ADVISORY NEIGHBORHOOD COMMISSION 3C
GOVERNMENT OF THE DISTRICT OF COLUMBIA
CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS
MCLEAN GARDENS • WOODLEY PARK

Single Member District Commissioners
01-Allen Hahn; 02-Kurt Vorndran; 03-Sally MacDonald
04-Richard C. Bartel; 05-John Welsh; 06-Trudy Reeves
07-Sheila Hogan; 08-Nancy Nord; 09-Nancy MacWood

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December 22, 2003

Mr. Geoffrey Griffis
Chair, DC Board of Zoning Adjustment
441 4th Street, NW
Washington, DC

Re: BZA Zoning Application No. 16970, the National Child Research Center

Dear Mr. Griffis,

Attached are the Findings of Fact and Conclusions of Law submitted by Advisory Neighborhood Commission 3C.

Sincerely,

Nancy J. MacWood
Chair, ANC 3C

Attachments

BZA
Case No. 16970
Exhibit No. 339

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.339

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FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. Subject property, which is in the Cleveland Park neighborhood of Ward 3, is located at 3209 Highland Place, NW. (Square 2072, Lot 30 (855 & 866)), on the north side of the street.
2. The property also has frontage on Ordway St., which is the street north of Highland Place.
3. The property is zoned R-1-B.
4. The property is improved with a three story plus basement detached single family dwelling, which houses a child development center, a free standing tool shed, and a free standing playhouse.
5. The main house was built in 1905 on a 45,207.54 square foot lot and was included as a contributing structure in the Cleveland Park Historic District designation.
6. The immediate neighborhood is entirely developed with single-family detached houses.
7. Highland Place extends from 34th Street on the west to Newark Street (at Ashley Terrace) on the east. It is one-way eastbound in the short (and narrow) block from 34th Street to 33rd Place; the remainder is a two-way street. Eastbound traffic can enter from 34th Street or from Newark Street via 33rd Place. It can exit only to Newark Street. Westbound traffic can enter only from Newark Street, and can exit only via 33rd Place to Newark Street. All traffic departing from the property must exit via Newark Street, going either to the intersection at 34th Street or the intersection at Connecticut Avenue; neither of these intersections is controlled by traffic signals.
8. Most of the north side of Highland Place is signed for restricted residential parking (RPP) and there is no parking on the southside. There is a three-way stop sign at the intersection of Highland Place and 33rd Street. Four parking spaces are reserved for NCRC related parking in front of the Applicant's property. Approximately three spaces are reserved on the Ordway Street frontage. The rest of Ordway Street is signed for restricted residential parking.

The Child Development Center

9. National Child Research Center (NCRC) moved into this property in 1930. The child development center serves children from two to five years old. It has 8 daily configurations of classroom groupings with an additional two classroom groupings meeting 3 days per week and one additional classroom grouping meeting two days per

week. There are five daily pick-up and four daily drop-off periods Monday through Friday. Its hours are 8am to 5pm.

10. NCRC's current enrollment is 171 children; current staff levels are 32 full time equivalents.
11. Each classroom has two teachers. Additional specialized persons come to the school on a regular, but not daily, basis. Some parents have also contracted to have adults "shadow" their child at the school whenever the child is in attendance.
12. NCRC hosts 7 all-school events per year. Some of these are held in the evenings and some are scheduled on the weekends. Additionally, NCRC holds meetings, including board meetings, at the center. In 2002, NCRC cancelled school for one day and held an all-day conference with invitees from other child development centers and schools.
13. Outdoor play equipment is currently spread throughout the property.

Previous Board Orders

14. The Applicant has been in operation on Highland Place since 1930 as a non-conforming use established prior to the creation of the Board of Zoning Adjustment in 1938.
15. On October 29,1963 BZA upheld (Appeal No. 7503) the Zoning Administrator's rejection of NCRC's application to increase student enrollment from 70 to 80 students and to erect a new building. The decision was based in part on objectionable traffic conditions and the petition and testimony of neighbors in opposition.
16. On Nov. 11, 1997 NCRC applied to the BZA for a special exception under Section 205 to run a child development center for 108 children; the application was subsequently amended to provide for an enrollment of 120 students ages 2 ½ to 5 years, and 28 staff members. On January 21, 1998 the BZA held a hearing on the application and issued summary Order No. 16307 approving the enrollment and staff level request, and hours and days of operation, 8am to 5 pm, Monday through Friday. After ANC 3C protested the adequacy of the required notice, the BZA reheard the application and granted the special exception by Order No. 16307 with a reduced approval period (8 years) and the addition of six traffic mitigation requirements.

District of Columbia Dept. of Health

17. The child development center is currently licensed by the District of Columbia Dept. of Health. In March 1998, two months after the BZA issued its summary Order No. 16307 the Department.of Health issued a license to NCRC for 90 children.
18. In Fall 2002, the Department of Health (DOH) found NCRC was in violation of the requirement regarding the number of children per classroom. Subsequently, DOH issued a waiver but stipulated that the Applicant must be in compliance by the beginning of classes in Fall 2003.

