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December 22, 2003

By Hand Delivery

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: BZA Application No. 16970
National Child Research Center - 3209 Highland Place, NW;
Applicant's Proposed Findings of Fact and Conclusions of Law

Dear Chairman Griffis and Members of the Board:

Enclosed please find the Applicant's Proposed Findings of Fact and Conclusions of Law.

Respectfully submitted,

Maureen Dwyer

Paul Tummonds by mld

Paul Tummonds

cc: See attached Certificate of Service

BZA
Case No. 16970
Exhibit No. 340

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.340

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2003 a copy of the foregoing letter and Applicant's Proposed Findings of Fact and Conclusions of Law was sent via first-class mail, postage prepaid, to the following parties:

Advisory Neighborhood Commission (ANC) 3C
c/o Nancy MacWood, Chairperson
3417 Woodley Road, N.W.
Washington, D.C. 20016

The Friends of NCRC
c/o Anne Large
3520 35th Street, N.W.
Washington, D.C. 20016

The Cleveland Park Neighbors
c/o Richard Nettler, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
Suite 1200
1801 K Street, N.W.
Washington, D.C. 20006

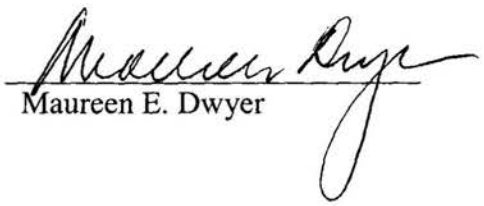
Katharine Marshall
3208 Highland Place, N.W.
Washington, D.C. 20008

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3207 Highland Place, N.W.
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Maureen E. Dwyer

Document #: 1370737 v.1

APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Application No. 16970 of the National Child Research Center, pursuant to 11 DCMR §3104.1 for special exception approval to continue an existing child development center (last approved by BZA Order No. 16307) with morning and afternoon programs for 120 children at any one time, ages two and one-half to five years, and 38 FTE staff on all floors of the existing and proposed buildings on the site and for new construction of an addition and new building pursuant to Section 205; and, pursuant to 11 DCMR §3103.2 for variance relief from Section 3202.3 in order to allow the construction of an additional principal structure, such that more than one principal structure will exist on a single record lot and from Section 2100.6, which requires the provision of parking spaces for the proposed additional principal structure in an R-1-B District at premises 3209 Highland Place, NW (Square 2072, Lot 30).

HEARING DATES: **February 11 and 25, May 6, June 24, September 16, October 7 and 28, November 4 and 18, 2003.**

DECISION DATE: **January 6, 2004**

DECISION AND ORDER

The Applicant in this case is the National Child Research Center ("NCRC" or the "School"). NCRC filed an application on November 12, 2002 for a special exception under 11 DCMR § 3104.1 to allow the expansion and renovation of an existing child development center under 11 DCMR §205 in the R-1-B Zone District at 3209 Highland Place, NW (Square 2072, Lot 30). The application was amended to request variance relief pursuant to 11 DCMR §3103.2, in order to allow the construction of an additional principal structure on a single record lot under Section 3202.3 and relief from the parking requirement under Section 2100.6. The Supplemental Statement of the applicant was filed on April 22, 2003. The zoning relief requested in this application is self-certified pursuant to 11 DCMR §3113.2.

Following a public hearing, the Board voted ____ on January 6, 2004, to approve the application subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated November 13, 2002, the Office of Zoning provided notice of the application to the D.C. Office of Planning ("OP"), the Zoning Administrator, the Department of Public Works, the Department of Health ("DOH"), and the Advisory Neighborhood Commission ("ANC") 3C, the ANC for the area in which the property is located.

The Board scheduled a public hearing on the application for February 11, 2003, and, pursuant to 11 DCMR §3113.13, the Office of Zoning, on December 10, 2002, mailed the Applicant, the owners of all property within 200 feet of the property, and ANC 3C notice of the February 11 hearing. Notice was also published in the D.C. Register.

The School's affidavits of posting and maintenance indicate that two zoning posters were posted beginning on January 24, 2003 in plain view of the public.

The Board held two public hearings on the application on February 11 and 25, 2003. The application was then amended and a public hearing date of May 6 was set. Pursuant to 11 DCMR §3113.13, the Office of Zoning, on March 6, 2003, mailed the Applicant, all owners of property within 200 feet of the property, and ANC 3C notice of the May 6 public hearing. Notice was also published in the D.C. Register.

Request for Party Status. ANC 3C was automatically a party in this proceeding. The Board granted party status to: (i) The "Cleveland Park Neighbors" ("CPN"), a group of individuals consisting of approximately 33 named individuals residing near NCRC; (ii) Gaylord Neely and Linda Badami ("Badami"), the owners of the property located at 3207 Highland Place, NW, the property immediately adjacent to the east of the NCRC property; (iii) R. Bruce and Sallie R. Beckner ("Beckners"), the owners of the property located at 3225 Highland Place, NW, the property immediately adjacent to the west of the NCRC property; (iv) Steve Hunsicker, the owner of the property located at 3083 Ordway Street, NW; (v) Henry Little, the owner of the property located at 3220 Ordway Street, NW; (vi) Katharine Marshall, the owner of the property located at 3208 Highland Place, NW, the property directly across the street from the main entrance to the NCRC main building; and (vii) the Friends of NCRC, an organization that includes 194 residents, of which 139 live within ANC 3C. Katharine Marshall and Friends of NCRC were parties in support of the NCRC application. The remaining parties were in opposition.

Motions. CPN and other parties and individuals in the case filed numerous motions throughout the course of this proceeding.

(a) By motions filed January 12, 2003, CPN sought dismissal of NCRC's application and a declaratory ruling by the BZA that NCRC is estopped from seeking an increase to its enrollment. CPN argued that its motion to dismiss should be granted because of alleged violations by NCRC of the conditions established by the prior BZA Order No. 16307. The Beckners concurred in the motion. NCRC opposed the motions, asserting that they were without basis since the school had

complied with all prior conditions and, further, that the BZA did not have any authority to entertain or grant declaratory relief.

(b) In a submission dated January 28, 2003, CPN raised the issue of whether NCRC's application to the Board failed to request necessary relief pursuant to Section 2516 of the Zoning Regulations which allows two or more principal structures on a single record lot in a residential district only by special exception approval. This issue was also raised in a submission from Lindsley Williams, a resident of 3307 Highland Place, NW. NCRC opposed the request for additional relief asserting that the proposed construction of a new building with classroom and indoor motor space is not a principal building but rather an accessory building to NCRC's existing preschool on the property.

(c) By motion filed February 25, 2003, the Applicant requested postponement of the public hearing to permit additional time to meet with the District Department of Transportation ("DDOT"). At the conclusion of the February 25 hearing, the Applicant withdrew the motion as moot.

(d) At the February 25, 2003 public hearing, an issue was raised as to whether the site is exempt from the parking and loading requirements of the Zoning Regulations or whether variance relief was required from Section 2100.6 of the Zoning Regulations. NCRC asserted that the entire site was exempt as a result of the NCRC property being deemed to be a site that is contributing to the Cleveland Park Historic District.

(e) At the conclusion of the February 25, 2003 hearing, the Board determined that variance relief from Section 3202.3 would be required and an issue was raised as to whether this would require an area variance or whether it was a use variance. The parties were requested to address this issue in their testimony and briefs.

(f) At the May 6, 2003 public hearing, a preliminary motion was raised regarding whether the main building on the NCRC property had four stories, and is therefore a non-conforming structure. NCRC opposed the motion and stated that the issue would be addressed in the testimony of its witnesses.

(g) By motion filed June 10, 2003, CPN and other parties in opposition sought to recuse Board member Ruthanne Miller from the case. Since Ms. Miller voluntarily recused herself from the case, this motion was moot.

(h) At the June 24, 2003 public hearing, NCRC filed a motion asking the Board to reconsider the issue of whether the carriage house is a principal structure on the NCRC property. The Board denied the motion.

(i) On October 31, 2003, party opponents Steve Hunsicker, Henry Little, and Badami filed a motion with the Board for additional time in which to present their testimony. The Applicant opposed this motion and argued that the Board had provided ample time in which all parties could present their testimony.

(j) On November 17, 2003, the party opponents (consisting of CPN, Badami, the Beckners, Steven Hunsicker and Henry Little) and ANC 3C filed a motion requesting that the Board provide them an opportunity to cross-examine the DDOT representative regarding the report submitted by DDOT into the record of the case on November 14, 2003. In the alternative, the party opponents requested that the November 14 report be stricken from the record. The Board determined that there was no basis to remove the report from the record, and it did provide the opportunity to comment on the report by written submission. Neither counsel for CPN nor any other party opponent made formal objection for the record at the public hearing to the Board's decision.

Applicant's Case. The Applicant presented testimony and evidence from five witnesses in its direct case and an additional two witnesses in rebuttal: Alexa Halaby, a member of the NCRC Board of Trustees; Charles E. Anthony, a principal in Charles Anthony Architects, recognized by the Board as an expert in architecture; Susan Piggott, Executive Director of NCRC; Pedro Alfonso, a member of the NCRC Board of Trustees and an NCRC parent; Osborne George of O.R. George and Associates, recognized by the Board as an expert in traffic and transportation engineering; Tiffany Williams, NCRC teacher and staff person assigned to monitor the school's carpool operation; and Sgt. Leo Wilson of the District of Columbia Metropolitan Police Department (retired).

