To: Mr. Griffis, Chair, Board of Zoning Adjustment

From: Laura Griffen, Esq., on behalf of Barbara's Montessori School

Date: October 29, 2002

RE: BZA Application #16915 – Findings of Fact and Conclusions of Law

As requested by the BZA at the September 24, 2002 hearing on the application for a renewed special exception for Barbara's Montessori School, following are the Findings of Fact and Conclusions of Law proposed by the School.

Findings of Fact

1. For the past 18 years, Barbara Allan has operated a child development center at this site known as Barbara's Montessori School. BZA has already renewed the school's permit twice since the original was granted in 1984 – once in 1987 and again in 1992. All relevant facts are exactly the same as when BZA granted the previous permit 10 years ago: enrollment is limited to 23 children per day plus 3 employees; the ages of the children range from 2 to 4 years old; and the center operates for only 3 hours a day, 5 days a week from September through May. The School is not asking for any increased enrollment or longer operating hours and does not contemplate any new uses or structures for the school.
2. The School has been a model school, educating over a generation of School children, mainly from the Palisades neighborhood. The BZA received scores of letters in support of the School's application for renewal. The School has never been cited for any violations, or generated any complaints prior to this latest special exception renewal.
3. The traffic and parking study conducted by the expert, Mr. Wells, found that the School "generates light traffic volumes: only 18 cars in the morning and 21 cars in the afternoon." Wells Study at 2. Overall Hurst Terrace only experienced "moderate traffic volumes" during the morning – 107 cars and trucks in a one-and-one half hour period – and around noon – only 85 vehicles over two hours. Based on Mr. Wells' own observations on September 18, 2002 and his discussions with the District of Columbia Traffic Coordinator (Lieutenant Patrick Burke), Mr. Wells that "[s]chool traffic operates safely and efficiently." Wells Study at 2. Mr. Wells is a highly credible expert on traffic and parking who has appeared before the BZA on other issues.
4. The District Department of Transportation ("DDOT") and the Office of Planning both found that the School did not cause traffic congestion. DDOT concluded that "[t]he proposed continuation of this site will not have a negative impact on parking supply in the immediate community, or create dangerous or objectionable traffic conditions." DDOT Letter at 2. Similarly, the Office of Planning ("OP") found that the School had instituted measures to alleviate any traffic congestion and that the School would not "tend to affect adversely the use of neighboring

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property in accordance with the Zoning Regulations and Zoning Maps." OP Letter at 11.

5. There is no plausible basis for reports of traffic problems on Hurst Terrace related to Barbara's Montessori School. The School generates at most fifteen to twenty cars a day in extra traffic, concentrated in a very narrow time frame. Even during that time, no hard evidence of traffic problems related to the School exists. The few concrete complaints cited turned on further investigation to be unrelated to the school or without merit.
   (a) The opponents said that an emergency vehicle had come through during school hours and was "impeded' by traffic. On further questioning by BZA members and testimony by Ms. Allan, however, it became apparent there were no double-parked cars obstructing the passage of the ambulance and that the emergency vehicles parked directly in front of the School, guided there by Mrs. Allan herself.
   (b) One lady testified that a school parent had blocked her access to the street. On further testimony and cross-examination, however, it became apparent that a car had parked in a legal parking spot in front of her walkway.
   (c) The opponents complained about traffic problems related to the School on holidays and the first few days of school. The existence of traffic generated during festive or one-time events was not shown to be typical of traffic during normal days.
6. Opponents' complaints about traffic on Hurst Terrace over the last few years were, even if credited, not related to the School. The School presented evidence that it did not generate significant traffic at any time of the day. Furthermore, the School presented evidence that traffic could only be an issue for at most 1% of the year, given School operating hours and days of operation. The School is only open 160 days a year; and School pick up and drop off times are only 40 minutes total during those days. As Mr. Wells showed, peak time for drop off and pick up is concentrated even more narrowly in the space of ten minutes in the morning and around noon.
7. To the extent objectionable traffic ever existed on Hurst Terrace, it was related to Key School construction. The marked decrease in traffic as a result of a new entrance for the Key School, noted by several witnesses at the BZA hearing, pinpoints the actual cause of any perceived issues. OP noted as well that it believed the new Key School entrance would alleviate any congestion issues that did exist. OP Letter at 10.
8. The measures taken by the School to improve traffic circulation have been effective. No current traffic problem was shown to exist, even by opponents. Opponents at the hearing testified that they feared that the School would not continue to enforce these measures, not that when enforced they have not proved effective. DDOT noted in its September 13, 2002 letter that "staff conducted several staff visits to observe drop-off and pick-up activities at the site. The conditions outlined in [the School's] Arrival and Dismissal Plan were fully complied with ." DDOT Letter at 2.
9. There was no showing that traffic from MacArthur Boulevard commercial establishments, the Key School, or commuters has any relation to Barbara's

Montessori School. To the contrary, the School presented evidence that given School pick-up and drop-off times, there could be little cumulative impact.

10. The School has made numerous efforts to accommodate concerns expressed by opponents. It has met with the police, with the Key School administration, with ANC members, and with opponents to work out an effective and comprehensive traffic plan. OP Report at 6. It adopted a traffic plan to address opponents' stated concerns about traffic, one that has been followed by parents and caregivers.
11. The School only employs 3 individuals as teacher's aides on any given day. Barbara Allan, the owner of the School, has two off-street parking spots, one in her garage and one in the driveway. Mr. Wells in his report noted that during the morning of September 18, 2002, "[h]alf of all spaces on the east side, and two-thirds of all spaces on the west side, were vacant." At noon even more parking was available. Wells Report at 13.