19. The Applicant was not in compliance in Fall 2003; DOH granted another waiver.

District of Columbia Dept. of Transportation (DDOT)

20. Prior to the rehearing of NCRC Application No. 16307, the DDOT, then a part of the District Department of Public Works, provided a report to the BZA stating that they had reviewed and approved the application for a child development center for 108 children and 28 staff. DDOT noted that the enrollment number was an increase from the previous enrollment of 90 children. DDOT was not informed that the actual request to the BZA was for a special exception enrollment of 120 students.
21. On February 5, 2003, DDOT wrote to the BZA that they did not recommend approval of BZA Application No. 16970 for a special exception to build new facilities and increase enrollment and staff, based on five safety concerns:
    -traffic and pedestrian safety at Newark and 34th Streets, which is the major exit route from NCRC
    -double standing by NCRC-related vehicles, which leaves only one lane for both east bound and west bound traffic
    -illegal parking on Highland Place, including that which blocks residents' driveways, and double parking
    -illegal driving patterns, including U-turns and running the stop signs
    -traffic congestion during peak drop-off and pick-up periods.

    DDOT further stated that "the proposed new construction, and subsequent increase of staff and enrollment at the subject site will have an adverse impact on parking supply, will create dangerous and otherwise objectionable traffic conditions and increase vehicular volume on neighboring streets."
22. On April 14, 2003, DDOT wrote to the BZA to inform them that they had developed three options that wouldn't solve, but could have a positive influence on, current traffic safety conditions related to NCRC. Acknowledging that one option was to do nothing, DDOT offered the following other options:
    –reduce the number of vehicle trips or
    –stagger drop-off and pick-up periods, add two uniformed monitors during early morning drop-off, increase participation in Metrocheck program, and limit special events to three or
    –designate Highland Place a one-way, westbound street from Newark Street to 33rd Place.

    DDOT added that if the last option were implemented the increase of 10 students and 10 staff would not "significantly worsen traffic conditions in the neighborhood."
23. The Board finds that there has been a long history of traffic problems in the neighborhood related to NCRC. The initial DDOT report reflected their objective evaluation of the safety conditions. Only a reduction in vehicle trips will significantly improve these conditions. The regulatory approach does not address the depth and pervasiveness of the problem, and the engineering approach would necessitate a drastic quality of life change related to traffic patterns for the

residents and neighborhood and might not result in a satisfactory improvement in safety.

District of Columbia Office of Planning

24. The Office of Planning sent a memorandum dated February 10, 2003 in which it stated that it could not make a recommendation to the BZA on Application No. 16970 because it could not determine the authorized enrollment level, had not heard from District agencies, including the Department of Transportation and Metropolitan Police Department, and the Zoning Administrator had not issued an opinion regarding parking requirements under Section 2100.6 and whether new construction would constitute a second principal building requiring special exception relief under Section 2516.
25. On February 24, 2003 the Office of Planning sent a supplemental memorandum to the BZA recommending denial of the application because it failed to meet the requirements of Section 205, including the adverse impact from parking and traffic demands. OP noted that NCRC wanted to increase current enrollment from 171 to 181 with an option for an additional 4 children, bringing the total to 185, which would be 65 more children than "listed" in Order 16307.
26. On April 3, 2003 OP sent a second supplemental report to the BZA recommending either tabling of the special exception application for a period that would be used to evaluate the effectiveness of NCRC's proposed Traffic Management Plan (TMP) or, if that proves unsuccessful, additional BZA hearings to consider the engineering, or one-way street designation, option offered by DDOT.
27. The Board believes that OP based its recommendations primarily on the recommendations of DDOT. The NCRC-proposed TMP includes DDOT suggestions, namely, the addition of uniformed monitors at the early morning drop-off and a ten-minute expansion of the early morning drop off period. The Board credits the testimony of neighbors that this system, which has been in place for several months, has minimally relieved congestion on Highland Place during one drop off period, has not improved parking or illegal traffic activity, and has worsened traffic conditions on Ordway Street. An additional monitoring of this system is not likely to change the results.

District of Columbia Metropolitan Police Department

28. MPD Officer Keith Roch testified at the BZA hearing on behalf of the District of Columbia MPD. Lt. Roch is the lieutenant for Police Service Area 204, which includes NCRC and the surrounding neighborhoods. Lt. Roch stated that traffic often causes dangerous situations on Cleveland Park streets, but that 34th St., which is the closest north, south and west access to and from NCRC, is particularly dangerous and he would not encourage any increase in traffic on 34th Street. Lt. Roch noted that there have been a significant number of accidents reported at the intersection of Newark and 34th Streets, which is one of the few

exit points from NCRC, but that many other accidents at that location are unreported to the MPD.

29. Lt. Roch also testified in response to questions from Nancy MacWood, Chair, ANC 3C, that Highland Place was a unique street in Cleveland Park due to its narrowness, lack of sidewalks, and deep curve in the road.
30. Lt. Roch also indicated that the MPD did not have the personnel to enforce traffic regulations, to monitor traffic congestion at private school sites or to enforce TMPs.

DC Council Members Submissions

31. Kathy Patterson, the Ward 3 councilmember, submitted a letter to the record opposing the application for a special exception for the child development center in her ward.
32. Phil Mendelson, the at-large councilmember and former chair of ANC 3C, submitted a letter to the record and testified that he opposed the application for a special exception and that he objected to the unauthorized increase in enrollment and staff levels pursuant to Order 16307.