Ms. Halaby testified as to NCRC's mission and its history of use of the site. She described the school's inclusion of children with special needs as an important part of that mission. Ms. Halaby noted that approximately 75% of NCRC's population comes from families in the District of Columbia. Its Board of Trustees recently evaluated NCRC's programmatic needs and efficiencies in order to ensure that it could continue to provide the very best in preschool education. The Trustees concluded that the School faces a critical space shortage. The National Association for the Education of Young Children ("NAEYC"), the School's accrediting agency, has recommended a reduction of one to three children in some of the School's group sizes. Ms. Halaby testified that in response to the need for smaller group sizes, the NCRC Board of Trustees determined that the creation of two new classrooms was imperative. One classroom will be designed for younger children and the other for older children. These new classrooms will be partially filled by taking the "extra" children from the existing classrooms, as recommended by NAEYC. However, that would leave approximately eight children in both of the new classrooms, which is not a developmentally appropriate group size. NCRC's need for the additional ten students comes from their need to make the group sizes in these new classrooms developmentally appropriate. Ms. Halaby testified that the all of the proposed new spaces—two additional classrooms, the indoor motor play space, and the private meeting space where teachers can conduct confidential meetings with parents—are essential to the School's future. Additionally, the renovation to the existing main building will allow the school to remove a classroom from the third floor and provide elevator access to all classrooms for all students with special needs.

Mr. Alfonso, also a member of NCRC's Board of Trustees, testified as to the importance of NCRC's inclusion program for families with children with special needs. His testimony, which was informed by his own experiences as the parent of a special needs child, focused in part on his belief that NCRC offered one of the only opportunities for a special needs child to be

mainstreamed into a class with typically developing children. He also described his personal observations of NCRC's safe and efficient carpool operation.

Mr. Anthony described the three components of the School's plans: an addition to the rear of the main house; a small building (roughly the size of a standard garage) to be used for storage and maintenance and that will replace an existing bike shed; and a new building (the carriage house) containing two new classrooms, indoor motor play space, and a combined music room/library. He also described the changes that were made to the project in response to community concerns; these changes included reducing the size of the new building and placing more of the building below grade, to minimize its visual impacts.

Mr. Anthony also testified as to the uniqueness of the NCRC site, the practical difficulties that would result from having to satisfy a requirement of one record lot for each principal structure, and the process of concept review and approval by the Historic Preservation Review Board ("HPRB"). He further testified that NCRC had originally proposed an addition to the existing playhouse rather than a new building, which would not have resulted in a new "principal structure". Based on comments from both the HPRB and opposing neighbors, NCRC separated the carriage house from the existing playhouse, both physically and visually, thus creating the need for variance relief from the principal structure requirements.

In his testimony, Mr. Anthony also noted that the proposed additions to the NCRC property had been carefully designed to minimize the impact on the outdoor play space so that there would be no objectionable impacts on adjacent or nearby properties. He noted its large size and the fact that no special treatment in terms of screening would be needed. Approximately 80 percent of the large site will continue to be devoted to open space.

Mr. Anthony also provided a square footage summary of the buildings located on the property; a break-down of existing and proposed classroom, administrative and service support space; and photographs showing how the addition to the main building would not have any impact on adjacent properties. Mr. Anthony also described the tree removal plan and pointed out those areas where additional landscaping would be provided along the side property lines. Finally, Mr. Anthony testified that, in his expert opinion, the existing building is a three–story structure, not a four–story structure.

Ms. Piggott testified to the School's 73-year history on the site and described its enrollment history, noting that during the 1980s, NCRC maintained a stable enrollment of between 141 and 145 students. Around 1990, early childhood education research noted the benefits of early childhood intervention, and NCRC lowered its entry age and added an inclusion program for children with special needs. This increased the enrollment to the level between 167 and 171, where it has remained for the past 13 years. Ms. Piggott testified that the school meets all applicable code and licensing requirements of DOH, and that even though the new space would allow the School to add more students, the School has agreed to limit the number of students to 120 children at any one time and has also agreed to an enrollment cap of 181. This agreement was part of a compromise position offered to the community by NCRC in an attempt to arrive at a mutually acceptable proposal.

Ms. Piggott also provided testimony regarding the safe and efficient operation of the School's traffic management plan ("TMP") and described how she and her staff put on orange vests and help unload students from cars and accompany them to the classrooms. She also described the benefits that NCRC provides to the District of Columbia, including serving children with special needs, providing financial aid for many families, and serving as a resource for educators.

Mr. George testified that the proposed application to add ten additional students and increase full-time equivalent ("FTE") staff to 38 would not create any objectionable impact in terms of traffic and parking. He estimated that NCRC's proposal would generate approximately nine additional vehicular trips over the course of the day. Mr. George testified that Highland Place essentially operates as a one-way westbound street, and that its traffic volumes were very low and very typical for a local street. He testified as to the availability of parking in the neighborhood, and noted that between the hours of 10:00 a.m. to 3:00 p.m., generally only 50 to 60 percent of the onstreet parking spaces were occupied. He testified that, based on his personal observations over the course of a year and a half, including approximately 30 site visits, he had observed a safe and efficient carpool operation. He noted that cars lining up for carpool on Highland Place must stand behind a white line that is substantially set back from the curve on Highland Place. It was his opinion that, overall, Highland Place operates in a very safe and efficient manner. He also testified that the city had no record of any traffic accidents associated with the School's use on Highland Place.

Tiffany Williams, an NCRC teacher and carpool captain who has participated in the carpool operations for six years testified as to the operation of the TMP and noted that the School's decision in the Fall of 2003 to extend the drop off time during the morning carpool operation had reduced the number of cars waiting. She also noted that parents are generally obeying the rules and that conditions this year have improved over prior years.

Sgt. Leo Wilson of the Metropolitan Police Department (retired) testified as to his role in the operation of the improved TMP. He consults with NCRC on its TMP and his firm provides trained personnel to assist in the operation of NCRC's carpool. He noted that his personnel have not observed any problems since the start of the school year, and that he had visited the site himself on numerous occasions and observed the safe and efficient carpool operation. Finally, Sgt. Wilson stated that if he were asked to compare NCRC with other schools that he works with, in his opinion there are no traffic-related issues at NCRC.

Government Reports. OP reviewed the application with respect to the enumerated conditions set forth under Section 205. OP filed three written reports dated February 6 and 24, and April 29, 2003, and provided testimony at the September 16, 2003 public hearing. In its February 6 report, OP did not make a recommendation regarding the application, noting that it was awaiting receipt of information from other District agencies. On February 24, 2003, OP submitted a supplemental report recommending denial of the application based on a finding that traffic and parking demands would have an adverse impact. In its report, OP found the application met the other requirements of Section 205 but not those relating to traffic and parking. OP also stated that it would reconsider its recommendation when it received additional information from the Applicant and DDOT. Subsequently, on April 29, 2003, OP filed its Supplemental Report. In that report, OP agreed with the BZA's finding that variance relief was

needed from Section 3202.3, and OP concluded that this was an area variance and that the Applicant met the requirements for this area variance relief. With regard to the transportation impacts, OP referenced the supplemental material filed by the Applicant, as well as DDOT's second report and concluded that it could not say whether the proposal met the standards for approval. Instead, OP recommended a trial period for implementation of the TMP. At the public hearing, the representative of OP testified that he would defer to DDOT on the traffic issues. He also testified that DDOT seems to be satisfied that the improved TMP would work. (Tr. of September 16, 2003 public hearing testimony of A. Jackson p. 292.)

District Department of Transportation. DDOT submitted two reports dated February 5 and April 14, 2003, and also presented testimony by Ken Laden, Associate Director for Transportation Policy and Planning, at the September 16, 2003 public hearing. On November 14, 2003, DDOT also filed in the record an evaluation of the School's TMP operation with the changes put in place in the Fall of 2003. In its February 5, report, DDOT did not support the application due to five transportation safety concerns and it encouraged NCRC to coordinate with DDOT's Traffic Services Administration to develop a safe circulation plan for the drop off and pickup of children. In its April 14 report, DDOT referenced the changes to NCRC's TMP that had been agreed to by the School as a result of meetings with DDOT and the neighbors. In that report, DDOT recommended four alternatives for the BZA in order to ensure the safe operation of the School on Highland Place. These alternatives were: making no changes to the current operation, adjusting NCRC's traffic generation, requiring an improved TMP (the "regulatory solution"), or making Highland Place one way (the "engineering solution"). The representative of DDOT testified at the public hearing that none of these approaches provided a 100% solution but that they did go a long way in terms of addressing traffic safety concerns. DDOT also noted that it would address transportation safety concerns related to the intersection of 34th and Newark Street as a separate transportation safety improvement that was unrelated to NCRC. Finally, DDOT noted that as a result of the 10 additional students and 10 additional faculty and staff "we do not anticipate that the resulting increase in traffic would significantly worsen traffic conditions in the neighborhood." At the public hearing, Mr. Laden noted that his concern with the regulatory solution was whether it could be implemented, monitored and enforced. Subsequently, on November 14, 2003, DDOT submitted completed evaluation forms that detailed the findings of a DDOT representative who witnessed carpool operations on October 29, November 7 and November 13, 2003. The information on the forms was gathered during unannounced visits to NCRC to observe its carpool operation as modified by the improvements that were put into place as of the fall of 2003. The forms described a smooth TMP operation and a morning peak drop off period that was operated in a very safe and efficient manner.

Department of Health. The Department of Health, Health Regulation Administration, Child and Residential Care Facilities Division ("DOH/HRA/C&RCFD") submitted a report into the record stating that NCRC met applicable licensing requirements. It noted that, with the approval of the proposed new construction, NCRC would have the potential to increase its licensed capacity to 150 children at any one time. This report was attached to the OP report dated April 29, 2003.

Department of Human Services. The Department of Human Services, Office of Early Childhood Education submitted a letter dated February 5, 2003 giving its support for NCRC's

application. The letter noted that 9,952 children in the District of Columbia are on waiting lists for licensed child care centers, and that in Ward 3 alone there are 689 children on such waiting lists.

