October 28, 2002
2847 Hurst Terr. NW
Washington, DC 20016

Board of Zoning Adjustment
Office of Zoning
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: BZA Application No. 16915
Proposed Findings of Fact and Conclusions of Law

Dear Members of the Board:

On behalf of the Hurst Terrace opponents, enclosed are 15 copies of our Proposed Findings of Fact and Conclusions of Law.

Thank you for your consideration.

Sincerely,

Joseph D. Rich

Joseph D. Rich

BZA
Case No. 16915
Exhibit No. 108

Board of Zoning Adjustment
District of Columbia
CASE NO.16915
EXHIBIT NO.108

To: Board of Zoning Appeal October 29, 2002

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

Re: BZA Application #16915 - Proposed Findings of Fact and Conclusions of Law

FINDINGS OF FACT

1. The subject property is located in a R-1-B neighborhood on Hurst Terrace. Ms. Barbara Allan is the owner of the property, and resides there with her family. She operates Barbara's Montessori School, an incorporated business, at the site pursuant to previous special exceptions granted in 1984, 1987 and 1992 (Nos. 14121, 14646 and 15713, respectively).

2. There are thirteen detached single family homes on the Hurst Terrace block, all but two of which are north of the subject property going toward Garfield Street. There are additional homes at the corner of Garfield Street and Hurst Terrace (and up an extension of Hurst Terrace) impacted by the child development center. Key Elementary School is located across the street from the subject property and runs south down Hurst Terrace to Fulton Place and Dana Place. In the last two years, Key School has been undergoing a major expansion which will increase its enrollment by approximately 50%.

3. Aside from Ms. Allan, all but two residents of Hurst Terrace oppose the extension of the special exception.[1] Those two residents live next door to the property and have chosen to stay neutral. Other residents at the Hurst Terrace/Garfield Street intersection and the extension of Hurst Terrace also oppose the

[1] Some of the opponents have moved into the neighborhood in recent years. None of these opponents had knowledge of the child development center when they bought there property. In a letter to the BZA, one person who recently purchased a house on the block indicated that had she known about the school when she purchased, she would have had second thoughts about buying on the block, or not paid as much for her home.

application.[2] While the opponents contend that Ms. Allan cannot meet the requirements for a special exception for a child development center, they do not seek a complete denial of the application. Rather, they seek that conditions be attached to any extension which would (1) limit the extension of the special exception to three years; (2) reduce the student enrollment cap to eight children and two employees; (3) require implementation of a new traffic plan; and (4) prohibit use of the property as a child development center only.

4. Barbara's Montessori School started operation, without a special exception, in the late 1970's. At that time, the school enrolled approximately eight to ten children, almost all of whom lived in the immediate neighborhood of the school and were walked to school by their parents.

5. In 1984, an addition was built at the residence, and Ms. Allan sought her first special exception. There was no opposition from neighbors. Indeed, Ms. Allan received the support of her neighbors because of their desire to help her out at a time in her life when she had gone through a divorce and was a single mother. This special exception was granted for three years and permitted expansion of the school to a maximum of twenty students and three employees. It also specifically limited operation of the school to Ms. Allan only. In 1987, Ms. Allan sought, again without opposition from the neighbors, an extension of this special exception, and was granted a similar exception for five years. In 1992, Ms. Allan sought another extension and this time sought an expansion to the school to a maximum of twenty three children and three employees. Again, there was no neighborhood opposition and in a Summary Order this special exception was approved for ten years.

6. Since 1992, Barbara's Montessori School has grown into a major school business similar to a mini private school, and into a school far larger than contemplated by the initial special

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[2] There are other residents who live within 200 feet of 2828 Hurst on North Glade Street and Fulton Street. While a few of these residents also oppose the special exception, many others have indicated their support. But, residents of these streets are not subjected to any of the serious traffic and parking congestion caused by the child development center that residents of Hurst Terrace experience.

exceptions. Although the 1992 special exception capped student enrollment to 23 students, Ms. Allan's own expert study states that presently forty two families have enrolled 47 students at the school. (See p. 4 of Wells' Report) Moreover, even if viewed from a given day of the week, the enrollment typically exceeds the 23 student cap permitted by the 1992 Summary Order.[3] Moreover, while the 1992 Order limits the number of employees to three, Ms. Allan admitted at the hearing that she has six employees.