Advisory Neighborhood Commission 3C

33. ANC 3C heard from proponents and opponents of the NCRC BZA application at its regular meeting in October 2002. At the request of the applicant the commission informally met with representatives of the child development center and the neighborhood to determine if mediation could resolve the contested issues. Subsequently three commissioners were appointed by ANC 3C to conduct mediation. After one meeting the Office of Planning offered to mediate and the ANC 3C withdrew its participation. The Office of Planning efforts were not successful.

34. At the regular meeting in January 2003, ANC 3C again heard from opponents and proponents of the application. The commission, by unanimous vote, resolved to oppose the application and urged the BZA to reject it. The decision of the ANC was based on the continuing adverse impact on the neighborhood from parking, traffic, noise, and special events related to NCRC and the exacerbation of these conditions from expansion of facilities, enrollment and staff levels.

35. On December 15, 2003 at the regular meeting of ANC 3C the commission undertook to consider proposed conditions to a new zoning Order. After discussion, the Commission withdrew its consideration of conditions and voted 5-2 to reiterate its opposition to the application. During that public meeting the commission reviewed letters, which had been in the ANC files, related to the enrollment issue considered in the 1998 Order and placed in dispute by the applicant in the current application. The letters written in 1997 to the

neighborhood from NCRC's acting director and a letter written the same year to then ANC Chair Phil Mendelson in response to questions about BZA Application 16307 offer significant evidence about the contested enrollment issue. Both of these letters were introduced by ANC 3C during the hearing on Application 16970. The ANC included in its December 15, 2003 resolution the finding that there was ample evidence to conclude that the ANC, the neighbors, and the BZA endorsed a total enrollment of 120 students and a staff level of 28 persons. The Board finds that this evidence and the testimony of Councilmember Phil Mendelson, who stated that he was clear that the only representation of enrollment during consideration of Application 16307 was a maximum student enrollment of 120 students, is persuasive and thus, the Applicant has currently enrolled 51 more students than authorized by the Order.

Applicant's Compliance with Zoning Order 16307 and Response to Traffic and Parking Issues

36. The director of the child development center, Susan Piggott, testified before the BZA that NCRC had not complied with the staff levels authorized in zoning Order 16307. She stated that NCRC was not out of compliance with enrollment capacity because the enrollment numbers reflected the number of students at NCRC at any one time rather than the total enrollment.
37. The Board found the ANC 3C testimony, the testimony of Councilmember Phil Mendelson, who was the ANC 3C Chair during the 1998 BZA proceeding, and testimony and submissions from neighbors, several of whom participated in the 1998 proceeding, creditable. The application in 1998 is clearly for 120 students and 28 staff members. The Order No. 16307 issued in January 1998 by the BZA included the condition that enrollment could not exceed 120 students and staff could not exceed 28 persons. There is no mention of "at any one time" in any part of the Order or in the application, nor in the transcript of the hearing.
38. There were six conditions included in Order No. 16307 issued on April 14, 1998 that required specific actions by the applicant to mitigate traffic and parking problems. The applicant was required to prepare and distribute to all parents and caregivers a pamphlet outlining traffic and parking policies and rules. This pamphlet was to be separate from other school notices. The applicant's submission included a two-page flyer for the 2001-2002 school year detailing arrival and dismissal procedures. There was no other evidence submitted to show compliance with this condition.
39. The applicant provided letters demonstrating their effort to have the carpool line area clearly marked and the no-parking and 15-minute parking areas defined and signed.
40. The Order prohibited the formation of the carpool line more than 10 minutes before dismissal times. Neighbors testified that this condition has been repeatedly violated and that they never observed NCRC staff attempt to restrict drivers who arrived too early for dismissal.

41. NCRC was also required to monitor drop-off and pick-up points on Highland Place and Ordway Street with special attention to ensuring that driveways are not blocked and traffic is not impeded. Neighbors testified that monitors were rarely positioned on Ordway Street and were not stationed during all of the drop-off and pick-up time periods both on Highland Place and Ordway Street. Testimony was supported by the neighbors' video, which demonstrated that driveways were blocked by parked cars and students were arriving and leaving the center without staff monitoring.
42. The Board finds that some conditions of the current Order were observed, but that the school was lax in ensuring that NCRC-related vehicles did not adversely impact neighbors and that students were safely and efficiently entering and leaving the center.

Applicant's Proposed Traffic Management Plan

43. The Applicant has implemented most of their proposed Traffic Management Plan (TMP). They propose to continue the traffic mitigation conditions in Order 16307, including the prohibition of queuing more than 10 minutes prior to arrival or dismissal times, no allowance for U-turns or turning around in residents' driveways, and monitors stationed at the Highland Place entrance and at the intersection of Highland and 33rd Places.
44. The Applicant has also added two uniformed persons at the 8:30am arrival on Highland Place, who are stationed at the entrance and at the intersection of Newark Street and 33rd Place. This drop-off period has been extended 10 minutes to 9:50am in order to stagger the drop-off period and lessen the carpool line and congestion. The Applicant has also instructed parents and caregivers to travel on Highland Place only one-way westbound. In addition, the Applicant will continue their practice of using uniformed personnel to direct traffic on Highland Place during special events.
45. The Director of NCRC, Susan Piggott, testified that arrivals and dismissals will be divided between Highland Place and Ordway Street if the BZA approves a facilities addition.
46. The Board finds the testimony of opponent neighbors creditable that some of the current zoning conditions are not being faithfully implemented, in particular the prohibition against U-turns and turning around in driveways and the requirement that monitors and attendants be in place at both Highland Place and Ordway Street to ensure safe and efficient arrivals and dismissals of children.
47. The Board further finds that the new traffic mitigation measures implemented by NCRC have made a superficial improvement on Highland Place at the expense of safety on Ordway Street. None of these measures have addressed parking issues related to pick-ups and drop-offs and the congestion during special events. It appears that the Applicant views Highland Place as its driveway rather than a public street lined with residential properties.