Metropolitan Police Department. Lt. Roch of the Metropolitan Police Department presented testimony at the October 28, 2003 public hearing at the request of the ANC. Lt. Roch gave his general impression of traffic conditions throughout Cleveland Park by noting that traffic is pretty bad everywhere in Cleveland Park. He also testified that actions such as parents walking children in the street and double parking their vehicles are widespread throughout Cleveland Park and there are a number of other schools where this occurs. He also testified that he has never received any calls concerning any problems associated with NCRC.

ANC 3C Report. The ANC voted on January 27, 2003 to oppose the School's special exception application by a vote of 8-0 with one abstention. Its resolution asked the Board to issue a new order at a later date after the ANC had the opportunity to consult with the neighbors and NCRC on conditions. Its report noted the following concerns: doubling the square footage of the School; the ANC's reliance on statements made during the 1998 case; traffic and noise concerns; and whether the school was in violation of its 1998 conditions. On April 28, 2003, the ANC voted to oppose the variance application by a vote of 9-0. The resolution stated that the School had not sustained the burden to demonstrate that its proposed development would not generate objectionable, adverse impacts due to noise, traffic, number of students, and the number of faculty it would generate. The resolution also stated that there was no exceptional or unique quality of the property to support the variance relief and 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. The ANC also expressed its view that the property could be put to conforming use without a variance and that the new building does not qualify for the parking exemption.

Parties and Persons in Support of Application. Friends of NCRC, the membership of which includes residents of the surrounding neighborhood, was granted party status in support of the application. Katharine Marshall, who lives directly across the street on Highland Place, also was qualified as a party in support of the application. In addition, there were many individuals who testified as "persons" in support of the application. These parties and persons indicated that the School's TMP provides for a safe and efficient carpool operation and they complimented the School for its response to community concerns. Friends of NCRC filed a petition with 205 signatures supporting NCRC and also filed in the record a videotape showing the Highland Place morning carpool operation; this videotape was continuous and unedited. The witnesses testified as to the School's need to upgrade its existing facility and commended the school on its mission of integrating children with special needs into the student body.

Councilmember Jack Evans filed a letter in support of the application.

Parties and Persons in Opposition to the Application. CPN, the membership of which consists of residents of the surrounding neighborhood where the School is located, was granted party status, and opposed the application due to concerns that the new construction and enrollment of ten additional children would exacerbate what it sees as existing traffic problems. CPN asserted that NCRC did not present satisfactory evidence that the property is unique or that

practical difficulties would result from complying with the Zoning Regulations for a single subdivided lot. CPN also asserted that the application should be denied because of alleged violations of the prior order and misrepresentations to the Board in the past and in these proceedings as to the manner in which the School's operations are conducted. CPN provided witnesses who gave testimony about traffic and parking and provided photographs. In addition, CPN proffered the testimony of its traffic consultant, who had not conducted an independent evaluation of NCRC's operation but instead commented on the report prepared by NCRC's expert and also provided analysis based on observations made by CPN's own members. CPN also provided testimony by Robert Schwartz, who was admitted as an expert in architecture and described the potential for negative impacts to the surrounding area from the loss of trees, significant alteration of the drainage pattern, and the removal of shade in the summer and sunlight in the winter.

The Beckners, a party in opposition, presented written submissions and oral and videotape testimony at the October 28, 2003 public hearing. In their testimony, they alleged that existing conditions with regard to the pickup and drop off of children are objectionable and dangerous. They also complained about the use of a public address system at one school event. Ms. Beckner testified that she videotaped NCRC operations over the course of 21 months beginning in February of 2002 and that she had edited that raw footage down to approximately 18 minutes to show NCRC's traffic impacts on the neighborhood. Ms. Beckner testified that even if the traffic were not a problem they would still oppose the project.

Steve Hunsicker, a party opponent, presented oral and written testimony in opposition to the application. He alleged that adverse traffic impacts are generated by NCRC's use of its property and that adverse parking impacts occur on Ordway Street. He also expressed his belief that the construction would result in damage to nearby houses and stormwater runoff issues.

Linda Badami, a party opponent residing at 3207 Highland Place, testified in opposition. Her testimony focused on the proposed addition to the main building, which she claimed would cut off light and eliminate sight lines from various rooms of her house. She also raised concerns that the proposed work would promote soil erosion and the destruction of existing trees.

Henry Little, a party opponent and owner of 3220 Ordway Street, in his testimony expressed concerns about the impacts from the construction of the new carriage house. His testimony focused on the loss of views from his house and the impact on his light and air.

In addition, many individuals testified in opposition to the application. They generally noted their concerns about traffic and parking impacts, the institutionalization of the neighborhood, and the fear that the School was constructing more space than was needed for just the additional ten students.

Councilmember Phil Mendelson also testified in opposition to the application. In his testimony, he explained that he had been a Commissioner of ANC 3C at the time of the 1998 BZA case. There was community opposition to the School back in 1998, but the ANC at that time believed that the potential for adverse impacts caused by NCRC's operations could be addressed successfully through the conditions the ANC negotiated with NCRC.

Councilmember Kathleen Patterson filed a letter in opposition to the application.

Case History. When the case was heard by the BZA on February 11th, a number of preliminary issues were decided. The BZA denied a Motion to Dismiss the application for failure to comply with prior BZA conditions. At that time, the BZA also determined the parties who would participate in the case. The case was continued until February 25th and all parties were asked to address the issue of whether additional relief was required for a second principal structure on a single record lot.

At the hearing on February 25th, the BZA decided that additional variance relief was needed from Section 3202.3 in order to permit a second principal building on a single record lot and NCRC agreed to amend its application accordingly. During that discussion, Corporation Counsel advised the BZA that the relief would be an area variance, but the BZA did not decide the issue. Following the February 25th hearing, NCRC amended the application to request variance relief from §3202.3 and, in the alternative, a parking variance under §2100.6.

At the conclusion of the May 6, 2003 public hearing, the Board provided the parties an opportunity to brief the following legal issues: whether the requested variance relief from Section 3202.3 is an area variance or a use variance; whether the entire site is exempt from the requirement to provide parking or whether variance relief from the parking requirement is necessary; and whether the main building on the NCRC property has more than three stories. The Board indicated that it would decide these issues when the hearings resumed in June.

At the June 24, 2003 public meeting, the Board addressed the remaining legal issues. The Board determined that the variance relief from Section 3202.3 is an area variance. The Board determined that the exemption from satisfying the parking requirements of the Zoning Regulations, Section 2100.5, applies to the entire NCRC site and thus Section 2100.5 does apply to NCRC's application and no variance relief from the parking requirements is needed in this application. The Board also addressed but did not decide the issue of whether the main building on the NCRC property consists of three or four floors. The Board determined that the case should proceed and the parties could provide evidence to address this issue.

FINDINGS OF FACT:

A. The History of the School and Its Use of The Subject Property.

1. Founded in 1928, NCRC provides a collaborative approach to preschool education in an environment that nurtures the whole child, fosters partnerships with families and is committed to the inclusion of children with special needs. A highly trained, multi-disciplinary faculty employs developmentally appropriate practices, supported by ongoing professional development and sound research. Essential to its role as a model of early childhood education is the creation of a diverse, respectful community. Both within and beyond the school community, NCRC seeks opportunities to advocate for all children and their families. (Exhibit 87, Applicant's Pre-Hearing Statement at p. 1.)

2. The property that is the subject of this application, 3209 Highland Place, NW (the "NCRC Property" or "Property"), is located in the Ward Three neighborhood of Cleveland Park. NCRC moved into its current buildings (a large house and small outbuilding known as the

Playhouse) on the Property in 1930. In 1986, the neighborhood was designated the Cleveland Park Historic District, which is listed in the D.C. Inventory of Historic Sites and the National Register of Historic Places. Therefore, any new development on the site is subject to the review and approval of the Historic Preservation Review Board ("HPRB") and the Mayor's Agent for Historic Preservation. (Ex. 87, Applicant's Pre-Hearing Statement at p. 2.)

3. At its January 23, 2003 public meeting, HPRB gave its conceptual design approval to the proposed plans. Since final HPRB approval is required, NCRC requested flexibility from the Board to incorporate final design changes recommended by HPRB. (Ex. 87, Pre-Hearing Statement of the Applicant, p.5.)

4. Since NCRC's use of the property predated the Zoning Regulations, its use was grandfathered even though it is located in a residential zone. In 1998, however, when NCRC applied for an increase in its certificate of occupancy from 90 to 120 children, it was directed to obtain special exception approval from the BZA. The R-1-B Zone District permits child development centers with special exception approval by the Board of Zoning Adjustment pursuant to §205 of the Zoning Regulations. In BZA Case No. 16307, the Board granted special exception relief subject to several conditions. (Ex. 87, Applicant's Pre-Hearing Statement at p. 2, Ex. D.)

5. NCRC has morning and afternoon programs for children ages 2-1/2 to 5 years of age. To operate its program, NCRC requires a license from The Department of Health, Health Regulation Administration, Child and Residential Care Facilities Division ("DOH/HRA/C&RCFD"). Although its certificate of occupancy permits it to have 120 children at any one time, its DOH/HRA/C&RCFD license allows only 108 children at any one time, based on the quantity and square footage of its classrooms. Since NCRC is a preschool that offers morning and afternoon programs as well as a full-day program, and some children do not attend school all day and/or every day of the week, the total number of children presently enrolled in the school is 171, although no more than 108 attend school at any one time. NCRC demonstrated that it meets all DC licensing requirements for its child development center. (Ex. 87, Applicant's Pre-Hearing Statement at p. 3, Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 214.)

6. NCRC also operates a summer camp program. This is a six week program that follows the operation hours and staff patterns substantially the same as those in the school year. The summer camp program is subject to the same conditions as the regular school year program. (Ex. 87, Applicant's Pre-Hearing Statement at p. 3; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 225.)

