To: Board of Zoning Appeal October 15, 2002

From: Joseph D. Rich, on behalf of opponents to special exception sought for 2828 Hurst Terrace, NW

Re: BZA Application #16915 - Application for Special Exception

At the September 24th hearing concerning this application, the Board requested that the parties file by October 15 a brief which addresses (1) whether the subject property meets the off-street parking requirements of 11 DCMR 205.4; and (2) the conditions each party is proposing be part of any approval of the application. This brief is filed by the Hurst Terrace opponents in response to that request.

I. There is Inadequate Off-Street Parking to Meet the Requirements of 11 DCMR 205.4

A. Relevant Facts

1. There is no evidence in the record as to when the structure at 2828 Hurst Terrace was constructed, but on information and belief it is assumed this occurred prior to May 12, 1958. On further information and belief, there was a driveway built prior to that date.

2. Two major additions have been added since 1958. The first was a major, two story addition to the residence. The second was the addition which is used to house the child development center which was constructed in conjunction with the application for the first special exception in 1984. As the BZA April 18, 1984 order found: "The applicant proposes to erect a one story rear addition measuring twenty-six feet wide by thirty feet deep. The addition would be for the purpose of accommodating a child development center at the subject premises."

3. Until the first special exception was approved in 1984, the house was solely a one family residence. After the approval of the child development center, the structure has served a dual purpose - both a single family residence for the Allan family, and the incorporated Barbara Montessori School business.

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4. On information and belief, the Allans own three vehicles. One is kept almost exclusively in the garage, and according to Ms. Allan's testimony, this parking space is to be used by their son when he gets his drivers' license. The second - a station wagon - is almost always parked in the driveway. Exhibit 5 is a picture of the residence which shows the station wagon in the driveway. As is evident from that picture, only one car can be parked in the driveway.[1] The third vehicle - a large van - is almost always parked on the street in front of the residence.[2]

5. The driveway is where children are dropped off and picked up at the school. The route to the rear addition of the house where the school is operated is through the driveway and along the side of the house. Evidence at the hearing indicated that when the school is operating, the station wagon is usually parked in the driveway. If the car is not parked in the driveway during school hours, the driveway is not used for parking to ease ingress and egress of students. Thus, in reality, the applicant does not provide any off-street parking for employees or visitors.

6. Past special exceptions specifically state that "the maximum number of employees shall not exceed three, consisting of one teacher and two aides." However, during her testimony at the September 24th hearing, Ms. Allan revealed for the first time that she in fact has <u>six</u> employees to assist her in operating the

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[1] Title 11 DCMR 2115.1 requires a minimum size of 19 feet in length and 9 feet in width for a parking space. Furthermore, Section 2116.4 states that "required parking spaces shall not be located in the area between a building line and lot line abutting the street. Given these restrictions, it would not be possible to legally place two cars in the driveway.

[2] Based on information and belief, Ms. Allan, although residing in the Hurst Terrace house, maintained her legal residence in Virginia until very recently. While the station wagon now has D.C. plates, for most of the past ten years all of the Allan vehicles had Virginia plates because of this. As indicated in the applicant's expert report, parking on most of Hurst Terrace is limited to two hours, except for holders of Zone 3 residential parking permits. This, of course, limits the places where these Virginia-licensed vehicles can be legally parked on Hurst Terrace.

school, some of whom are volunteers.

B. Legal Discussion

Title 11 DCMR 205.4 states that: "The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors."

Title 11 DCMR 2100.1 states that "All building or structures erected on or after May 12, 1958 shall be provided with parking spaces to the extent specified in Section 2101. . . ." Section 2101.1 specifies that for a one family dwelling, one parking space is required; and that for a child development center one parking space is required for each 4 teachers or other employees.

Title 11 DCMR 2100.4 states "when use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change . . . . parking spaces shall be provided for the additional requirement in the amount necessary to conform to 2101."