7. The large size of the school makes it unique among Ward 3 child development centers that are located in residential homes inhabited by the owner. First, evidence presented at the hearing indicated that almost all child development centers are not located in residential homes where the operator of the facility resides. Out of 32 child development centers in Ward 3, all but four are operated in institutional-type facilities appropriate for a school of this size - like churches, synagogues, existing school facilities, business facilities such as that operated by Fannie Mae or professional child care businesses operating in a non-residential facility. Photographs presented at the hearing demonstrate the type of facility typically used for child development centers. Second, of the four centers that operate out of a residential home like Barbara's Montessori School, the other three enroll only 4 or 5 children.

8. The School offers no off-street parking to employees or visitors. The driveway at the residence 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, a vehicle owned by Ms. Allan 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.

9. In the past ten years, there has been a major change in conditions on Hurst Terrace resulting in a significant adverse

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[3] According to the school schedule examined by the expert, there are 27 students at the school two days a week (Mondays and Thursdays) and 24 students at the school on Wednesdays. (P. 4) On the Wednesday that the expert personally viewed the school on September 18, 25 students were in attendance. (p. 12)

impact from the school and other sources on traffic and parking congestion on the block. Although conditions have become increasingly objectionable in this period, residents of Hurst Terrace were friends of Ms. Allan's and did not object or complain of these conditions until now because of this friendship.[4]

10. The changed conditions have been confirmed by ANC3D. After it conducted a two day hearing on July 17 and September 4, 2002, ANC 3D found that circumstances on Hurst Terrace have changed since the 1992 special exception was approved. Specifically, in its letter to the Board of September 5, the Commissioners stated:

> "Since the last zoning exception was approved ten years ago for a child development center at [2828 Hurst Terrace], there has been great increased traffic to the vicinity caused by the enlargement of Key School across the street and the greater density of residential and commercial uses in the neighborhood as well as an increase in the number of students at this center who are driven rather than walked to school."

11. Evidence presented at the hearing supports this finding, as follows:

> * There has been a change in the nature of the school. Originally, the school was designed for children in the immediate neighborhood, to which only a few children would be transported. The 1987 Board order included the following finding of fact: "Ms. Allan testified that the majority of children live within walking distance of the site. No more

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[4] Particularly important in the continued patience and tolerance of Hurst Terrace residents for this school was an understanding that the special exception would be limited to Barbara Allan only and that the school would revert to a single family residence when she ceased operating it. Only recently as set forth in her special exception applciation, Ms. Allan made known for the first time her plan to retire in a few years and sell the residence and school business to Christine Lonergan, someone who has never lived near or on Hurst Terrace nor operated a school of this magnitude. While Ms. Lonergan's name is no longer on the application, Ms. Allan's plans to sell the school have not changed.

than five children reside outside the immediate area and they are dropped off and picked up by parents who work in the area." Finding #16, 1987 Order. Today, that clearly is no longer true. Ms. Allan's own expert report indicates that on Wednesday, September 18, of twenty five students attending school, only four were walked to school and one walked home. Eighteen parents drove children to school and, of these, eight parked and escorted the children to the school. Nineteen parents picked up students at noon. (p. 12, Wells Report) In addition the same report indicated that 11 families, or 23% of those enrolled, were from Maryland or Virginia (p. 4).

* There has been a great increase in traffic on Hurst Terrace since the initial special exceptions were granted. An earlier Board order included the following finding: "The site is located on a local street, having a minimum volume of through traffic and primarily serving as access to the properties fronting on it. The street is lightly traversed, and experiences its greatest traffic volumes during arrival and departure times at the Key Elementary School." Finding # 15, 1984 Order. This has changed. Ms. Allan's expert report characterized the traffic on the block as "moderate." But, specifics in the report demonstrated that in 1.5 hour period in the morning between 8:00 AM and 9:30 PM, 107 vehicles traveled on Hurst Terrace, and between 11:00 AM and 1:00 PM, an additional 85 vehicles traveled on the street. (p. 12, Wells Report). This is clearly a higher volume of traffic than when the block was "lightly traversed" in the past. In addition to the additional traffic generated by the school, the increase is caused primarily by (1) Hurst Terrace becoming in recent years a cut-thru for traffic attempting to avoid the traffic build-up at the corner of MacArthur Blvd. and Arizona Avenue; and (2) the expansion of Key School in the past two years.[5]