7. The existing NCRC Property includes a large house, referred to as the main building, a small outbuilding known as the Playhouse, and a bike shed. The School has six classrooms, all of which are located in the main building, on all three floors. The Playhouse is used for multiple purposes, including the library and optional programs (early arrival, lunch, after-school programs), motor skills room, teacher/parent meeting space, music room and occupational and speech therapy spaces. The school has a large outdoor playground that is open to community use after 3:30 p.m. on weekdays, and all day Saturdays, Sundays and holidays,

unless the playground is needed for school purposes during those times. (Ex. 87, Pre-Hearing Statement at p. 2, 10; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 228.)

8. This application involves the renovation of the existing main building, and the construction of an addition to the main building, a garage-sized storage and maintenance building, and a new accessory building that NCRC calls the carriage house. The requested improvements will allow NCRC to create two classrooms for the purposes of ensuring that group sizes are developmentally appropriate, consistent with current educational standards. It will also provide work space for teachers and volunteers as well as spaces where teachers and parents can meet with respect for privacy. The creation of two new classrooms will enable the school to improve its teacher/student ratios and design spaces that are more developmentally suited to the ages of students. Other new spaces will include a multipurpose room suitable for indoor play, development of motor skills, and gatherings of children and parents, as well as a combined music room/library. (Ex. 87, Applicant's Pre-Hearing Statement at p. 3; Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 80; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 214.)

9. Presently, NCRC has 28 full-time and 10 part-time staff. NCRC's Executive Director testified that each part-time person is counted as 1/3 of a full-time person, which results in an FTE count of 32 faculty/staff. (Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 240.) Any person hired for the sole purpose of administering the TMP would not be counted. Once the new classrooms are built, NCRC's FTE number will increase from 32 to 38, using the same formula.[1] (Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 237-241.)

10. Even though the existing BZA order does not limit the number of children on the site at any one time, nor the school's total enrollment, NCRC agreed to two new conditions of approval in this application. One would clearly limit the number of children on the site at any one time to the 120, which is the same number currently permitted under the existing Certificate of Occupancy. The second would limit the enrollment at the school to 181; however, because the private school admissions process is not an exact science, NCRC requests in its proposed conditions of approval the flexibility to exceed this number by up to 2% (not more than 4 students) in a given year. Similarly, NCRC's summer camp would be subject to an identical enrollment cap of 181 plus the 2% flexibility. (Ex. 87, Applicant's Pre-Hearing Statement at p. 7; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 214.)

11. Beginning in January of 2002, when it formally announced its plans for this application, NCRC began a process of community forums that included more than 25 meetings with neighboring residents and community organizations. As a result of this dialogue with the community, and in an attempt to arrive at a mutually acceptable proposal, many changes and improvements were made to NCRC's proposed design. These include:

- A reduction in the square footage of the entire project, including an approximately 40% reduction in the Carriage House's footprint and the

[1] NCRC notes that its December 15, 2003, submission of proposed Conditions to the BZA erroneously uses a different formula for calculating FTEs. The formula used in this submission is based on the information in the record.

elimination of one classroom space and another room designed for work with children in small groups;

- A reduction in the proposed increase in the number of additional students from 19 to 10;
- Increased separation between the Carriage House and the existing Playhouse;
- Elimination of proposed on-site paved parking areas;
- Elimination of a covered walkway linking the Carriage House to the Playhouse;
- Moving the mechanical equipment to the roof of the addition to the main building, away from the existing location near the neighbors, and adding a mansard roof to conceal that mechanical equipment both visually and acoustically;
- Reducing the height and size of the storage and maintenance building; and
- Revising the Ordway Street elevation with regard to the size and design of the windows.

(Exhibit 87, Applicant's Pre-Hearing Statement p, 4-5; Excerpt of Tr. of May 6, 2003 public hearing, testimony of A. Halaby p. 23-24; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 224.)

B. The Proposed Plans for Expansion of the Child Development Center Use.

12. For the last 73 years, NCRC has operated its preschool program within the same amount of space. It has done so even though the program has changed over time in response to the needs of the children of the community. During the 1980s, the school maintained a stable, total enrollment of between 141 and 145 students. Some students attended in the morning and some in the afternoon. In 1990, research in several areas brought about changes to NCRC's program. The first of these was the idea that early intervention could make a big difference in a child's later school success. To that end, NCRC added its inclusion program for children with special needs and lowered its entry age to two and one-half years. This brought enrollment to a total of between 167 and 171 children and it has remained the same since. NCRC also added staff to work with the children with special needs, as well as their parents and teachers. It now has a speech therapist, an occupational therapist, and a counselor. (Ex. 218 Chart of NCRC enrollment; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 212-213.)

13. Additional research in the area of motor development also influenced NCRC's program. NCRC learned that motor activities improve not only physical development but brain development for later learning. Accordingly, it hired a part-time motor teacher to carry out the goals of this program. (Ex. 137, Supplemental Statement of the Applicant, p. 2.)

14. NCRC now plans to add two classrooms and an indoor motor space, as well as a combined music room/library. The building designs have been reviewed and approved in concept by the Historic Preservation Review Board. (Excerpt of Tr. of May 6, 2003 public hearing, testimony of A. Halaby p. 25-27; Excerpt of Tr. of May 6, 2003 public hearing, testimony of . Anthony p. 79-80, 82-83.)

15. There are several advantages to the new plan:

(1) By adding two classrooms, it will allow NCRC to reduce the number of children in each class, creating developmentally appropriate group sizes.

(2) Spaces will open up at the school for ten new children, addressing a serious citywide shortage of preschool spaces as identified by the Department of Human Services.

(3) By eliminating the classroom from the third floor of the existing building and by adding an elevator, NCRC is able to provide greater access and accommodations for its special needs students. And in the case of a fire or other emergency, the safety of all students will be enhanced by eliminating classroom space on the highest building level.

(4) The indoor motor play space provides an opportunity for students to play indoors during inclement weather and motor activity has been demonstrated to have a significant impact on a child's intellectual development.

(5) The building location and design maximizes the amount of open space on the site by providing approximately 80% open space even though only 60% is required.

(6) The school can continue to be an important community and city resource for all residents.

(137, Supplemental Statement of the Applicant, p. 3; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 227; Ex. 217; Excerpt of Tr. of May 6, 2003 public hearing, testimony of A. Halaby p. 25-27.)

16. NCRC's inclusion program for children with special needs is unique in that it begins at age two and one-half, and its approach includes having the therapists on staff and working in the classrooms. Based on research, early intervention for these children is vital for their development. NCRC places two to three children with special needs in each classroom along with more typically developing children. NCRC serves a wide range of children with special needs, including children with autism, Down syndrome, cochlear implants, blindness and language problems. (Ex. 137, Supplemental Statement of the Applicant, p. 3, Exhibit A.)

17. Over the last school year, NCRC enrolled 24 children with special needs in its preschool program. During that same time period, NCRC had to turn away 29 children with special needs because of a lack of space. In addition, NCRC also had to turn away 234 of its

typically developing children because of a shortage of space. Thus, there is a critical need for the services NCRC provides. This need is also evidenced by the letter from the Department of Human Services, Office of Early Childhood Education, that noted that 9,952 children in the District of Columbia are on waiting lists for licensed child care centers. Nonetheless, in order to balance the needs of the children in the larger D.C. community with the needs of its neighbors, NCRC has agreed to limit its enrollment to 10 additional children. (Ex. 137, Supplemental Statement of the Applicant, p. 3.)

18. Presently, NCRC has a total enrollment of 171 children in its morning and afternoon programs. This application requests an increase to 181, with 2% flexibility, upon completion of construction of the carriage house. NCRC will agree to a specific condition limiting the total enrollment to 181 (with the two percent flexibility) as well as a condition limiting the total number of children at any one time to 120. Even though the new classroom space could accommodate up to 150 children at any one time, NCRC agrees to limit the number to 120. (Ex. 137, Supplemental Statement of the Applicant, p. 3-4; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 214.)

19. The Board finds that all of the proposed new construction will be in complete conformance with the requirements for the R-1-B Zone District with the exception of the Board's determination that the carriage house is a second principal structure, thus requiring variance relief from Section 3202.3. The building addition and new construction will have a height below the permitted height of 40 feet. The lot occupancy of the buildings will only be approximately 20%, well below the permitted lot occupancy of 40%, and the remaining amount of open space provided with the new construction will be approximately 80%.

C. Code and Licensing Requirements

20. NCRC has been in continuous operation as a licensed child development center since 1930. It is licensed by the DC Department of Health (DOH) and its current license permits 108 children in the morning program and 108 in the afternoon program. DOH filed a report in the record indicating that it has no objection to the application. (Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 214-216; Exhibit 143, OP Report dated April 29, 2003 -- Exhibit 2.)

21. With two additional classrooms, DOH determined that NCRC will be able to accommodate 150 children at any one time. NCRC has agreed, however, to limit the number of children to 120 at any one time. (Exhibit 143, OP Report dated April 29, 2003 -- Exhibit 2.) The Board finds that NCRC meets all licensing requirements under Section 205.2.

D. Traffic and Parking

22. NCRC has been in continuous operation at this site since 1930. There is no history of accidents or safety issues. The current TMP, which was put in place by the Board's order in 1998, includes the use of walkie talkies and school personnel with orange vests to ensure smooth operation of the pick up and drop off of children on Highland Place. The carpool operation takes place only on Highland Place, not on Ordway Street. (Ex. 87, Pre-Hearing Statement p.9; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 218-220.)

23. The transportation consultation firm of O.R. George & Associates performed a traffic study of the area in which the subject property is located and generated a traffic impact analysis of the existing and future conditions and a Traffic Management Plan ("TMP") for the School. The Traffic Impact Analysis and TMP were submitted as part of the School's application. (Ex. 87, Pre-Hearing Statement, Ex. P.)

24. The Traffic Impact Analysis, together with the TMP, demonstrate that the proposed changes to the School will not adversely affect traffic patterns in the vicinity of the site or have an adverse impact on the road network. Mr. Osborne George of O.R. George & Associates testified that the additional students and staff requested by the application will generate approximately nine additional trips over the course of the day. Mr. George testified, and the DDOT representative also confirmed, that this number of trips would have no significant impact on traffic operations in the neighborhood. The Board so finds. (Tr. of September 16, 2003 public hearing, testimony of O. George p. 28, 39, 49, 71-72; Tr. of September 16, 2003 public hearing, testimony of K. Laden p. 280-281.)

