 structure, go back and recalculate all those other
25 aspects that are required for whatever you're making

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1 here.

2 No. 410 says for our purposes on a
3 single lot of record, this will be deemed as a
4 single building, but in order for that to happen,
5 all the buildings in the group of buildings have to
6 be constructed simultaneously. All the front
7 entrances of the group have to address the street, a
8 front yard or a front court, right? No rear or
9 service entrance shall abut a street.

10 It sets out the parameters at which to
11 look at this theoretical one building.

12 I think -- and this isn't perhaps the
13 case to make this definitive or to make it clear,
14 because this application doesn't fit the parameters
15 of which I think 410 was anticipating, if it is even
16 specifically able to come under 410. I mean 410, if
17 you look at it, to make it maybe an easier example,
18 look at a several acre lot that you're putting roads
19 into, streets and it's all private property and
20 those aren't public rights of way. They are ingress
21 and egress out of a public site. And you start
22 putting houses on those pieces, well, that's what
23 410 would allow you to do, to look at all those
24 together and say -- now would you look at each of
25 those as -- if it was a hundred buildings, is that a

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1 multi-family building for other requirements, for
2 parking for, for anything else? I don't think so.
3 We wouldn't invoke other aspects, I don't think of
4 the regulations.

5 MEMBER ETHERLY: So then under the
6 discussion that Ms. Miller was just suggesting, what
7 would be an "all other structures" scenario?

8 CHAIRPERSON GRIFFIS: Oh, in an R-4?

9 MEMBER ETHERLY: Yes.

10 CHAIRPERSON GRIFFIS: Not under 410?

11 MEMBER ETHERLY: Yes.

12 CHAIRPERSON GRIFFIS: Oh yeah. All
13 other structures. That's simple. A conversion of
14 an existing building that had a lot that allowed
15 more than two units on it. So if you had an
16 existing apartment building and you wanted to add on
17 to it or you were reconfiguring it, all other
18 structures would be in R-4 and others would be -- I
19 don't know. That's the first that comes to mind.

20 VICE-CHAIR MILLER: Well, I would
21 suggest we may not even have to reach this question,
22 if we're unsure about it. If we agree that this
23 provision applies to just one lot as opposed to more
24 than one lot or if we want to go on and address the
25 substance of the application.

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1 CHAIRPERSON GRIFFIS: Good, let's do.
2 Did you want to address further? Are there any
3 others that want to talk further on the substantive
4 issues of the case?

5 While you're gathering your thoughts and
6 your notes on that which I know you will be, I want
7 to address one thing that's a bit of a digression
8 into the specifics, but Exhibit 39 was submitted by
9 the Applicant and a lot of this stuff I found kind
10 of distressing to be looking at this kind of
11 bantering back and forth and the accusatory nature,
12 some of this stuff I actually didn't even understand
13 why we were getting it. But one specific thing I
14 did want to make clear for the record is the
15 Applicant indicated that documentation of ownership
16 of lots and -- but why does Karl La Cour want to
17 know, question, it is customary for the BZA to
18 inquire if a developer owns the land when a
19 developer submits an application -- or rather,
20 that's a question. Is it customary? And the answer
21 to that is no. It's not customary for the Board
22 inquire. It's actually a requirement of an
23 application to be before us that the owner is --
24 brings the application. So it goes well beyond
25 whether we want it or not want or whether it's

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1 somebody who is irate about the application bringing
2 this up, it's actually a very serious point and
3 first threshold element of having a full and
4 complete application to come forth.

5 In fact, we've had numerous applications or
6 not numerous, but several, that have been removed
7 from our docket based on the fact that proper
8 ownership was not evidenced before us.

9 Then going to Exhibit 40, which is from
10 the party in opposition, the focus group. I just
11 take a note and maybe I shouldn't, but I have to
12 address it. There's some bantering back and forth
13 about how the Applicant's attorney was a former BZA
14 chair and they certainly hope they don't get special
15 treatment. I'm not really sure what that means at
16 all, nor do I think it had any impact or relevancy
17 to what we were looking at here. And I think the
18 point of bringing both of those up is to show that
19 what we look at and always strive to find or require
20 is the substantive facts that go directly to the
21 relief that's required and therefore we're able to
22 properly deliberate a lot of these other aspects, I
23 think, are frankly, perhaps a waste of time to
24 actually put together and submit into the record.

25 Now that isn't to disregard both sides,

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1 the Applicant's and the party in opposition in terms
2 of their other substantive aspects in addressing the
3 application and I would note that there is a good
4 legal analysis, by the party in opposition, one
5 addressing 410.06 and other aspects of 410, the
6 safety, the distance, the fire hydrants, all of
7 that, I think, is appropriate to look at and also in
8 terms of the character and the impact of the size
9 and the density of what is being proposed.

10 That being said, I'll let others
11 comment.

12 MEMBER MANN: Mr. Chairman?

13 CHAIRPERSON GRIFFIS: Yes.

14 MEMBER MANN: If I could go back for
15 just one moment to an item that you addressed a
16 moment ago and that was regarding those ownership
17 issues.

18 CHAIRPERSON GRIFFIS: Yes.

19 MEMBER MANN: Based on the evidence that
20 was submitted in Exhibits 39 or 40, is the Chair
21 satisfied that the ownership issue has been
22 resolved?