48. Based on the above, the Board finds that the Applicant's child development center is creating objectionable and unsafe traffic conditions for dropping-off and picking-up of children.

CONCLUSIONS OF LAW

Applicable Law – Special Exception

The Board of Zoning Adjustment is authorized to grant special exceptions where, in the Board's judgment, a special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. DC Official Code Section 6-641.07(g)(2)(2001); 11 DCMR Section 3104. The Applicant is seeking a special exception pursuant to 11 DCMR Sections 3104 and 205 to continue the operation of the child development center located at 3209 Highland Place, NW.

Sections 205.2 through 205.10 list the factors to be considered by the Board before deciding to permit a child development center in a R-1 District. The final two provisions, Sections 205.9 and 205.10, direct the Board to seek recommendations regarding the application from other DC agencies, which was done here.

Section 205.2 states that the child development center shall be capable of meeting all code and licensing requirements. The Department of Health (DOH) found that the Applicant violated the maximum number of children per classroom when they visited the center in Fall 2002. DOH granted the center a waiver, but stipulated that the classroom numbers had to be in compliance by the beginning of the Fall 2003 session. The applicant was not in compliance at that time. DOH granted another waiver indicating that if the BZA approved a facilities expansion the Applicant would be able to meet the licensing standards. DOH has recommended approval of the special exception application based on the need for more child development spaces in DC. The Board finds the actions of DOH, namely the decision not to enforce licensing requirements in the hope that this Board will make a decision that removes them from responsibility to bring this center into licensing compliance, are transparent. It is the responsibility of DOH, not the BZA to ensure compliance with child development center licensing standards. It is clear to the Board that the Applicant has not satisfied Section 205.2.

Section 205.3, which states that the center shall not be located and designed to cause objectionable or unsafe conditions for picking-up or dropping-off of children, was the focus of much of the testimony. The Department of Transportation reported that the current traffic conditions created by the center are unsafe and initially recommended rejection of the application. DDOT suggested that one option to improve the conditions would be to lessen the number of trips to the center. Other options regarding traffic mitigation presented by DDOT were characterized as having some potential to improve the situation, but DDOT would not state that any of these options would make the traffic

conditions safe. DDOT also offered that their engineering option (one-way street) would be highly objectionable to residents, an observation that was supported by the testimony of opponent neighbors. Finally, DDOT suggested that an expansion in enrollment would not significantly worsen a traffic situation that they described as already unsafe. The Metropolitan Police Department (MPD) testified that there is serious traffic congestion in the area of the center and that accidents are recurring at the Newark and 34th Streets intersection, which is the main intersection providing north, south, and east access for vehicles leaving the center. The MPD also testified that Highland Place posed difficult traffic challenges due its narrowness, lack of sidewalks, and blind curve near the entrance to the center. The Office of Planning suggested tabling the application until a 4 month evaluation could inform the BZA about the ability of the applicant's Traffic Management Plan (TMP) to successfully transform the unsafe and objectionable conditions into one meeting the standards of Section 205.3. If the TMP failed then OP recommended consideration of the engineering option, which DDOT has reported would be objectionable to neighbors and has only marginal chances of succeeding. Thus, none of the DC agencies familiar with the drop-off and pick-up patterns have stated that the conditions are safe and unobjectionable.

The Board finds that the assertions by Mr. George, the applicant's traffic consultant, that no unsafe conditions exist in the vicinity of the center not creditable. The Board heard extensive testimony from neighbors about the unsafe and objectionable conditions, including children walking in the street, crossing in front of traffic, center-bound vehicles blocking driveways and carpool queues impeding the flow of two-way traffic. The Board also heard testimony from a Metropolitan Police Department officer, who was authorized to testify on behalf of the MPD and who is extremely familiar with the traffic conditions in the neighborhood, that 34th Street is particularly dangerous and Highland Place poses unique traffic problems due its configuration. The Board is aware and must take note that there have not been any changes in this neighborhood since the previous Order, which noted the serious traffic conditions, that would account for the traffic conditions and exempt the center from responsibility.

The traffic plan presented by the Applicant is not designed to address the significant issues created during drop-off and pick-up periods. Indeed, the center has neglected to comply with the current Order by monitoring all such periods to ensure safety. The addition of 10 minutes for dropping-off children during one period out of nine during the day does not demonstrate serious intent. The addition of two uniformed persons during that one time period should be helpful, but that alone does not approach satisfying the requirements of Section 205.3.

After considering the totality of the testimony concerning this issue, the Board finds that the Applicant's child development center does create unsafe and objectionable conditions for dropping-off and picking-up of children.

