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GOVERNMENT OF THE DISTRICT OF COLUMBIA
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By Facsimile

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
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2003 JUN 10 PM 3:49

Re: BZA Application No. 16970
National Child Research Center
3209 Highland Place, N.W.; Square 2072, Lot 30
Response to Application for Variance Relief

Advisory Neighborhood Commission 3C Brief on National Child Research Center's Application for Variance Relief from Sections 3202.3 and 2100.6 of DCMR, Chapter 11

National Child Research Center (NCRC) is applying for special exception relief under section 205 of the Zoning Regulations. The Board of Zoning Adjustment (BZA) ruled in a preliminary matter that the proposed carriage house structure would be a second principal building on a single lot and as such NCRC must seek variance relief from the principal structure and parking requirements of the regulations (sections 3202.3 and 2100.6, respectively). Advisory Neighborhood Commission 3C (ANC) considered the variance issues at a regularly scheduled meeting, at which a quorum was present, on April 28, 2003. By a vote of 8-0, one abstention, resolved that NCRC should comply with the zoning regulations because the facts and circumstances of this case did not meet either the hardship or the peculiar and exceptional practical difficulties tests.

1. NCRC Does Not Meet Test for Use Variance

The ANC examined both the use and area tests for variance relief under section 3202.3. For a use variance the applicant must demonstrate that they could not use the property in a manner consistent with the zoning regulations without a variance. In citing this point, the court *Gardner E. Palmer, et al. v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C.1972) went on to say "[a]n inability to put property to a more profitable use or loss

BZA
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Exhibit No. 189

Board of Zoning Adjustment
District of Columbia
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EXHIBIT NO.189

of economic advantage is not sufficient to constitute hardship." NCRC is operating a successful child development center on the subject lot. That business can continue without a variance. It is not relevant to the determination of whether the test for a variance has been met to consider increased profit motive or increased density of use. The issue is simply whether the owner, NCRC, can make a reasonable profit within the zoning regulations. It should be noted that the lot is zoned residential and is located in a sought after residential neighborhood. Thus, the site could alternatively be used consistent with zoning as a residential property. Under these facts, the applicant has reasonable use of the property in a manner consistent with zoning regulations and, therefore, a use variance is not warranted.

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2. NCRC Does Not Meet Test for Area Variance

As regards an area variance, the key consideration is whether there are peculiar and exceptional practical difficulties that would make compliance with zoning regulations unnecessarily burdensome. The court in *Gardner* explained the general test for relief:

> To support a variance it is fundamental that the difficulties or hardships be due to unique circumstances peculiar to the applicant's property and not to general conditions in the neighborhood.

In listing the types of difficulties that could be considered the court included the shape, narrowness, or shallowness of the property in question. In this instance the NCRC property is a large square lot that extends between two streets. Neither the size of the lot nor the dual street frontages are unique to applicant's property since another property in the same block shares these features. Nor is the size of the lot an impediment to zoning law compliance. Indeed the owner could subdivide the property and sell one lot for residential development. That the property is located in an historic district is also not unique since every property in Cleveland Park is subject to the same constraints and regulatory purview imposed by the historic designation. Thus, the Historic Preservation Review Board (HPRB) concept review of the NCRC property has no relevance to the BZA variance consideration because granting a variance on the basis of HPRB design decisions (no final design decisions have been made in this case) would allow every property owner in the Cleveland Park Historic District to circumvent zoning regulations on the basis of HPRB design decisions.

The applicant has stated that subdividing the lot would cause "exceptional practical difficulty" because it would "carve up" the open lot. However, in its application for a special exception, NCRC argues that the size of the lot provides sufficient space to build an additional building without adversely impacting the neighborhood. Indeed the applicant stresses the amount of open space that will remain on the lot after the building is erected. Now the applicant is arguing that subdivision to accommodate the new building within the zoning regulations will somehow ruin the open space aspect of the property. What the applicant is really suggesting is that complying with side yard, rear yard and lot occupancy requirements for a proposed structure that is larger than many of the homes in its immediate vicinity will mean moving the building and redefining the open space. That does not present the owner applicant with a peculiar and practical

difficulty. There are no impediments to compliance with the zoning laws that even approach the strict variance requirements.

3. Granting Variance Would Result in Substantial Detriment to Public Good
The aggressive opposition of the neighbors to the variance relief requested is evidence of the perceived substantial detriment that would be created by granting the variance. As was stated above, the applicant runs a successful child development center that will continue with or without the variance relief. Further the variance is not necessary to renovate or remodel the existing historically contributing buildings on this property, which are used as classroom and auxiliary space.

4. NCRC Has Not Met the Test for Parking Variance
Regarding section 2100.6, which requires on-site parking spaces when the intensity of use of a building is increased due to an addition or increased number of people using the building, both of which apply in this case, the variance determination is based on peculiar and exceptional difficulties in complying with the regulation. Since this is a large lot with frontage on two streets, there is no obvious impediment to creating a curb cut and minimal on-site parking. HPRB, which would evaluate the sighting of the parking plan design, does approve curb cuts and driveways when they are found to enhance the historic district. Indeed, a new curb cut and driveway access to on-site parking has recently been approved by HPRB a few blocks from the NCRC property.

5. Parking Variance Would Result in Substantial Detriment to Public Good
The collateral parking needs associated with each expansion of NCRC have been a continuing problem in the neighborhood. It was the focus of the 1998 special exception proceeding and it will be a prominent aspect of the current case. The District Department of Transportation has submitted to the BZA a report that outlines the current traffic and parking issues, including double parking, and it has labeled them as creating a dangerous situation. Under these circumstances allowing NCRC to further exacerbate this situation by granting the parking variance, which would place additional parking demands on neighborhood streets, is unreasonable and would result in substantial detriment to the public good.

6. NCRC Does Not Satisfy Parking Exemption Criteria
The exemption from parking is extended to historic landmarks, or buildings or structures that contribute to the enhancement of the historic district. NCRC has benefited from section 2100.5 even though the property is not individually landmarked because the main 1905 Colonial Revival house is mentioned in the historic district designation application as a fine example of that period of architecture. The proposed new building, which triggers the parking requirement, will not be designated by the State Historic Preservation Officer as contributing to the enhancement of the historic district. Since the regulation mentions only landmarks and contributing structures as qualifiers for the exemption, the new structure would not be eligible for an exemption.

7. Facts of This Case are Distinguishable from The Atlantic Building Case

The facts of this case are distinguishable from The Atlantic Building case, which is presented as precedent by the applicant. That case, which was heard by the BZA, involved additions to seven historically contributing buildings. With each building the facades were saved, and indeed three of the buildings were entirely preserved. In this case, the BZA has ruled that the new structure is a principal building and not an addition and it will not be designated as historically contributing by the State Historic Preservation Officer. Thus, the Zoning Administrator must apply the regulation to an entirely different set of facts.

8. Conclusion
The ANC finds that the tests for granting variances under sections 3202.3 and 2100.6 are not met. We urge the BZA to reject the application.

Certificate of Service

I hereby certify that on this 10the day of June, 2003, I caused a true and correct copy of the foregoing response to National Child Research Center's application for zoning variances to be served by facsimile or hand upon:

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Respectfully Submitted,

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