Conclusions of Law

1. The Board of Zoning Adjustment is authorized to grant special exceptions to childcare development centers where such special exceptions "will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property . . ." Title 11, District of Columbia Municipal Regulations ("DCMR" or "the Regulations"), Section 3104.1. The Regulations state that in interpreting and applying the regulations, the Regulations shall be regarded as promoting among other things educational opportunities in the District. 11 DCMR § 101.2. In general, uses of land for educational purposes are highly favored. Glenbrook Road Ass'n v. District of Columbia Board of Zoning Adjustment, 605 A.2d 22 (D.C. App. 1992).
2. The School does not create an objectionable traffic condition within the meaning of the regulations. 11 DCMR § 205.3 The governmental bodies and traffic expert who studied traffic on Hurst Terrace did not find unusually high traffic loads, and all were agreed there was no objectionable traffic condition. The opponents did not present credible evidence that any objectionable traffic condition existed, or that the School had any role in creating an objectionable traffic condition.
3. As the D. C. Court of Appeals has noted, the BZA's function in looking at special exceptions is "to determine whether a reasonable accommodation has been made between the [school] and the opponents which does not interfere with the legitimate interests of the latter." Glenbrook Road Ass'n, 605 A.2d at 25. Here the record shows the School tried to reach an accommodation and implemented concrete steps to address the concerns of the opponents. The opponents, however, testified that their goal was to have the School moved out of the neighborhood, rather than to try to reach an accommodation with the School. The opponents' goal is not a legitimate interest. Their alternative proposal, to limit the School to a few children each year, was designed equally to close the School.
4. The School currently has sufficient parking for the number of employees/ teachers as required by the regulations and interpreted by the Department of Transportation. The regulations require one parking space each four teachers.

11 DCMR Section 2101. The BZA and DDOT consistently have found that the School is not required to provide off-street parking. In 1992, the BZA granted a special exception to the School in its current configuration of students and teachers. In his letter dated September 13, 2002, DDOT noted that "[a]s stated in the previous DDOT report dated September 25, 1992, the off-street parking requirement of (1) parking space for every four (4) staff is not required for this site, however we note the applicant has a driveway leading to a garage that can accommodate two (2) vehicles." The School has relied on this consistent and longstanding interpretation. On any given day, only three teachers are at the school. Furthermore, even assuming the regulations require off-street parking, such parking already exists at the School in a garage and a driveway.

5. The BZA has the authority to grant a perpetual special exception to the School, as it did for similarly situated schools such as the Community School of the Palisades. Where, as here, the size of the School is small, its impact on traffic is negligible, and the School has been in existence for years, the need for constant special exception investigations is not necessary. The BZA has the authority to revisit the School's special exception should conditions warrant.

6. ANC Findings. The BZA must accord the ANC's findings great weight under D.C. law. After careful and extensive consideration of the ANC findings. In an exhaustive review, it is clear that:

   a. The BZA cannot as a legal matter accept the ANC's recommendation that the School's special exception be tied to Barbara Allan personally. The D.C. Court of Appeals has held that such conditions are "illegal per se"; zoning conditions imposed by public agencies may only run with the property, not with the person. National Black Child Dev. Institute, Inc. v. District of Columbia Bd. Of Zoning Adjustment, 483 A.2d 687 (D.C. App. 1984).

   b. The BZA cannot credit the ANC's contention that future traffic conditions in the neighborhood require a shorter time for the renewed special exception. The existence of other sources of traffic for Hurst Terrace, from commercial establishments, increased density in the neighborhood, and the like, is not legally relevant to determining whether the School itself generates an objectionable traffic condition. The School itself has agreed to keep its current student and teacher cap and thus will not be a source of increased traffic in the future.

   c. All other conditions in the ANC's proposed recommendations (conditions 1, 2, 3 and 4 in the ANC letter from John Finney dated September 5, 2002) have been voluntarily adopted by the School.

Order.

1. The School's special exception shall have a perpetual term. Any violations of the BZA's order in this case should be brought to the attention of the BZA, which can order further remedies. In addition, should substantial evidence be presented that traffic or other conditions on Hurst Terrace significantly change as a result of the School itself, the BZA reserves the right to order a new proceeding for a special exception.

2. The BZA imposes the following conditions on this Order:
   (a) Daily enrollment shall be limited to 23 children and 3 employees. The School shall retain its current operating times from approximately 9:00 A.M. to 12 Noon on weekdays from September through May for a maximum of 160 days a year.
   (b) The School shall continue to require that cars dropping off and picking up students stack up only next to the curb directly in front of the School's property. No more than three cars be parked in front of the School at any given time; any other cars must drive around the block until space in front of the School opens up; such cars will not be allowed to turn around on Hurst Terrace. No parents or caregivers shall either double-park or idle on Hurst Terrace next to a parked car. Any parent or caregiver who violates this rule shall have their child expelled from the School on the third violation.
   (c) 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 the contract with the parents.
   (d) The School shall meet with opponents quarterly to discuss any concerns.
   (e) The School shall give opponents adequate notice of holiday parties and other special events that are likely to generate traffic.

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To: Geoffrey Griffis, Board of Zoning Adjustment

From: Laura Griffen on behalf of Barbara's Montessori School, Case #16915

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Re: Findings of Fact and Conclusions of Law

Attached is the Findings of Fact and Conclusions of Law proposed by Barbara's Montessori School as requested by the BZA at its September 24th hearing.

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