25. The improvements to NCRC's Traffic Management Plan, which were developed in consultation with DDOT and the neighbors, provide additional measures in order to ensure a safe and efficient carpool operation. Based on discussions with DDOT, NCRC agreed, among other things, to add ten minutes to the morning arrival time in order to spread out the number of cars and reduce the opportunity for double standing. NCRC also agreed to hire two uniformed personnel to monitor the carpool operation during the peak morning hours. Additionally, NCRC agreed to provide stickers for NCRC cars in order to identify those vehicles and to provide a system for tracking whether those vehicles comply with the School's TMP. NCRC also instituted an escalating system of penalties with the threat of expulsion for any student whose family does not abide by its TMP. All of these changes were put in place by NCRC in the fall of 2003 so that the School could assess the effectiveness of the improvements. (Ex. 137, Supplemental Statement of the Applicant, ex. D; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 221-222; Tr. of November 18, 2003 public hearing, testimony of S. Piggott p. 33-34.)

26. Based on the testimony presented by the School's expert witness, Osborne George, the testimony of Tiffany Williams, an NCRC teacher who monitors the carpool operation, and the testimony of Sgt. Wilson, whose staff oversee the carpool operation, the improvements have made a perceptible difference in the carpool operation. This was confirmed by the supplemental report of the Department of Transportation, which conducted three unannounced site visits over the course of the fall in order to assess the effectiveness of these changes. The Board credits the testimony of Mr. George and DDOT that the TMP improvements made by the School this fall have improved traffic conditions in the vicinity of the School and the site. (Tr. of September 16, 2003 public hearing, testimony of O. George p. 60, 65-66; Tr. of November 18, 2003 public hearing, testimony of O. George p. 27; Tr. of November 18, 2003 public hearing, testimony of T. Williams p. 38; Tr. of November 18, 2003 public hearing, testimony of L. Wilson p. 40, 41, 50, 56; Exhibits 306A and B.)

27. NCRC's Traffic Management Plan requires that all parents, caregivers, and visitors coming to the school must observe a one-way operation (westbound) on Highland Place. The school deploys several staff members along its frontages facing Highland Place and Ordway

Street in order to monitor the drop off and pick up of students. (Ex. 137, Supplemental Statement of the Applicant, ex. D; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 221-222.) While there is a greater level of activity on Highland Place during drop off or pick up of students, the Board finds that this level of activity is typical of a school use, which does require that at certain times of the day, students arrive at and leave from the school. To further reduce traffic impacts, NCRC agreed to schedule admission play sessions and prospective parent tours during non-peak hours, when the carpool is not in operation. (Ex. 137, Supplemental Statement of the Applicant, ex. D.)

28. DDOT testified that the School's TMP addressed many of its concerns. As a way to address opponents' concerns about whether the TMP could be implemented and enforced, DDOT also suggested making Highland Place a one-way street at all times as an alternative. (Tr. of September 16, 2003 public hearing, testimony of K. Laden pp. 277-281.) Many residents, however, expressed their opposition to this one-way street proposal. (Exhibit 136.) The Board notes that NCRC already requires that all parents, caregivers, and visitors coming to the school must observe a one-way operation (westbound) on Highland Place. (Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 219-220.) The Board also notes the additional improvements made to NCRC's TMP in the fall of 2003. Accordingly, the Board finds that there is no need for it to impose the additional requirement of a one-way operation. The Board notes, however, that DDOT has the authority, if it so chooses, to engage in the public process of making streets one way.

29. The parties in support of NCRC's application testified that the School's operations are safe and efficient and that there has never been any question as to the safety of the students. Katharine Marshall, a party in support who lives directly across the street from the entrance to NCRC on Highland Place, testified as to her 30 years of experience living on that street. She acknowledged that while there may be periods of activity when students are dropped off or picked up, the operations are generally safe and efficient. (Tr. of September 16, 2003 public hearing, testimony of K. Marshall p. 383) Friends of NCRC also testified in support of the school's Transportation Management Plan. Additionally, it presented continuous unedited video testimony showing in real time the operation of the morning carpool on Highland Place. (Exhibit 244; Tr. of October 7, 2003 public hearing, testimony of J. Thoren p. 68-70; Tr. of October 7, 2003 public hearing, testimony of A. Large p. 77.)

30. CPN, through expert testimony provided by Steve Peterson, disputed the findings of the School's traffic experts. CPN's expert testified that he believed that the data offered by Mr. George was incorrect, that existing conditions in the area are unsafe and congested, and that any additional students would exacerbate existing traffic problems. (Tr. of October 28, 2003 public hearing, testimony of S. Peterson p. 102.) Witnesses testifying on behalf of CPN expressed their belief that, currently, cars dropping off and picking up students block driveways, double park in the street, and make ingress and egress difficult for the residents of Highland Place and Ordway Street. They further expressed their concerns that the TMP, including the new traffic mitigation measures proposed by the School, will not work and will not be enforced. (Tr. of October 28, 2003 public hearing, testimony of L. Kaufman p. 88; Exhibit 264; Tr. of October 28, 2003 public hearing, testimony of S. Taylor p. 127.)

31. The Board credits the testimony of Mr. George over that of Mr. Peterson. Mr. George personally performed the traffic analysis submitted by the Applicant. In addition, he testified that over the course of a year and a half he made approximately 30 (mostly unannounced) site visits to observe the School's operations. (Tr. of September 16, 2003 public hearing, testimony of O. George p. 55-56) Mr. Peterson offered none of his own data, and conducted no original research or analysis. His entire analysis was based on challenging the data collected by Mr. George, as well as on data collected by neighboring residents in opposition. However, even were the Board to accept the data offered by Mr. Peterson, his own findings demonstrate that over the course of the day, there are only three approximately 15 minute periods— in the morning, at mid-day, and in the afternoon—when cars are waiting to pick up children. (Exhibit 258, exhibits 3A, 3B, 3C; and Tr. of October 28, 2003 public hearing, testimony of S. Peterson p. 109, 138-139.) The Board finds that these limited times of increased vehicular activity do not create an unsafe or untenable situation.

32. CPN witnesses also provided photographs in support of their testimony about traffic and parking problems at the School. (Exhibit 265.) These photographs, however, did not identify which cars were related to the School as compared with resident or commuter cars. The Board notes that the majority of these photographs were also taken prior to the improvements in the TMP implemented by the School in the fall of 2003 and, in at least one case, in the aftermath of Hurricane Isabelle when Highland Place was closed to through traffic.

33. Testimony was also presented by the Beckners in opposition to NCRC's TMP. Their testimony consisted of written, oral, and videotape testimony. Ms. Beckner testified that upon learning of the School's plans for expansion, she immediately began videotaping NCRC's operation over the course of 21 months, and edited 10 hours of raw footage down to approximately 18 minutes purporting to show NCRC's traffic impacts on the neighborhood. (Exhibit 266; Tr. of October 28, 2003 public hearing, testimony of S. Beckner p. 7-8.) The Board finds it difficult to assess the probative value of an edited videotape taken over the course of a significant period of time and reduced to an abbreviated version. Nonetheless, even if the videotape were taken at face value, the 18 minutes presented out of 600 minutes of videotaped activity represents only 3% of the time that traffic issues may occur. The Board finds that this does not present evidence of a significant issue in terms of traffic impacts on the community. Further, the probative value of the videotape is further reduced by the fact that no one can conclusively identify whether individuals shown on the tape who might be making U-turns or blocking driveways are in fact associated with the School's activity. There was testimony by at least one resident in opposition that she herself made a u-turn on the street. (Tr. of October 28, 2003 public hearing, testimony of L. Kaufman p. 170.) The Board also notes that the Beckners testified that even if traffic were not a problem, they would still oppose the project. (Tr. of October 28, 2003 public hearing, testimony of S. Beckner and B. Beckner p. 40.)

34. The Office of Planning deferred to DDOT on the traffic issues, and also suggested that a trial period might be helpful in terms of assessing the efficacy of the changes or improvements to the TMP. (Exhibit 143.) NCRC representatives testified that they had implemented the improvements to their TMP in the fall of 2003. (Tr. of November 18, 2003 public hearing, testimony of S. Piggott p. 34.) The testimony of their rebuttal witnesses—which included Mr. Osborne George, Tiffany Williams, and Sgt. Wilson—established that the improvements to the TMP, including the additional time during the morning peak hours, have

reduced the double standing of cars and made a noticeable difference. (Tr. of November 18, 2003 public hearing, testimony of O. George p. 27; Tr. of November 18, 2003 public hearing, testimony of T. Williams p. 38; Tr. of November 18, 2003 public hearing, testimony of L. Wilson p. 40, 41, 50, 56.) The on-site visits by the Department of Transportation provide further confirmation of this fact. (Exhibits 306A and 306B.) The Board finds that there is no need to impose an additional requirement on the School for a further trial period. The Board further finds that during the course of this proceeding, which has spanned nearly one year, NCRC has demonstrated its commitment to improvements in its TMP and the testimony and evidence of record establish that those changes are effective.

35. Persons and parties in opposition testified that the existing conditions at NCRC were objectionable and had been for many years. The Director of NCRC testified, however, that prior to February 2002, when the School announced its plans for expansion, the School had only received approximately three complaints per year regarding its use. NCRC testified that each time it received a complaint, it immediately took action to correct the situation. (Ex. 87, Applicant's Pre-Hearing Statement at p. 9; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 217.) Lt. Roch of the Metropolitan Police Department also testified that he had received no complaints concerning the School's operation. (Tr. of October 28, 2003 public hearing, testimony of Lt. Roch p. 65.) Likewise, the Department of Transportation noted that it had received no reports of any traffic accidents or unsafe conditions regarding the operation of the School. (Tr. of September 16, 2003 public hearing, testimony of K. Laden p. 279.) The Board finds that, based on the evidence of record, there is no basis to conclude that the School has had a history of traffic or safety problems. The Board also notes that many of the opponents had children who attended the School, and they did not raise any objections until after their children had left the School and NCRC had brought forward its proposed project.