Regarding Section 205.4, which pertains to the provision of adequate off-street parking spaces, the Applicant's property is located within the Cleveland Park Historic District

and thus, is exempt from the parking requirements pursuant to Section 2100.5. However, the Board still must consider whether there is ample parking on street to meet the needs of teachers, other staff, and visitors to the center. Parents and caregivers do require on-street parking since the center does not require that drop-offs and pick-ups occur only via the carpool line. There is limited parking available in the vicinity of the Highland Place entrance to the center. The south side of the street is signed no parking and the north side of the street is signed for restricted residential parking(RPP). Some of the residents on the north side have driveways, but most of the residents on the south side do not and thus, they use the RPP spaces on the north side, leaving few unused spaces during many of the pick-up and drop-off periods. Applicant's staff use unrestricted spaces in front of the school property or those behind the school on Ordway Street, which effectively blocks that entrance to the center. Since the center has testified that they have at least 32 full time equivalent staff members and are seeking an increase, the four spaces on Highland Place and approximately four spaces on Ordway Street bordering the Applicant's property are not sufficient to meet their staff needs. The Metrocheck program that the center envisions encouraging may not be convenient for staff, especially staff that spend a limited time at the center and then leave to meet other professional commitments. Visitors, who number in the hundreds during applicant information and interview sessions, have no designated parking spaces and thus, must seek parking somewhere in the neighborhood. In addition, the all-school special events planned by the center result in an intense parking demand, usually at night or on weekends when residents are using much of the available street parking. Thus, the center has substantial parking needs, which cannot be accommodated with on-street parking.

Sections 205.5, which provides that play areas must not be objectionable to adjacent or nearby neighbors, and 205.6, which allows the Board to require measures to protect adjacent neighbors, are material to this application. The play areas that have been spread out will be consolidated under the new facilities proposal. The placement will add play equipment to that currently bordering one of the neighbor's properties. The Board finds that the additional noise from this configuration of play equipment so close to the neighbor's property could indeed be objectionable to them and other nearby neighbors. The Board finds that pursuant to Section 205.6 it could require screening, but given the historic nature of the properties and the amount and proximity of the play equipment it may not be feasible to satisfy this requirement.

The factors identified in Section 205.7 were not at issue and Section 205.8 is not relevant to this case.

Applicable Law – Variance

The Applicant is seeking variance relief from Sections 3202.3, which prohibits more than one principal building on a single record lot, and 2100.6, which requires parking spaces when the intensity of use of a building is increased due to an addition or increased number of people using the building.

The Board found that the facts necessitated an application for an area variance, which can be granted pursuant to D.C. Official Code Section 5.420 (11 DCMR Section 3107.2) only when by reason of exceptional narrowness, shallowness, or shape of a piece of property or exceptional topographical conditions the strict application of the zoning laws would result in peculiar and exceptional practical difficulties. In Gardner E. Palmer, et al. v. Board of Zoning Adjustment, 287 A.2d 535 (D.C. 1972) the court ruled that in considering an area variance the test should be whether compliance would be unnecessarily burdensome due to peculiar and exceptional practical difficulties. The court further instructed that a basic question should be whether the facts presented unique circumstances that were not found in the neighborhood generally.

The Applicant is running a successful child development center pursuant to a special exception. A variance is not necessary for the Applicant to continue the child development center. The property is also zoned residential and is located in a popular residential area, thus, providing a viable conforming use of the property. There is nothing unique about the configuration of the property in terms of narrowness, shallowness, shape, or other topographical features. The property is quite large and extends well beyond the required 50 feet of frontage required in an R-1-B zone district as do other properties on the same block of Highland Place. It extends through to Ordway Street, but other properties on Highland Place also extend to the adjoining block.

The Board finds that there is no unnecessary burden placed on the Applicant by either continuing to operate under current conditions or complying with the zoning requirements to create a second record lot for the proposed second principal building. The Board further finds that there is no exceptional situation or condition, which would make compliance unnecessarily burdensome. While the property is in a historic district and subdivision would be subject to approval by the DC Historic Preservation Review Board, this same requirement applies to all property owners in the historic district, and thus, is not a peculiar or exceptional practical difficulty.

Granting an area variance would result in substantial detriment to the public good because it would allow the Applicant to build a new principal structure and avoid side yard, rear yard, lot occupancy and other residential zoning requirements that protect neighboring property owners. The Applicant's proposal would create a massive building that would dwarf its nearest neighbor and deny that owner the privacy, sunlight and openness resulting from the strict application of the zoning laws. The Board finds that there is no basis for granting the variance relief.

The Board also finds that the proposed additional facilities and increased enrollment and staff would increase the intensity of use. The new facility would increase the allowable occupancy levels, notwithstanding any limits placed on enrollment and staff levels. The parking exemption that has been extended for the current use by the Zoning Administrator is based on the certification of the State Historic Preservation Officer that the principal structure is contributing to the historic district. This exemption would not be extended to the proposed new structure because it would not be a contributing

structure to the historic district. Thus, it would not qualify for exemption from the parking requirement imposed by Section 2100.6.