Case law refers to the scheme created by 2100.1 and 2100.4 as a "grandfathering" procedure. This procedure permits structures built before the parking regulations were passed in 1958, to continue to operate without providing the parking spaces required by these regulations. However, if the building is converted, parking spaces must be provided in the amount not already grandfathered. Gladden v. District of Columbia Board of Zoning Adjustment, 659 A.2d 249, 253-54 (D.C. 1995); see also, Page Associates v. District of Columbia Board of Zoning Adjustment, 463 A.2d 649, 651 (D.C. 1983).

The principle of the Gladden case literally applied to the situation here means that the applicant is entitled to credit for the one "grandfathered" parking space required for the family dwelling, and is required to provide additional spaces for the child development center in accordance with the regulations. The applicant arguably needs two spaces for employees because she has six employees - Title 11 DCMR 2101.1 requires one parking space for every four employees of a child development center - and she cannot meet this requirement. Even if it is assumed that only one parking space is required for employees, in reality no such

space is made available in the one off-street parking space in the driveway.

In any event, when considering how the holding of the Gladden case applies to this case, it is especially important to take into consideration an additional factor which was central to the Court's approval of the parking arrangement in that case. There, the court concluded that two parking places were required, and that this requirement was met through a "grandfathered" space and one nine by nineteen-foot space on the premises. But, in finding that the group home met this requirement, the court took special note of a further condition imposed by the BZA on the group home:

> "We note that the BZA also required by a condition contained in its order that the applicant provide an extra compact car space. In addition, the BZA required three off-site parking spaces, all to alleviate potential traffic concerns. Under these circumstances we are satisfied that the BZA's decision with regard to the parking spaces provided was a correct interpretation of the applicable regulation and supported by the record."

Gladden, supra, 659 A.2d at 254 (emphasis in original).

Thus, even if the BZA were to conclude that Ms. Allan is in technical compliance with the parking regulations, the Gladden case instructs that any approval should include a condition that requires additional off-street parking similar to that required in Gladden - one designed "to alleviate potential traffic concerns."

In addition to the Gladden precedent, a fair reading of Title 11 DCMR 205.4 also indicates that such condition is necessary in this case. Section 205.4 requires "sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors. (emphasis added) The evidence is very compelling that additional off-street parking is needed at this school. The traffic and parking congestion generated by the 47 students enrolled at the school is considerable, and most of these students are driven to school.[3] While a new traffic plan

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[3] Enrollment on any given day often exceeds the twenty three student limit in the 1992 special exception, The

was recently implemented by Ms. Allan has reduced the size of the line of cars at the school, evidence at the hearing demonstrated that this plan has created new parking problems for residents of the street. In order to comply with the requirement that the line of cars dropping off and picking up children not extend beyond the property, many of the parents now park on the street in front of other homes on Hurst Terrace waiting for a space to open up in front of the residence. Moreover, the evidence graphically demonstrates the severe parking problems created on days when there are special events at the school to which parents come to the school. In short, any school that enrolls 47 children and does not provide any off-street parking for parents or employees inevitably causes traffic and parking congestion which adversely affects neighboring property.

A condition requiring additional off-street parking similar to that imposed by the BZA in the Gladden case cannot be met by Ms. Allan. She simply does not have the ability to provide any off-street parking on her property. In light of this, we think the more appropriate condition to be placed on any special exception for this child development center is what we suggest below - that student enrollment be limited to no more than eight children.

II. **Proposed Conditions**

For the reasons stated herein, and in our initial brief, we do not believe Ms. Allan has met her burden of demonstrating that Barbara's Montessori School (1) "will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps," as required by 11 DCMR 3104.1; (2) (2) "shall be located and designed to create **no** objectionable traffic condition," as required by 11 DCMR 205.3; and (3) "shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors." Accordingly, the BZA has a strong basis for denying the special exception sought by Ms. Allan.

