ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, D.C. 20006-1307
TEL: 202-775-0725 FAX: 202-223-860
www.rkmc.com

RICHARD B. NETTLER
JEANNINE RUSTAD ZIGNER
(202) 775-0725

February 24, 2003

BY HAND

Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

D.C. RECEIVED
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Re: BZA Application No. 16970/National Child Research Center
3209 Highland Place, N.W.; Square 2072, Lot 30 (the Property)

REPLY TO NCRC'S BRIEF REGARDING THE APPLICABILITY OF SECTION 2516 OF THE ZONING REGULATIONS TO THE INSTANT APPLICATION

Dear Mr. Griffis:

The following reply is filed on behalf of the Cleveland Park Neighbors to NCRC's brief regarding the applicability of section 2516 of the zoning regulations (11 D.C.M.R. § 2516) to NCRC's use of the playhouse and proposed construction and use of the carriage house. Steve Hunsicker, a party in opposition, joins in this reply.

Relying on legislative history, as well as recent cases seeking relief from this section, NCRC argues that section 2516 was only intended to apply to new residential development on sites with theoretical lots, and was never intended to apply to child development centers, private schools or universities. (NCRC Brief p. 3.) Specifically, NCRC claims that it was intended to "address those situations where developers intended to develop multiple unit housing on large interior lots that have minimal street frontage." (NCRC Brief p. 4.) This argument ignores the simple facts that:

a. The plain language of the regulation states that it is applicable to "construction on a lot that is located in, or within twenty-five feet (25ft.) of, a residence district . . ." Thus, the section is not limited to residential development but, rather, applies to any construction in a residential district.

BZA
Case No. 16970
Exhibit No. 123

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.123

b. The legislative history attached to NCRC's brief notes as one of the concerns that the previous §2516, which allowed more than one principal building as a matter of right (so long as certain conditions were met) was "being applied in an increasing degree of circumstances where its application is questionable or problematic, and not for the purpose of developing multiple unit housing." (NCRC Brief Exhibit B p.1.) Moreover, it was noted by the Zoning Commission that:

> The construction of more than one principal structure on a single subdivided lot will, under certain circumstances, cause irreparable injury to the stability of the residential neighborhoods, contrary to the purpose and intent of the Zoning Regulations.

(*Id.* p.2.) Irreparable injury to the stability of the neighborhood is precisely the damage caused by NCRC, as has been recognized by both the community, as well as the District of Columbia Department of Transportation.

c. Although NCRC may have "extensive street frontage" (NCRC Brief p. 4), given the grade of the property, it is not conducive to vehicular access.

As in its February 11, 2003 submission, NCRC relies heavily on cases involving schools and universities, ignoring the differences in these institutions as compared to child development centers. (*See* the Cleveland Park Neighbors Brief pp. 5-6.) NCRC goes as far to say that child development centers, "by their very nature . . . include numerous buildings or structures on a property." (NCRC Brief p. 3.)

NCRC correctly notes that the effective date of the current section 2516 was April 17, 1989. However, NCRC then ignores this fact by relying on cases that involve additions of new buildings (to private schools and/or universities) prior to the effective date. As such, those buildings and uses would be grandfathered.[1] In addition to relying on cases involving private schools and universities, given that the effective date of the requirement for a special exception requirement was April 17, 1989, the cases relied up by NCRC are inapplicable, as demonstrated by the following:

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[1] Presumably, unlike NCRC, the institutions cited have obtained certificates of occupancy for their multiple buildings, rather than a single certificate of occupancy for their main building.

a. Washington International School ("WIS"). As NCRC points out, WIS had been before the BZA on several occasions prior to 1989, including 1986, when it sought and was granted a special exception to construct an additional building to house classrooms, which is clearly a primary use.[2] Because that relief was sought prior to the adoption of the current version of section 2516, it did not need a special exception for the construction of a second primary building.

In 1997, WIS sought, and was granted a special exception to house a gymnasium and music building, which was also to contain accessory offices and classrooms for music lessons.[3] These uses have clearly been found to be accessory to schools. Moreover, the definition of schools, unlike the definition for a child development center, contemplates more than one building.[4]

b. Maret School. In 1991, Maret sought and received a special exception to construct a garage for buses and storage shed for equipment. These buildings are clearly accessory and, therefore, would not trigger the need for relief under § 2516.

In 1998, Maret sought a special exception to "allow alteration, repair and additions to an existing private school." Both the plat and zoning memorandum attached with Exhibit H to NCRC's brief clearly demonstrate that what was being constructed was additions to existing buildings (which predated the 1989 amendment) and NOT the addition of new buildings.

c. National Cathedral School. As we addressed in our brief, this case involved a gymnasium and parking garage, clearly established accessory uses.

d. Levine School of Music. This case involved the construction of an auditorium, also an accessory use.

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[2] It goes without saying that buildings constructed and used prior to the effective date are grandfathered. However, expansion of such buildings would require relief.

[3] Unlike NCRC, WIS made it clear during meetings with neighbors etc., that the uses were not primary, but were secondary or accessory. Plus, WIS had community support.

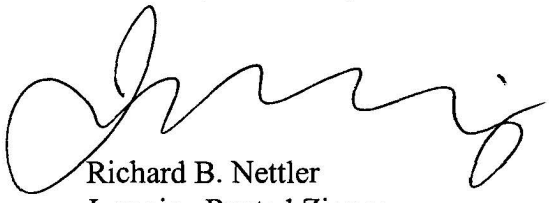
[4] Contrary to NCRC's assertion that the definition of "public schools" and accessory uses for public schools is not helpful in determining accessory uses for private schools (NCRC Brief p. 9) was rejected by the court on appeal of the NCS case. *See National Cathedral Neighborhood Assn. v. District of Columbia Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000)(relying on the definition for a public school, holding that "there is no question that athletic facilities, and the buildings housing them, are an adjunct to the educational mission of a school")(cited in the Cleveland Park Neighbor's Brief p.6).

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the Cleveland Park Neighbor's Brief dated February 19, 2003, NCRC clearly needs either a use variance or a special exception pursuant to section 2516 of the zoning regulations to go forward with its current proposal. Consequently, this matter should be continued for a period of no less than forty-five (45) days to allow for the readvertisement as a use variance or the submission of the required materials and to allow for the additional government review under section 2516.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Richard B. Nettler
Jeannine Rustad Zigner

cc: Neighbors
Mr. Denzel Noble (by hand)
Office of Planning (by hand)
Mr. Robert Kelly, Zoning Administrator (by hand)
ANC 3C (by hand; c/o Nancy MacWood)
Gaylord Neely & Linda Badami (by hand)
Sallie R. Beckner & R. Bruce Beckner (by hand)
Steven R. Hunsicker (by hand)
Henry P. Little (by hand)
"The Friends of NCRC" (by hand)
Katharine Marshall (by hand)
Maureen E. Dwyer (by hand)