23 CHAIRPERSON GRIFFIS: No, absolutely
24 not.

25 MEMBER MANN: Okay.

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1 CHAIRPERSON GRIFFIS: I mean I think it
2 could have easily been resolved and I don't think
3 the owner, the actual owner of each of the lots
4 needs to be present or bringing the application, but
5 some allocation of that needs to be brought to the
6 Applicant.

7 So, for instance, if there was a letter
8 of intent to purchase a property, well, that letter
9 of intent could also be joined with the current
10 owner saying that they're granting the authority to
11 be represented by the potential future purchaser.

12 (Pause.)

13 Anything further?

14 VICE-CHAIR MILLER: Yes. I think there
15 was a -- there is a question of ownership with
16 respect to one of the lots and it looks like Exhibit
17 39 was submitted, in part, to address that and in
18 that package is a letter of understanding and it's
19 marked Exhibit 5 and I'm just taking a look at it.
20 I'm not sure it really reaches our requirements to
21 be authorized to participate in these proceedings on
22 the owner's behalf.

23 CHAIRPERSON GRIFFIS: Okay, what else?

24 (Pause.)

25 Okay, a couple of other things. The

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1 party in opposition, they talked a lot about the
2 precedent, the precedential value of this and I
3 don't think that it's persuasive, their argument
4 that if we were to approve it, that it would have
5 some precedential effect to further 410 applications
6 or further development in this area on Richardson
7 Place or otherwise. So I think that actually was a
8 failing argument.

9 In terms of the Applicant's submission,
10 it is noted the Board had asked whether all the
11 parking behind each of the units in the potential or
12 proposed subdivision met the dimensional
13 requirements of 9 by 19. I would note that in
14 Exhibit 39 submitted in our exhibit number and also
15 in the written statement, it indicates that they
16 have angled the parking off of the 10-foot public
17 alley and allowed for 12 feet, 6 inches on the
18 entrance to those. I don't know -- and I think
19 that's good address, however, I'm still wondering
20 whether it meets the dimensional requirements
21 because it bottlenecks on that last one and not that
22 this is a scaled drawing, but actually last night I
23 scaled off a 12'6" and looked and I can't tell, but
24 it certainly diminishes the low 12'6". It may make
25 it. It may not. I don't think that's the most

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1 critical piece of the application, but it does rise
2 to the additional questions that I have of all the
3 detail of what is being proposed.

4 Others? Anything else?

5 VICE-CHAIR MILLER: Well, I guess with
6 respect to the substance of it is the question of
7 whether it's in character with the neighborhood and
8 would impair the intent and purpose of the zone
9 plan.

10 I would tend to concur with Office of
11 Planning on this one, that it's not in character and
12 impairs the intent and purpose of the zone plan. It
13 does appear to be more like an apartment house.

14 CHAIRPERSON GRIFFIS: Okay. Others? I
15 think it fails in terms of maintaining the
16 character, not because it's an apartment house. It
17 doesn't read as an apartment house. It has four
18 front doors. It has stairs. But what we end up
19 having is a cellar and three levels above and the
20 Applicant's testimony in the record was that he was
21 making twins of the others. And it was good and
22 persuasive testimony, the fact that the materiality
23 was similar, some of the fenestration pattern or the
24 articulation, although we don't have a lot of the
25 detail on that. But beyond that, although there are

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1 some similar that have the height, beyond that, I
2 don't think it makes it in terms of the character
3 because one, the density that is substantially
4 increased in comparison to the others and the number
5 of levels, not that the cellar is a story, but the
6 story and level seem to be totally out of the
7 context of what is surrounding.

8 And context isn't just find an example
9 to this specific that supports, but context is the
10 overall and I think that was shown to be a smaller
11 size in nature and utilization in the Richardson
12 Place and in the square itself.

13 Okay. Others?

14 (Pause.)

15 Anything else on that then? Is there a
16 motion?

17 (Pause.)

18 MEMBER MANN: I'll make a motion that we
19 deny Application 17404 of Wilbur Mondie for variance
20 from lot width and lot area requirements under
21 section 401.3, for 410, 412, 414, 416 Richardson
22 Place.

23 CHAIRPERSON GRIFFIS: Excellent. I'll
24 second the motion.

25 (Applicant withdraws application.)

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1 CHAIRPERSON GRIFFIS:

2 Indeed. We appreciate that and I do not
3 disagree that you are able to withdraw at any time
4 and I believe that we can accept that withdrawal of
5 the application and therefore would move to -- the
6 motion that's on the table at this point. Unless
7 our attorney sees different, Ms. Monroe?

8 MS. MONROE: I'm somewhat at a loss,
9 although I feel there's been a vote yet. We don't
10 have a definitive vote. I suppose it's simply
11 withdrawn. I'm going to look at the regulations.

12 CHAIRPERSON GRIFFIS: I think you'll
13 find when you review those regulations at any time
14 in the processing of this, the Applicant would be
15 able to withdraw the application and therefore
16 there's no official action required by the Board at
17 this point as we've heard that Mrs. Mondie has
18 withdrawn his Application 17404.

19 So thank you very much.

20 Mr. Moy, is there anything else for the
21 Board's attention in the morning session and meeting
22 at this time?

23 MR. MOY: No sir, that concludes the
24 meeting session.

25 CHAIRPERSON GRIFFIS: Excellent, very

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1 well. Not noting any other additional business for
2 the Board this morning, let's adjourn the meeting.

3 (Whereupon, at 12:09 p.m., the meeting
4 was concluded.)

5