However, as stated at the September 24th hearing and in the initial brief, the opponents are not trying to close down the

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applicant's own expert report noted that two days a week there are 27 students scheduled at the school and on a third day, 24 students. (P. 4)

school, and, thus, are not urging a denial of the special exception.[4] But, we think that if the school is to continue to be approved for any special exception, the order must include a condition requiring a significant reduction in the size of the school permitted under the existing special exception. A school with an enrollment of 47 children and employing six persons in a residential home which continues to be used as a home residence is far too large - indeed, an aberration when compared to the similar child development centers in other home residences used for child development centers.[5] Moreover, the size of the school on a block like Hurst Terrace inevitably generates traffic and parking congestion which has a major adverse impact on the residents of Hurst Terrace and the Hurst Terrace/Garfield Street intersection. In such circumstances, any approval of this application must include a condition which reduces the limitation on students and employees permitted at the school by earlier special exceptions from the present twenty three children and three employees, to eight children and two employees, to be phased in over the next two years.[6]

It is also very important that if the special exception is permitted to continue, it be limited to a three year period - the same period that was permitted when the first special exception

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[4] We recognize that there is a strong demand for schools like the Allan school, and the support this school has received from past and present parents. Indeed, this has resulted in a very long waiting list at the school. We believe the best solution to the issue here is to re-locate the school to an alternative facility that is large enough to meet this demand without adversely affecting the quality of life of those living in the neighborhood. We have urged, and will continue to urge, Ms. Allan, or any successor to Ms. Allan, that this is the most efficacious solution to the issue at hand.

[5] These numbers are far greater than the 23 students and 3 employees permitted in the past special exceptions. Even if one looks at a given day at the school, the applicant's expert report indicates it cannot meet this limitation, and indeed has likely been in violation of this condition on many occasions.

[6] This was the approximate size of the school when it was true neighborhood facility prior to the granting the first special exception - a size which did adversely impact the street.

was granted in 1984. The evidence demonstrates that circumstances in the Hurst Terrace neighborhood have changed significantly since the last special exception was approved ten years ago. In light of this, vigilant monitoring of the operation of the school and a review of any special exception in three years is necessary for several reasons: first, to determine if the new traffic plan is complied with and is in fact successful in relieving the present traffic and parking congestion on Hurst Terrace; second, to determine the extent of increased traffic and parking on Hurst Terrace from the expansion of Key School is completed next year and how the school's traffic plan operates after the expansion is completed; and, third, because of the likelihood of a new owner of the school in the near future - someone who will be replacing Ms. Allan, who has operated this facility for over twenty years - there will be a need to determine how the traffic and parking congestion caused by the school is being addressed by someone without the experience of operating a school of this magnitude out of her home.

We also believe that two additional conditions be included in the order: (1) a condition requiring the traffic plan recommended by the ANC, and (2) a condition prohibiting use of the property as a child development center only.

Below is a proposed order.

1. Approval shall be for a period of three years.

2. Enrollment shall be reduced over the three year period from the present maximum of 23 children set in previous BZA orders, to no more than 15 children in 2003-2004, to no more than 8 children in 2004-2005.

3. The maximum number of employees shall be reduced from three to two, starting in the 2003-2004 school year.

4. The hours of operation shall be between 9:00 AM and 12:00 PM, from September through May for a maximum of 160 days a year.

5. The school will establish and implement a traffic plan as part of its contract with parents, which requires that cars dropping off and picking up students stack up only next to the curb directly in front of the school's property. Double parking

and waiting, or parking in front of neighbors' property will not be allowed. Cars which approach the school and find that the allowed stacking lane is full will need to circle the block by proceeding down Hurst Terrace and around the block without turning around on the street, until there is space in the stacking area. Failure of a family to abide by this requirement more than twice will lead to dismissal of their child or children.

6. The school will review the feasibility of staggered or appointed times for the arrival of particular students or groups of students. If staggering is feasible, these times will be added to the traffic plan and contract with the parents.

7. The property at 2828 Hurst Terrace cannot be converted into a facility which is a child development center only. It must remain a single family residence.