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February 10, 2003

Maureen E. Dwyer, Esq.
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Dear Ms. Dwyer:

I represented the National Child Research Center in the application and hearing before the Board of Zoning Adjustment of the existing certificate of occupancy. At that time the occupancy was increased to 120 children. As part of my representation, I addressed various community meetings and met with surrounding residents. You asked specifically as to my recollection of discussions concerning the maximum number of students.

It is my clear recollection, although I do not remember specific discussions, that the maximum occupancy of 120 was always considered as the maximum number of students in class at one time, not the maximum number of children enrolled at the school. This is consistent with the common meaning of occupancy. A movie theater with 200 seats has an occupancy of 200, even if it has three showings and 600 people view the film on the same day. None of the discussions with the community involved any special meaning of occupancy.

This meaning is also clear from the context in which the issue of the number of children at NCRC arose. Child development centers are subject to regulation by a number of District agencies. Issuance of the certificate of occupancy which requires a hearing before the Board of Zoning Adjustment, for which I was retained to represent NCRC, is just one of the required permits to operate a nursery school. Schools are also licensed and annually inspected by the Department of Human Services. The DHS regulations enforce various educational and health provisions. In its licensing program, DHS insures that there is sufficient square footage of educational and play space at the school, as well as plumbing facilities, for the number of students who will be present at any one time. Such evaluation is, and can only logically be made, on the basis of students' presence, not total enrollment. Thus, the space required by DHS for 100 all-day children would be twice the space required for 50 separate morning and 50 separate afternoon children, even though the "enrollment" is the same. It would be ludicrous to determine the need for plumbing fixtures by counting children who were not present at the school at the same time. It was the DHS inspector who noted that the license granted by DHS was for a larger number of students than the then existing certificate of occupancy. This meant that more students were intended by DHS to be present at the

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school at one time than permitted by the certificate of occupancy. Since the facilities met the space and fixture requirements of DHS, the inspector directed that the school request and increase in the occupancy figure so that the two permits would be consistent. The inspector, who also reviewed the educational staffing, was fully aware that there were, as there are in most nursery schools, part time students, each present for parts of the day, but not overlapping. The inspector only requested and expected the C of O to be increased to the number of students for which the license was issued.

It is also clear from the discussions I recall with the community that there was an understanding that occupancy meant the number of children present at any one time. Questions were raised, for instance, as to whether there would be any weekend programs. Although there were none, certainly no neighbor suggested that weekend programs would be welcome if they involved children registered during the week, which would thus have no effect on enrollment. Nor did anyone expect that were a weekend program contemplated that an enrollee for one weekend day would be reduce the number of children which could be enrolled for 5 days during the week. Neither would have made sense.

The community's quite reasonable concern was the number of cars which would drop children off. In response to the neighbors, we discussed the number of cars which would be arriving each morning and how traffic could be managed The neighbors were largely concerned with arrivals in the morning and it was understood that the number of children arriving on a particular morning would never be greater than the occupancy level The neighbors understood that the same children might not be arriving each day and that some children may leave at noon and others arrive for the afternoon, but were no more concerned with these facts than they were concerned that a mother might drop the child off one day and a father or caregiver bring the child the next morning. The concern was the maximum number of vehicles which would use the street on any morning. The level of occupancy was always discussed in these terms.

It is my opinion that the school is in full compliance with the limitation of the certificate of occupancy, as understood by the neighbors and the Board of Zoning Adjustment when the current permit was issued, if no more than 120 children are present at any one time, regardless of the total number of different children who may be present during an entire week.

Sincerely,



Matthew S. Watson

cc: Geoffrey Griffis, Chair
Board of Zoning Adjustment

ShawPittman LLP

DATE: February 10, 2003

TO: Rick Nero

ORGANIZATION: Board of Zoning Adjustment

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