Discussion of the ANC's Recommendations

The Board is required to give "great weight" to both the relevant ANC's recommendations and those of OP. Further, the Board must provide reasons why it has followed or not followed the advice of the ANC, discussing each of the ANC's issues and concerns. ANC 3C has been clear and definitive in its opposition to the special exception application and the variance relief. The commission found that traffic and parking issues created by the Applicant are objectionable and have created an unsafe condition in the neighborhood. The commission further found that the Applicant had not complied with various conditions of Order 16307, the most serious of which is the enrollment and staff limit. The lack of compliance and the unwillingness of the Applicant to fully and openly comply with Order 16307 contributed to the Commission's opposition to this application. The evidence provided by the ANC is compelling.

The ANC acknowledged that the child development center has been a welcome neighbor, but that the increase in facilities and enrollment and staff levels is unwarranted and would transform the center into an objectionable neighbor based on traffic, parking and intensity of use. The Board finds that the ANC's objections and concerns have been supported by Councilmembers Kathy Patterson and Phil Mendelson, and by a substantial amount of neighborhood testimony and submissions.

The OP testimony also does not endorse approval of the special exception based on traffic and parking issues. OP recommends tabling of the application so that a four month evaluation of the TMP can be done. The Board notes that the Applicant has asserted that the TMP has been implemented, with the exception of the division of traffic between Ordway Street and Highland Place. But testimony and submissions indicate that even this aspect of the TMP is in effect informally. Thus, the Board finds that the best efforts of the Applicant to address the parking and traffic problems, which have been outlined by the Department of Transportation among others, are insufficient and are not likely to improve over the next few months.

The Board cannot grant a variance where the qualifying conditions required by Section 3107.2 do not exist. Further, the Board cannot grant the special exception when the requirements of Sections 3108.1 and 205 have not been met. It is therefore ORDERED that the application for variance relief and for a new special exception be denied.

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ANC 3C Resolution No. 2003-038

RESOLUTION REGARDING ENROLLMENT LEVELS FOR NATIONAL CHILD RESEARCH CENTER PERTAINING TO BZA APPLICATION NO. 16970

Whereas the National Children's Research Center ("NCRC" or "Applicant") NCRC is applying for relief under DCMR (Code) Section 205.8 and other Sections of the Code to obtain a new operating order to replace its existing D.C. Board of Zoning Adjustment ("BZA") Order #16307 ("Order") issued in 1998; and

Whereas ANC 3C ("ANC") has participated in numerous public and community meetings and has testified before the BZA regarding the Applicant's request for zoning relief for its operations for a Childhood Development Center; and

Whereas ANC 3C is on record opposing the Applicant's request for special exception and variance relief:

THEREFORE, BE IT RESOLVED that ANC 3C reiterates its opposition to the Applicant's request for special exception and variance relief based on the ANC's previous resolutions (attached); and

BE IT FURTHER RESOLVED that upon ANC 3C consideration of the letters from Ms. Stafford and Mr. Watson (attached) at its regularly scheduled meeting on December 15, 2003, the ANC realizes that the Applicant requested and the BZA approved the Order No.16307 based on an enrollment level of 120 students.

Attested by Nancy J. MacWood — Chair, on December 19, 2003 (Date)

Nancy J. MacWood

This resolution was approved (5-2) by the ANC 3C at its regular public meeting on December 15, 2003, at which a quorum was present.



NATIONAL CHILD RESEARCH CENTER
3209 Highland Place, N.W. Washington, D.C. 20008
Telephone (202) 363-8777
Fax (202) 244-3459

Kay Stafford
Acting Director

Dear Neighbor:

The National Child Research Center (NCRC) has operated a school at 3209 Highland Place, NW, for nearly 70 years. Originally founded as a research facility under a three-year grant from the Laura Spelman Rockefeller will, the school has continued as an independent school for young children. The mission of NCRC is to provide the very best in early childhood education. This has been the goal of the school and will continue to be so in the years ahead. Over the years NCRC has witnessed periodic changes in the regulations governing the District's preschools. It is for this reason that I am writing to you.

NCRC has a Certificate of Occupancy for its buildings, as well as a Permit for Child Care Facilities, issued by different administrations of the Department of Consumer and Regulatory Affairs. The Certificate of Occupancy was issued in 1981 in the then current nomenclature for a 90 student "Nursery School & Kindergarten & Elementary School." Currently we do not operate a kindergarten or elementary school, nor do we have any plans to do so. Nursery schools are now named as "Child Development Centers," and the most recent facility permit for NCRC was issued for 120 children of "Ages two and one-half thru five." Although these differences have existed in the permits for a number of years, we are now advised by the Service Facility Regulation Administration that the Certificate of Occupancy issued by the Building and Land Regulation Administration must be conformed to the Child Care Permit. Because we are located in a residential area, any change in the Certificate of Occupancy must be approved by the Board of Zoning Adjustment with a full application and hearing.

In the coming days, notices will be mailed and posted of the filing of the application and the date of the hearing. We want you to know that this is a completely paper matter. The school is not contemplating any construction or change in the maximum number of students, which currently stands at 108. I wish to assure you that there will be no changes in our daily operation or original mandate of providing a safe, stimulating educational experience for young children.

In order to answer any questions you may have, we are holding an informal, informational meeting on October 28th at 7:30 pm in the Annex Building on the playground. Please come and invite any interested neighbors to attend. Please also feel free to call me at 202-363-8777.

