Board of Zoning Adjustment Case #16970, Hearing Session #8, 4 November 2003
National Child Research Center, application for variance and special exception
Testimony of Peter Espenschied (362-0500)

I am Peter Espenschied, vice-president of the Cleveland Park Citizens Association, and a member of the Planning and Zoning Committee of ANC 3-C. Both CPCA and the ANC have urged you to deny NCRC's application for expansion. Both City Council members who are familiar with this case, Ms. Patterson and Mr. Mendelson, are opposed to this application and have so written to the Board. It was the school's 1997 correspondence with Mr. Mendelson which unmasked the school's recent invention of characterizing its enrollment authorization as a mere building occupancy limit. The school's attorney then wrote to Mr. Mendelson, as ANC chairman, stating explicitly that its enrollment was 108 students, and that it had no intention of expanding that enrollment.

I want to add two specific observations. (1) The traffic congestion problem. From the elements that have been contributed by several witnesses, including the Department of Transportation, there is available a simple two-part solution which the BZA can impose, that would resolve the present imbroglio: (A) Dismiss the application without prejudice, until such time as the school reduces by attrition to the population levels authorized by the existing order--both students and staff. (B) Require as a condition of any further special exception, that the school alter its admission policy to reflect a return to its function as a neighborhood school; for example, by requiring that it give absolute admissions preference at each grade level to children whose parents provide a written guaranty that their child will be brought to school without the use of a motor vehicle (for example:) at least 80% of the time. It is quite possible that this change in admission policy would by itself solve the existing problem, without imposing any significant difficulty on the school, and would actually reduce its difficulties and responsibilities in dealing with traffic congestion.

Requiring such a change should certainly precede the imposing of harsh and disruptive changes upon the neighborhood, such as making Highland Place into a one-way street. Public policy, as expressed in Sec. 3108.1 of the Zoning Regulations, requires that the holder of a special exception must "not tend to affect adversely the use of neighboring property". The special exception holder's operations must be kept below the level at which they become abusive of the neighborhood. It would be a travesty of public policy, and of common sense, to make alterations of the neighborhood in order to facilitate the abuse. This applicant is already way out of bounds. The situation is unacceptable as it is; and it should be unthinkable to allow it to become even worse.

(2) The variance. The recommendation from the Office of Planning that a variance be granted, is based on a patently wrong reading of Sec. 424 (g)(3) of the D.C. Code. The statute authorizes the granting of a variance if there would otherwise be "peculiar and exceptional practical difficulties" or "exceptional and undue hardship" for the owner of the property. In the Carliner [App.D.C.412 A.2d 52 (1980)] and Roumel [App.D.C.417 A.2d 405 (1980)] cases, inter alia, the court has laid down that an area

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variance can only be granted if the "peculiar and exceptional practical difficulties" are caused by the land's unique characteristics as to size, shape, or other extraordinary condition. Here there are no such unique characteristics. But, in fact, even if the property were unique as to size and shape, that condition would be ameliorative, not causative, of any zoning difficulty, since here the property is large enough to be susceptible of subdivision into two buildable lots. Therefore the requirements for an area variance cannot even remotely be met in the present case.

The possibility for a use variance is even more clearly nonexistent. In Palmer [App.D.C.287 A.2d 535 (1972)] the court barred the granting of use variances unless the level of hardship is such that no reasonable use can be made of the property. There is no basis for granting a variance simply because the owner desires to make a new and different use, or a more extensive use, instead of the use it is already making. For the Board to grant a variance to this applicant would be plainly erroneous. Therefore the Board need not reach the otherwise inescapable conclusion that NCRC's application for a special exception must also be denied.