36. The Board credits the testimony of Mr. George and DDOT that the expansion with the proposed TMP will not create adverse traffic impacts for the neighborhood. (Tr. of September 16, 2003 public hearing, testimony of O. George p. 28, 71-72; Tr. of September 16, 2003 public hearing, testimony of K. Laden at p. 280-281.) The Board also finds that none of the opposition testimony demonstrated how an enrollment increase of 10 students (the incremental impact of the proposed expansion) would result in traffic or safety impacts. Rather, the Board finds, based on the testimony of Mr. George and DDOT, that the addition of ten children will have no perceptible impact.

37. Much of the opposition testimony focused on existing conditions, including area-wide issues. As Lt. Roch testified, however, the general impression of traffic conditions in Cleveland Park is that traffic violations occur. (Tr. of October 28, 2003 public hearing, testimony of Lt. Roch p. 55-56.) The Board finds that, for purposes of the special exception, NCRC is not required to show that it can solve area-wide traffic problems; rather only that its proposed increase in enrollment, when combined with the TMP improvements, will not materially increase objectionable traffic, parking or safety conditions. The Board finds that the School's TMP, including the escalating system of penalties and the possible expulsion of students, the use of stickers to identify NCRC cars, and the inclusion of its TMP in all contracts with parents and staff, demonstrates that NCRC has addressed the issues associated with its use.

38. The materials submitted into the record and the testimony on behalf of NCRC established that once the carriage house is built, traffic on Highland Place will be reduced, since more families will be directed to use the Ordway Street entrance. (Ex. 137, Supplemental Statement of the Applicant, p. 5; Tr. of September 16, 2003 public hearing, testimony of O. George p. 63.) Further, by adding students to the full-day programs at the School, the number of mid-day trips also should be reduced. There is no basis in the record to find that the addition of ten children would have an objectionable impact, nor was there any substantial evidence from the opposition on this issue.

39. Since NCRC is a contributing building within the Cleveland Park Historic District, it is exempt from the parking requirements under Section 2100.5. Based on the testimony of NCRC's traffic expert as well as the conclusions of OP and DDOT, the Board finds that there is sufficient on-street parking available for staff and visitors to the School. (Ex. 87, Pre-Hearing Statement ex. P, p.17; Tr. of September 16, 2003 public hearing, testimony of O. George p. 57-58; Tr. of September 16, 2003 public hearing, testimony of A. Jackson p. 285; Tr. of September 16, 2003 public hearing, testimony of K. Laden p. 299.)

E. Outdoor Play Space

40. NCRC has a large area of its site devoted to playground use. When the School is not using the playground, NCRC makes it available for use by neighborhood residents as a community amenity. (Ex. 137, Supplemental Statement of the Applicant, p. 6; Tr. of June 24, 2003 public hearing, testimony of S. Piggott p. 228.)

41. Over the course of its more than 70-year history, NCRC is unaware of any objectionable impacts from or any complaints regarding its outdoor play space area. The area is large and well-removed from neighbors. (Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 83-84.)

42. There was testimony by the Beckners that on one occasion the School created a noise impact by its use outdoors of a sound amplification system. (Tr. of October 28, 2003 public hearing, testimony of S. Beckner p. 16.) The Board has addressed this issue in the conditions of approval.

F. Special Treatment in the Way of Design, Screening of Buildings or Planting and Parking Areas

43. No special treatment is required for the new construction. The property is of significant size, with substantial open space and has adequate screening. (Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 104-105.)

44. The HPRB has also reviewed and approved in concept the design as compatible with the historic district and site. Further, as part of its final approval by HPRB, the School is required to file a detailed landscaping plan. (Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 105-106; Tr. of November 18, 2003 public hearing, testimony of C. Anthony, p. 17.)

45. Even with the new construction, the lot occupancy of the site will only be approximately 20%, whereas the regulations permit a lot occupancy of 40%. Approximately 80% of the site will continue to be devoted to open space. (Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 84.) The Board finds that the Applicant satisfies Section 205.6 of the Regulations.

46. The Board finds that NCRC does not use an off-site play area and also that there is no other child development center within the square or within 1,000 feet. (Ex. 137, Supplemental Statement of the Applicant, p. 6.) Thus, Sections 205.7 and 205.8 of the Regulations are not applicable to this application.

G. Variance Relief from the Principal Structure Requirements of the Regulations

47. The NCRC property is located in the Cleveland Park Historic District, which has written into its designation the contour and historic topography of the district. The NCRC property is the largest site in the neighborhood by a substantial amount, comprising 45,000 square feet. The next largest lot size on Highland Place is approximately 31,000 square feet, and the average lot size is significantly smaller. (Ex. 137, Supplemental Statement of the Applicant, p. 9; Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 83-84.)

48. The site is unusual in that it is a through lot with significant grade changes from Highland Place, which is up on a hill, to Ordway Street, which drops significantly. The site is also unusual in that it is improved with three existing buildings, two of which are deemed contributing to the district – the 1905 main building (a Colonial Revival house) and the 1915 playhouse. (Ex. 137, Supplemental Statement of the Applicant, p. 9; Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 84.) Finally, the site is also unusual because it has open access to both Highland Place and Ordway Street.

49. The NCRC property is unusual in that it includes a very large playground and significant open space. Even with the proposed construction, approximately 80% of the site will continue to be devoted to open space. (Ex. 137, Supplemental Statement of the Applicant, p. 9; Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 84.)

50. HPRB has granted conceptual design approval for the proposed renovation and new construction. (Ex. 137, Supplemental Statement of the Applicant, p. 10; Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 84.)

51. The Board finds that the NCRC property is unique by reason of its exceptional size, shape, topography or other extraordinary and exceptional situation or condition.

52. NCRC has used the entire property since 1930 as a child development center. NCRC has always utilized the multiple buildings on the NCRC property for child development center use without being required to have separate record lots for each building. (Ex. 137, Supplemental Statement of the Applicant, p. 10.)

53. In 1998, NCRC obtained special exception relief to increase its certificate of occupancy and was not required to obtain variance relief from §3202.3 at that time. Both the

main house and the playhouse were existing in a single record lot at that time and both were used for school use. (Ex. 137, Supplemental Statement of the Applicant, p. 10.)

54. NCRC originally proposed to construct the carriage house as an addition to the existing playhouse which, under the Zoning Regulations, would not require variance relief. (Ex. 137, Supplemental Statement of the Applicant, p. 10.) The HPRB staff recommended visual separation of the buildings above grade and the HPRB recommended further that the connector piece be eliminated. (Ex. 137, Supplemental Statement of the Applicant, Exhibit I; Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 86-88.) This action separates the building and creates the need for the variance relief.

55. Requiring NCRC to create separate record lots for each of the principal structures on the property will result in an exceptional practical difficulty in that it will require the "carving up" of this large, predominantly open and wooded lot in a historic district. Each of these lots would be required to satisfy all applicable Zoning requirements, including lot occupancy, side yard and rear yard requirements. Satisfaction of these requirements not only would pose an exceptional practical difficulty for NCRC, but it would also very likely diminish the open and wooded setting that currently exists on the site. To attempt to comply with the Zoning requirements, the carriage house would be pushed further back into the lot with significant grade changes to the existing slope of the site. There would be a loss of mature trees and, to meet light and air requirements for the new space, additional above grade construction with greater impacts on adjacent properties. (Ex. 137, Supplemental Statement of the Applicant, p. 10; Tr. of November 18, 2003 public hearing, testimony of C. Anthony, p. 11-14.)

56. NCRC currently does not have any parking spaces on the property. Were the lot subdivided, the creation of parking spaces would result in numerous negative impacts on the property including the removal of grass and wooded areas, loss of playground space, loss of pervious ground cover, and potential negative aesthetic impacts on both Highland Place and Ordway Street. (Ex. 137, Supplemental Statement of the Applicant, p. 10; Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony, p. 89-90.)

57. The Board finds that by reason of the aforementioned unique or exceptional condition of the NCRC property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulty upon the owner of the property.

58. The Board finds that granting the variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

59. NCRC's satisfaction of the special exception requirements to operate a child development center in the R-1-B District (§205 and 3104.1), including the proposed conditions of approval that have been submitted by NCRC, is evidence that the proposed continued use of the NCRC property for a child development center will satisfy this standard.

60. The requested variance would permit continued use of this site as a preschool -- the use to which it has been devoted for 73 years. (Ex. 137, Supplemental Statement of the Applicant, p. 11.) Conversely, without the requested variance, NCRC's continued use of the site

as a preschool would be in jeopardy, which would have negative implications for children throughout the District of Columbia.

61. The requested variance would also permit renovation and reuse of contributing buildings in an historic district and help preserve the open space and topography of the site. (Ex. 137, Supplemental Statement of the Applicant, p. 11.)

H. Impact on Use of Neighboring Property

62. NCRC's property is one of the largest sites in the Cleveland Park Historic District with over one acre of available land area. Even with the proposed new construction, the School will continue to have approximately 80% of its site devoted to open space. (Ex. 137, Supplemental Statement of the Applicant, p. 9; Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 84.) The Board finds that the proposed design of the buildings, the maximizing of open space on the site, and the sensitivity of the project design to the character of the historic district eliminate any potential objectionable impacts on neighboring property.