Sincerely yours,

Kay Stafford

Kay Stafford
Acting Director

Recd by FAX
10/27/97

LAW OFFICES OF
MATTHEW S. WATSON
1701 Q STREET, N.W.
WASHINGTON, D.C. 20009-2455
(202) 986-7500

ALSO ADMITTED
NEW YORK
MARYLAND

FAX
(202) 986-2386

October 24, 1997

Phillip Mendelson
Chair
Advisory Neighborhood Commission 3C
3871 Newark Street, NW
Apartment B470
Washington, DC 20016

Re: National Child Research Center

Dear Phil:

You asked that I set forth details as to the application which the National Child Research Center intends to make to the BZA for amendment of its occupancy permit. As you are aware, NCRC has operated at 3209 Highland Place NW for nearly 70 years. For the last several years, it has held a Child Care License for 120 students. In the last licensing inspection, it was determined that the Certificate of Occupancy, which was issued in 1981, is inconsistent with the Child Care license in that it is for 90 "Nursery School & Kindergarten & Elementary School" students. In actual fact, the school enrollment is now at 108, 12 less than the license capacity, although in excess of the certificate of occupancy.

In order to reissue the annual Child Care License, it is necessary to conform the Certificate of Occupancy as to both the type of school, which should now be "Child Development Center," since there are no kindergarten or elementary school classes, and as to the number of students. Since the area is zoned residential, any change in the occupancy permit requires an application to the BZA.

NCRC is not intending to do any construction, nor is it intending to increase the number of students from its current enrollment or to change its operation in any other way. I view the application to the BZA as merely technical, since the school conforms in every way, except for the capacity listed no the certificate of occupancy, to the more stringent Child Care Regulations.

NCRC is agreeable to discussing with the Commission any restrictions to be requested from the BZA to insure that the school remains a good neighbor.

The school is planning an information meeting for neighbors to be held next Tuesday evening, October 28th, at the school to discuss the application and answer any questions which the neighbors may have. I am enclosing a copy of the letter which was sent to neighbors earlier in the week. We would welcome you and Ms. Redman, as well as any other commissioners at the meeting.

If you or any of the other commissioners have any questions, please feel free to telephone me. I would also be happy to arrange for any commissioners to meet with staff at the school at any convenient time.

NCRC is probably one of the oldest, if not the oldest, continuous "resident" of Highland Place. It hopes that it will have the Commission's support in its application to conform the certificate of occupancy with the school's operation and Child Care License.

Thank you for your assistance.

Sincerely,

Matthew S. Watson

ADVISORY NEIGHBORHOOD COMMISSION 3C
GOVERNMENT OF THE DISTRICT OF COLUMBIA
CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS
MCLEAN GARDENS • WOODLEY PARK

Single Member District Commissioners
01-Allen Hahn; 02-Kurt Vorndran; 03-Sally MacDonald
04-Richard C. Bartel; 05-John Welsh; 06-Trudy Reeves
07-Sheila Hogan; 08-Nancy Nord; 09-Nancy MacWood

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ANC3C RESOLUTION 2003-011

Resolution Regarding Variance Application by NCRC

WHEREAS National Child Research Center (NCRC) is seeking variance relief from sections 3202.3, which prohibits more than one principal building on a single record lot, and 2100.6, which requires parking spaces when the intensity of use of a building is increased due to an addition or increased number of people using the building; and

WHEREAS section 5.420 of the DC Code provides the granting of variances by the Board of Zoning Adjustment (BZA)

> Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application ... [of zoning regulations] would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize,...a variance from such strict application so as to be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map; and

WHEREAS the BZA has not determined whether a use or area variance is the necessary relief for the proposed second principal building on NCRC's single record lot; and

WHEREAS a use variance "cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations" and thus, would result in exceptional and undue hardship*; and

WHEREAS NCRC is currently operating a successful child development center in a sought after residential neighborhood; and

WHEREAS an area variance is based on a showing that "compliance with the area restriction would be unnecessarily burdensome"* due to peculiar and exceptional practical difficulties; and

WHEREAS 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"*; and

WHEREAS sect. 2100.6 requires the provision of parking spaces for additions when the intensity of use will be increased; and

WHEREAS the zoning regulations provide an exemption from the parking requirement only when a building is located in a historic district and has been certified by the State Historic Preservation Officer as contributing to the character of that historic district; and

WHEREAS Advisory Neighborhood Commission 3C has unanimously opposed the NCRC application on historic preservation grounds (Resolution No. 2002-042) and the application for special exception relief under section 205 for NCRC (Resolution No. 2003-001):

BE IT RESOLVED that ANC 3C finds

1. that there is no exceptional narrowness, shallowness, or shape of the NCRC property or any exceptional topographical conditions that are unique to this property;
2. that NCRC has not shown that its property, which is zoned residential, could not be put to a conforming use without a variance;
3. that there is no unnecessary burden placed on NCRC by either continuing to operate under current conditions or complying with the zoning requirements to create a second record lot for the proposed second principal building; other similar lots on the same street have been subdivided and the new structures have complied with the area zoning requirements;
4. that there is no extraordinary or exceptional situation or condition of the NCRC property , including the fact that it is in a historic district since this fact is not unique to this property in the neighborhood;
5. that granting the variance could result in substantial detriment to the public good because it would allow NCRC to build a new principal structure and avoid side yard, rear yard, lot occupancy and other residential zoning requirements that protect neighboring property owners;
6. That with the proposed addition and proposed increase in enrollment and faculty there will be an increase in intensity of use and we further find that the new principal building would not be certified by the State Historic Preservation Officer as contributing to the historic district and therefore, it does not qualify for a parking exemption under sect. 2100.6.