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[5] There is no dispute that during the 2001-2002 school year, the construction of a major addition at the school significantly increased traffic and parking congestion on Hurst Terrace because all children were dropped off at that entrance. This year, traffic has been reduced as all children are dropped off on Dana Place while renovation of the original building is completed. However, when this renovation is completed this year, the school will return to having drop-off on both Hurst and Dana.

12. Evidence also supports a finding that parking congestion on Hurst Terrace has increased significantly. Photographs in the record demonstrate the parking impact of a school that enrolls 47 children when the parents come to attend special events. Similarly, because there is no off-street parking at the school, any of the parents who may visit the school add to the parking congestion on the block.

13. The result of these changes has been a major increase traffic and parking congestion on Hurst Terrace which has had an adverse impact on the quality of life for Hurst Terrace residents. Photographs introduced at the hearing demonstrate the line of cars that typically come to the school for drop-off and pick-up of students - a line that often extended down Hurst Terrace to Garfield Street as demonstrated by the photographs. This has caused problems for the residents, including the following:

* Photographs show that many of the parents drive large SUVs and often get out of their cars to chat, completely blocking the one open lane on the street.

* Testimony and letters from opponents, as well as photographs, indicate that because of this traffic and parking congestion, they have had their driveways blocked, their parked cars blocked, been unable to return to their home at noon for lunch, been forced to park down the street from where they live when returning from errands, and have had contractors who have encountered difficulty in working at their property. Several residents operate small home businesses and are at home all day and the traffic congestion has interfered with their customers' ability to come to these homes.

* One resident testified that last winter, her husband was in need of emergency medical treatment, but that emergency medical vehicles were impeded by school traffic in their efforts to reach her home to transport her husband to the hospital for emergency surgery. In addition, the children of a 95 year old resident who lives directly across the

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Because the school is expanding by 50% in enrollment, traffic and parking congestion on Hurst is expected to be significantly worse than what it was before the school was expanded.

street from the School, expressed in their letter of opposition a concern that the same, dangerous condition may exist for their mother were she to need emergency medical attention.

14. After opposition to the school became known to Ms. Allan, she started implementing a new traffic plan in 2002.[6] While this plan has thus far reduced the length of the line of cars at the school, evidence at the hearing demonstrated that it has created new traffic and parking problems for residents of the street and immediate neighborhood. In order to comply with the requirement in the new plan that the line of cars dropping off and picking up children not extend beyond the property line of the school, 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 school. As one opponent testified, this has caused interference with her ability to reach her car (See also, Wells Report, p. 12, indicating the number of parents parking their car) Recent photographs taken in September, 2002 also show that the severe parking problems created on days when there are special events at the school continue. Moreover, the plan tends to spread the traffic congestion around the neighborhood. By limiting how many cars can be lined up in front of the school - which is the central component of the plan - other arriving cars have to circle the block waiting for their turn, thus creating increased traffic on small residential streets such as Dana Place, Eskridge Terrace and Garfield Street.

15. In its September 5 letter to the Board, ANC3D stated that "In order to give us time to deal with these issues [the increased traffic congestion set forth above in Finding 10], ANC3D supports the continuation of the Center, known as Barbara's Montessori School, **ONLY** with the following conditions:

1. The School's current student cap (23) and employee cap

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[6]In the past, Ms. Allan placed traffic cones in front of her house to improve access to the traffic dropping off and picking up children. It did not prevent the traffic lines discussed above. Moreover, under D.C. regulations, "no person or authority shall place or maintain any traffic control or device upon any street . . . except by permission of the Director of Public Works." See 18 DCMR 2102.1. To our knowledge no such approval has ever been received.

(3) will not be increased;

2. The School will not change its current operating times from approximately 9:00AM to approximately 12 Noon on weekdays from September through May for a maximum of 160 days a year;

3. 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.

4. 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.

5. The special exception will be renewed only for an additional five years, not the ten years or indefinite term requested by the applicant.