63. While Ms. Badami testified that the proposed addition to the main building might have an objectionable impact on the light and air to their property, the Board finds that the proposed height and scale of the addition, which would be permissible by right if it were a single family residence, will have no such objectionable impact. (Tr. of June 24, 2003 public hearing, testimony of C. Anthony p. 159.) The Board further finds that the addition will improve the existing situation by relocating air conditioning equipment from the side of the existing building to the roof where it will be screened from view and mitigated as to noise. (Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 105.)

64. With regard to the Littles' property, the Board notes that the carriage house is set back a greater distance than the required 8-foot side yard from the neighboring property line and that the height and scale of the carriage house are in keeping with the existing buildings on the street. (Ex. 191; Tr. of June 24, 2003 public hearing, testimony of C. Anthony p. 158.) The Board also finds that the Applicant's proposed plans to provide additional landscaping and screening will further ensure the lack of any objectionable impact. (Tr. of November 18, 2003 public hearing, testimony of C. Anthony p. 17, Exhibit 302.)

65. The Board also notes that the Applicant will be required as part of its final permit review by the Historic Preservation Review Board to present a landscaping plan that addresses the impact on the trees as well as the impact on stormwater and grading. (Tr. of November 18, 2003 public hearing, testimony of C. Anthony p. 17.) The Board finds that this will provide the neighbors with ample opportunity to ensure that their concerns are addressed. In addition, the Applicant must demonstrate attentiveness to stormwater, construction and other site-related issues during the city's permitting process. (Tr. of June 24, 2003 public hearing, p. 25-26.)

I. ANC 3C

66. ANC 3C filed three resolutions opposing the application. (Exhibits 96, 142, and 189.) In its filings and testimony, the ANC raised the following concerns: the doubling of the size of the buildings; the ANC's reliance on statements made during the 1998 case; traffic and nose impacts; whether the School was in violation of its 1998 order; that there is no exceptional

or unique quality about the property that satisfies the variance test; that NCRC has not shown that the property could not be put to a conforming use without a variance; that there is no unnecessary burden placed on NCRC by continuing to operate under current conditions or complying with the zoning requirements for a second record lot; that granting a variance could result in detriment to the public good because it would allow NCRC to build a new principal structure and avoid side yard, rear yard, and other residential zoning requirements; and that the proposed addition and increase in enrollment and faculty would be an increase in intensity of use, and would not qualify for the historic district exemption from the parking requirements. (Tr. of October 7, 2003 public hearing, testimony of J. Welsh at p. 13-16, 19-21, 23-24, 25-29.)

67. The Board has carefully considered the recommendations and reports of the ANC. The Board finds that the size of the new construction is not germane to the special exception. Further, even with the new construction, NCRC will still be far below the permitted lot occupancy of the site. (Excerpt of Tr. of May 6, 2003 public hearing, testimony of C. Anthony p. 84; Ex. 137, Supplemental Statement of the Applicant, p. 6.) As to the ANC's concern that NCRC represented in 1998 it would not increase its size, enrollment or staffing throughout the 8-year term of the order and that the neighbors relied on that, the Board finds that there is nothing in the previous BZA order that limits NCRC's right to file the subject application nor, indeed, does the Board have the authority to include such a limitation. As to the ANC's concern that the 1998 special exception only entitled the School to an enrollment of 120 students, the Board addressed this issue during the course of the hearings and determined that there was no limitation in the prior order on the number of students, let alone a restriction on enrollment.

68. With regard to the ANC's concerns that traffic continues to be a serious problem, the Board concludes that the School's TMP provides for the safe dropping off and picking up of students and that the TMP also addresses any potential for objectionable traffic impacts caused by parents or staff. The Board notes that ANC Commissioner Welch testified that his opposition was based on the opponents' video even though he testified that during his own site visits he observed a "calm automotive operation" that was "very good and acceptable". (Tr. of October 7, 2003 public hearing, testimony of J. Welsh at p. 20, 38.) As stated in these Findings of Fact, the Board credits the testimony of Osborne George that the School's TMP addresses any concerns as to traffic impacts associated with the School's carpool operation. (Tr. of September 16, 2003 public hearing, testimony of O. George p. 60, 65-66; Tr. of November 18, 2003 public hearing, testimony of O. George p. 27.) The Board also credits the testimony of Mr. George, the Office of Planning and DDOT that there is ample parking in the neighborhood to meet the needs of NCRC staff and visitors. (Ex. 87, Pre-Hearing Statement ex. P, p.17; Tr. of September 16, 2003 public hearing, testimony of O. George p. 57-58; Tr. of September 16, 2003 public hearing, testimony of A. Jackson p. 285; Tr. of September 16, 2003 public hearing, testimony of K. Laden p. 299.) The Board also found the testimony of Lt. Roch and Sgt. Wilson to be persuasive in that both testified as to area-wide conditions and the absence of any complaints or problems associated with NCRC's operation. (Tr. of October 28, 2003 public hearing, testimony of Lt. Roch p. 55-56; Tr. of November 18, 2003 public hearing, testimony of L. Wilson p. 40, 41, 50, 56.) The ANC did not present any evidence of a history of complaints nor did the ANC present any expert testimony to rebut the expert testimony of Mr. Osborne.

69. With regard to the ANC's concern that NCRC events have generated unacceptable noise levels, and that the new building would create adverse impacts resulting from diminished

sunlight, commercial air conditioning equipment and noise, in its findings and conditions, the Board has addressed each of these issues. The Board finds that there was no evidence in the record as to a history of objectionable noise impacts with the exception of the one pumpkin party event, and the Board has addressed, in its conditions, noise impacts from the use of outdoor amplification equipment. The Board also finds that the design of the building and the relocation of the air conditioners to the roof, which will be visually screened, as well as insulated for noise, improves the existing condition and addresses any noise impact. The Board also finds that the design of the building will not adversely impact neighboring property in terms of diminished sunlight or visual impacts. Finally, as to the ANC issue as to whether the School was in violation of the 1998 BZA order by having 38 faculty, based on the testimony of record, the School has an existing faculty count of 32 FTE and the 38 FTE number would not be in place until the new classrooms were ready. The Board also finds that there was no condition in the 1998 BZA order restricting faculty or staff.

70. As discussed below in its Conclusions of Law, the Board has determined that the NCRC property does qualify for variance relief and finds that the property does have exceptional and unique qualities, which create practical difficulties. In making this conclusion, the Board credits the opinion of the Office of Planning that the School meets the test for a variance from the principal structure requirements. (Exhibit 143 at p. 3-4; Tr. of September 16, 2003 public hearing, testimony of A. Jackson p. 272-274.) As to the ANC's concerns about the increase in intensity of use and whether NCRC is entitled to the parking exemption, the Board concludes that the entire site is entitled to the parking exemption based on the precedents of this Board and the stated intent and language of the Zoning Regulations. (Tr. of June 24, 2003 public hearing, p. 133-148.) Finally, as to the ANC's concern that the variance could result in detriment to the public good because it would allow NCRC to build a new structure and avoid side yard, rear yard, lot occupancy and other residential zoning requirements, the Board finds that the proposed building otherwise complies with all zoning requirements with the exception that it is not located on a separate record lot. The Board recognizes the practical difficulties associated with creating a separate record lot and finds that the applicant meets the variance test. The Board also notes that its conclusion is supported by the Office of Planning. (Exhibit 143 at p. 3-4.)

J. Events at the School

71. NCRC testified that over the past 73 years, and continuing today, its operations are not limited to classroom instruction of students but they also include activities and events of the type ordinarily associated with a school. Examples of these activities and events include Back to School Night, Family Work Day, the Pumpkin Party, Community Service Day, the Pajama Picnic, parent/teacher conferences, parent lectures and meetings, and meetings of the Board of Trustees and its committees. (Tr. of May 6, 2003 public hearing, testimony of A. Halaby, p. 45-46; Tr. of June 24, 2003 public hearing, testimony of S. Piggott, p.225.) The Board finds that traditional and limited activities of the School such as those just listed appropriately are permitted as part of the special exception and can occur during evening and weekend hours.

72. NCRC's construction proposal includes a comparatively large space that, according to the school, will be used (among other things) for all-school gatherings that cannot currently occur in the existing facility. Opponents have expressed their concern that NCRC

intends to operate a "conference" center using this space. However, the Board credits the testimony of Susan Piggott that NCRC has only allowed its facilities to be used for conferences at which it invites educators from D.C. public schools and other private schools to participate in workshops focused on sharing best practices and improving the quality of preschool education. Ms. Piggott further agreed that NCRC would conduct conferences not more than three times per year, subject to the following conditions: the School will provide thirty (30) off-site parking spaces for use by attendees of the conference; NCRC will provide at least three uniformed officers to regulate traffic operations; such conferences will be scheduled on days when school is not in session. (Tr. of June 24, 2003 public hearing, testimony of S. Piggott, p.225-227.) Based on the testimony provided by NCRC, the Board finds that this limited use of NCRC's site would not result in any objectionable impacts. The Board also finds that it is an accessory use to the principal school use.

K. Future Plans

73. The parties in opposition expressed their concern that the size of the proposed new construction would permit additional expansion by the School in the future. NCRC testified that it was willing to limit its application to the ten additional students. (Tr. of June 24, 2003 public hearing, testimony of S. Piggott, p.214, 227.)The Board finds that it has no authority to bind the Applicant by restricting expansion in the future. Based on the testimony and evidence of record, NCRC proposes to increase its enrollment by ten students and an enrollment cap will be a condition of the Board's order. Any plans for future expansion would require a new application and a new public hearing; the Board and the community can assess any impacts from that expansion should that point in time ever arrive.

74. The Board finds that NCRC has made a persuasive case for its need for additional classroom space, indoor motor play space, and meeting room space for teachers and parents. (Tr. of May 6, 2003 public hearing, testimony of A. Halaby, p. 26-27; Tr. of June 24, 2003 public hearing, testimony of S. Piggott, p.226; Ex. 87 Pre-Hearing Statement of the Applicant, p.5-6.)