THEREFORE BE IT FURTHER RESOLVED that ANC 3C finds that the requested variance should not be granted and urges the BZA to deny the application.

RESOLVED that the Chair, Commissioner Welsh, or the chair's designee is authorized to represent the ANC on this matter.

Attested by Nancy J. MacWood, Chair, on April 28, 2003
Date

* *Gardner E. Palmer,et al. v. Board of Zoning Adjustment, 287 A.2d 535; 1972 D.C.App*

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ANC 3C RESOLUTION 2003-001

Resolution Regarding NCRC Request for BZA Special Exception

WHEREAS National Child Research Center (NCRC) is applying to the D.C. Board of Zoning Adjustment (BZA) for the purpose of seeking adoption of a new zoning Order to replace the existing BZA Order (#16307) for special exception; and

WHEREAS NCRC proposes to double the size of its present buildings from approximately 9,000 square feet to approximately 18,000 square feet; and

WHEREAS ANC3C and the surrounding neighbors each gave NCRC its support for the previous BZA application in 1998, where NCRC stated that it would not increase its physical size, student enrollment, and staffing throughout the eight-year term of the Order; and

WHEREAS ANC3C and the surrounding neighbors also relied upon NCRC's representation during the 1998 BZA hearing that it is "not intending to do any construction, nor is it intending to increase the number of students from its current enrollment or to change its operations in any other way..." in agreeing to the BZA Order; and

WHEREAS NCRC takes the position that the BZA's 1998 special exception entitles it to a student enrollment the size of which is limited only by a requirement that there not be more than 120 students on the property at a given time; and

WHEREAS NCRC's interpretation of the special exception, if accurate, would permit the school to increase its student population substantially without seeking any additional authorization from the BZA; and

WHEREAS, not withstanding efforts by NCRC to regulate the flow of traffic to and from the school, traffic generated by NCRC continues to be a serious problem to individuals residing on the neighboring streets; and

WHEREAS NCRC and the surrounding neighbors both agreed to continue negotiations with each other on various issues, including enrollment cap, building expansion program, traffic management, use, and noise mitigation; and

WHEREAS NCRC's use of this property in the past has been inconsistent with its representations to the BZA, ANC3C and other governmental bodies, resulting in a widespread outcry from the

neighbors against the applicant's proposed expansion over concerns regarding already excessive traffic, noise, students and faculty; and

WHEREAS NCRC may be in violation of the existing BZA Order by having 38 faculty, 35 percent more than 28 stated in the existing BZA Order; and

WHEREAS dozens of nearby residents allege that NCRC is currently in violation of the existing BZA Order by having caused adverse impacts to the neighborhood for persistent, objectionable traffic management conditions described both verbally and pictorially at the regularly scheduled, Oct. 28, 2002, meeting of ANC3C and at other meetings of NCRC and residents of the surrounding neighborhood; and

WHEREAS neighbors have complained that NCRC events have generated unacceptable noise levels; and

WHEREAS the 1998 BZA approval for a new special exception (DCMR Chapter 11, Sect. 3108.1) to operate a larger child development center in this R-1 district is conditioned on, among other things, averting adverse affects on neighboring property (Sect. 3108.1), creating no objectionable or unsafe traffic conditions (Sect. 205.2), and creating no objectionable audio or visual conditions (Sect. 205.5); and

WHEREAS numerous surrounding neighbors, especially those living on Ordway Street next to and across from NCRC, having expressed objection to the proposed new building due to adverse impacts resulting from diminished sunlight, the noise from commercial air conditioning equipment, and the noise from the close proximity of students/staff in the proposed classroom space designated for music and gymnastics; and

WHEREAS increased student enrollment and staffing will exacerbate traffic problems, yet the applicant has not provided the results of a traffic study; and

WHEREAS the NCRC has not sustained its burden as the requester of a special exception by demonstrating that its proposed development will not generate objectionable, adverse impacts due to resulting noise, traffic, number of students, and the number of faculty it will generate;

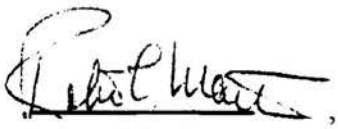
THEREFORE, BE IT RESOLVED THAT ANC3C opposes the NCRC application for the reasons stated above and their ongoing adverse impacts on the surrounding neighborhood, and ANC3C urges the BZA to reject NCRC's request at its Feb. 11, 2003 meeting or subsequent meeting; and

BE IT FURTHER RESOLVED THAT the Chair or her designee be authorized to testify, representing the ANC before the BZA or other body on this topic.

This resolution was approved by the ANC 3C by a unanimous vote of 9-0 at its regular public meeting on January 27, 2003, at which a quorum was present.

Attested by , Chair, on January 27, 2003

Nancy MacWood Date

Attested by  , Secretary, on January 27, 2003
Robert Martin Date