6. The special exception will be granted only to the current property owner, Barbara Schreiver Allan, without inclusion of the additional non-owner listed on the original application."

(Emphasis in the original)

16. The Office of Planning concurred in the conditions recommended by ANC3D, but would permit an extension of seven, rather than five, years.

CONCLUSIONS OF LAW AND ORDER

Based on the findings of fact and evidence of record, the Board concludes that the applicant has not 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 (emphasis added); (3) "shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors," as required by 11 DCMR 205.4; and (4) "shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions," as required by 11 DCMR 205.5.

Neither the opponents nor ANC3D recommends outright denial of the application and thus the Board will not deny it. But, in light of the above conclusion, the School cannot continue as presently configured.

It is well-accepted that the views of ANC3D are entitled to "great weight." Therefore, the Board follows the ANC recommendation that the School be permitted to continue **only** with certain conditions.[7] The Board adopts the conditions recommended by the ANC with the following two changes: (1) the extension of the special exception shall be for three years, not the five recommended by the ANC; and (2) during the school years of 2003-2004 and 2004-2005, the student cap at the School shall be reduced to eight students and the employee cap to one.

Limitation of special exceptions for child development centers to specified periods of time is not uncommon, especially when there has been opposition to the application.[8] Indeed, even in cases where there has been no opposition, the Board has on certain occasions imposed limitations on how long a special exception for a child development center should run. For example, in all three of the special exceptions granted in this

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[7] It is clear that the BZA has the authority to require that a special exception be subject to a variety of conditions. See e.g. Gladden v. District of Columbia Board of Zoning Adjustment, 659 A.2d 249, 254 (D.C. 1995)

[8] See for example, orders in Application Nos. 14,593, 15646, 14651, 14,688, 14,690, 14,832, 14,883, 14,932, 14,941, 15,755, 15,799, 15,838, 15, 986, 16,183, 16,200, 16,242, 16,502, and 16,657

case, there was no opposition, and the Board still imposed a time limitation. Just recently, on September 17, 2002, in the Application 16911 of Brandywine Street Association for a special exception for a child development center, the Board entered a Summary Order which limited approval to three years, even though no persons or entities opposed the application and the Office of Planning recommended approval, apparently with no time limitation.

Here, where there is significant opposition to the application, limiting the extension to three years is necessary. The ANC has found greatly "increased traffic conditions in the vicinity" of the School, and this finding is also entitled "great weight." In light of this finding a careful review of the circumstances on Hurst Terrace is needed in the next three years. First, it needs to be determined if the new traffic plan recommended by ANC3D is complied with, and is in fact successful in relieving the present traffic and parking congestion on Hurst Terrace. Second, it needs to be determined what the extent of increased traffic and parking on Hurst Terrace is from the expansion of Key School when the renovation is completed next year, including how the school's traffic plan operates after that expansion is completed and increased traffic at Key School resumes with the opening of the Hurst Terrace entrance. Third, because of the likelihood of a new owner of the school in the near future - a person who will be replacing Ms. Allan who has almost twenty years experience operating a child development center 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.[9]

The reduction in the student and employee cap is required because the school is simply too big for a small residential

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[9] The Board recognizes that it does not have authority to limit the special exception to an individual as recommended by ANC3D. However, the likelihood that there will be an inexperienced new owner and operator of the School in the near future supports a requirement that there be further review of the special exception in three years. The longer five year period recommended by the ANC was made with an additional recommended condition that there would not be such a change of ownership and operation.

block like Hurst Terrace. Indeed, there is no other child development center of this magnitude in Ward 3 which is located in a residential home where the owner resides. The Findings of Fact amply demonstrate that a school that enrolls 47 students inevitably causes "an objectionable traffic condition," and that the lack of any off-street parking for a school of this size is insufficient to "meet the reasonable needs of teachers, other employees and visitors." In such circumstances, limiting the student enrollment at this School to a level similar to other child developments centers in occupied residential homes in Ward 3, is warranted.

It is therefore ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of three years from the date of expiration of the 1992 approval.

2. Enrollment shall be reduced over the three year period from the present maximum of 23 children set in the 1992 Summary Order, to no more than 15 children in 2003-2004, and 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.