L. Harmony with the Zoning Regulations and Map and the Comprehensive Plan

75. The proposed School building is well within the height, lot occupancy and bulk requirements for the R-1-B Zone District. (Ex. 87 Pre-Hearing Statement of the Applicant, exhibit F.)

76. The Comprehensive Plan Generalized Land Use Map designates the site as low-density residential. Schools are considered to be part of the fabric of a residential community. As the Comprehensive Plan notes, many residential neighborhoods also include commercial and institutional uses, such as schools, which contribute to the character and enhance the livability of the communities. 10 DCMR § 102.3. Moreover, public schools are permitted by right in the R-1-B zone district.

77. Private schools are considered to be uses that are compatible with residential neighborhoods, provided conditions are met with respect to minimizing possible negative impacts. (Ex. 87 Pre-Hearing Statement of the Applicant, p.7-8.)

78. Given the site's 73 history of use, the design of the proposed new construction and the nature of the surrounding neighborhood which includes other institutional uses, the Board finds the proposed site is in harmony with the Zoning Regulations and Map and is not inconsistent with the Comprehensive Plan.

CONCLUSIONS OF LAW

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code § 5-424(g)(2)), to grant special exceptions as provided in the Zoning Regulations. NCRC applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 205 to renovate and expand an existing child development center. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

NCRC is a child development center as that term is used in the Zoning Regulations. To meet its burden of proof under Subsection 3104.1, the applicant must demonstrate that the proposed school use would meet the special exception conditions listed in Section 205; that it would be in harmony with the general purpose and intent of the Zoning Regulations and Maps; and that it would not adversely affect the lawful use of the neighboring property.

The Board's discretion in reviewing an application for a special exception for a private school is limited to a determination of whether an applicant has complied with the requirements of Sections 205 and 3104.1. If the applicant meets its burden, the Board must ordinarily grant the application. *See The Washington Ethical Society v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 18 (D.C. 1980). As stated in *French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023 (D.C. 1995), "The Board's limited function [in a special exception case] is to assure that the regulations adopted by the Zoning Commission are followed. . . ." *Id.* at 1034, quoting *Tenley & Cleveland Park Emergency Committee v. District of Columbia Board of Zoning Adjustment*, 550 A.2d 331, 341 (D.C. 1988), *cert. denied*, 489 U.S. 1082 (1989).

As the D.C. Court of Appeals held in *Washington Ethical Society*, when a school applies to the BZA for an increase in its enrollment, the test is the incremental impact from the additional students and the evidence in the record must be sufficient to convince reasonable minds of its adequacy.

Further, the Board is required under D.C. Code §412.4 to give "great weight" to OP recommendations. The Board is also required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Code §1-261(d)) to give "great weight" to the resolution of the ANC for the area within which the subject property is located.

MOTIONS

During the course of these proceedings, the BZA ruled on various motions filed by the parties in this case. The record establishes that the Board provided an opportunity for all interested parties to fully brief the issues, to present oral argument and to respond to questions from the Board in its disposition of the motions.

The motions by CPN to dismiss NCRC's application and its request for relief declaring that NCRC be estopped from seeking an increase to its enrollment were denied by the Board. CPN argued that its motion to dismiss should be granted because of NCRC's alleged violations of the conditions established by the prior BZA Order No. 16307. As a result of these alleged violations, CPN requested that the Board grant the declaratory relief finding that NCRC is in violation of Order No. 16307, as it has an enrollment exceeding 120 students and a staff of over twenty-eight (28), ordering NCRC to bring itself into compliance, and barring NCRC from refiling the instant application or filing an application for new construction and increased enrollment until six (6) months prior to the expiration of Order No. 16307 (March 2007). (Ex. 67, p. 7-9, 12; Tr. of Feb. 11, 2003 public hearing at p. 233-239.) The Beckners concurred in CPN's Motion. (Ex. 82 and 92.)

NCRC opposed the Motion, asserting that the Board has no authority to entertain or grant a request for declaratory relief, CPN's motions imply an enrollment cap condition in a prior BZA order which in fact does not exist, and NCRC is in full compliance with all conditions of its prior special exception approval. (Ex. 69, p.1; Tr. of Feb. 11, 2003 public hearing at p. 251-252, 255-256.)

At the February 11, 2003 hearing, the Board heard arguments from counsel for Cleveland Park Neighbors and NCRC regarding the Motion for Declaratory Relief and the Motion to Dismiss. The Board also heard from the representative of the Office of Corporation Counsel who stated that while the Board has authority to dismiss a case, the D.C. Administrative Procedures Act, Section 208, does not allow declaratory relief in a contested case, which special exception cases are considered to be. In addition, the representative of the Office of Corporation Counsel noted that Section 2508 of the Administrative Procedures Act makes declaratory relief appropriate essentially in two instances, in order to remove uncertainty as to the application of a statute or regulation, or to terminate a controversy, and that neither of those apply in this case. The Board agreed with the arguments of the representative of the Office of Corporation Counsel and denied the motion for declaratory relief. (Tr. of Feb. 11, 2003 public hearing at p. 259 – 261.)

With regard to CPN's motion to dismiss NCRC's application, the Board determined that while there may be ambiguity in the prior order, there was no express condition in BZA Order No. 16307 that established a cap on enrollment and staff levels. (Tr. of Feb. 11, 2003 public hearing at p. 271, 280, 283, 284.) The Board also noted that issues related to the enforcement of prior orders and conditions are not something that should lead to the dismissal of an application, as there are other avenues for aggrieved neighbors to address concerns regarding enforcement of prior BZA orders and conditions. (Tr. of Feb. 11, 2003 public hearing at p. 282.)

In a submission dated January 28, 2003, CPN raised the issue of whether NCRC's application to the Board failed to request necessary relief pursuant to Section 2516 of the Zoning Regulations (which allows two or more principal structures on a single record lot in a residential district only by special exception approval). (Ex. 86, p. 6.) NCRC argued that special exception relief pursuant to Section 2516 was not necessary because the proposed construction of a new building that includes classroom and indoor motor space is not a principal building, but rather an accessory building to NCRC's existing preschool on the property. Counsel for NCRC noted past decisions of the Board (including the BZA approved applications for The Lab School, The Maret School, The National Cathedral School, The Washington Ethical Society, the Levine School, the Naylor Road Preschool, and the Washington International School) that did not require relief from Section 2516 even though the BZA was approving use and construction of multiple buildings on single subdivided lots. (Ex. 113.)

At the February 11, 2003 public hearing, the Board heard discussion on this issue and requested that the Parties to this case submit briefs as to the applicability of Section 2516 to the present case. In addition, the Board heard discussion on whether proper notice of the application was made to the community as a result of the failure to mention Section 2516 in the public hearing notice. (Tr. of Feb. 11, 2003 public hearing at p. 284 - 295.)

In its public hearing on February 25, 2003 the Board heard oral argument from counsel for NCRC and CPN and determined that the proposed new Carriage House on the NCRC property is a principal structure rather than an accessory structure. (Tr. of Feb. 25, 2003 public hearing, p. 234, 235, 238.) However, the Board also determined that special exception relief from Section 2516 was not the appropriate relief that NCRC should be seeking; rather, NCRC should request a variance from Section 3202.3 of the Zoning Regulations which prohibits more than one principal structure on a single record lot. (Tr. of Feb. 25, 2003 public hearing, p. 239-243.) NCRC agreed to amend its application to request variance relief from Section 3202.3 of the Zoning Regulations. (Tr. of Feb. 25, 2003 public hearing, p. 246.)

During the February 25, 2003 hearing an issue was raised as to whether the variance relief from Section 3202.3 of the Zoning Regulations was a request for an area variance, or whether it was a use variance. (Tr. of Feb. 25, 2003 public hearing, p. 265-270.) An issue was also raised as to whether the entire site is exempt from the parking and loading requirements of the Zoning Regulations. (Tr. of Feb. 25, 2003 public hearing, p. 181, 248-263.)

At the June 24, 2003 public meeting, the Board addressed these issues. On the question of whether the variance relief from Section 3202.3 is an area variance or a use variance, the Board determined that such variance relief is an area variance. (Tr. of June 24, 2003 public hearing, p. 128- 131.) The Board noted that the child development center use on the property is a permitted use and that the requirements of Section 3202.3 go to the structure of the actual building and not the use of the building. Therefore, an area variance is the appropriate relief. (Tr. of June 24, 2003 public hearing, p. 130 - 133.) The Board also noted that its previous decision in BZA Application No. 16693 was in error. (Tr. of June 24, 2003 public hearing, p. 132-133.) The Office of Corporation Counsel provided expert advice to the Board and concurred in the Board's determination.

With regard to the issue of whether the exemption from satisfying the parking requirements of the Zoning Regulations, Section 2100.5, applies in this case, the opposition argued that the new carriage house was a separate building and therefore was not entitled to the exemption enjoyed by the existing main building and playhouse. (Ex. 192, p. 13-15.) After extensive briefing and oral argument (Exhibits 191 and 192), the Board determined that the exemption applied to the entire site. The Board noted that NCRC has received certification from the State Historic Preservation Officer that the buildings contributed to the character of the Cleveland Park Historic District and that to determine that the new building required parking would make Section 2100.5 void or superfluous, as well as contrary to the purpose and intent of that section. Based on the plain language of that section, the Board concluded that NCRC was exempt from the requirement to provide off-street parking spaces. (Tr. of June 24, 2003 public hearing, p. 133-148.)

An issue was also raised as to whether the main building on the NCRC property has only three stories or whether the addition required variance relief. (Ex. 175, Excerpt of Tr. of May 6, 2003 public hearing, p. 11-13.) The Board discussed the fact that based on the language of Section 199.1 of the Zoning Regulations, the height of the building is measured from the middle of the front of the building, and that same location determines the number of stories. During the June 24, 2003 public hearing, the Board determined that the parties to this case can present additional testimony on this issue during the course of the public hearings. (Tr. of June 24, 2003 public hearing, p. 149-151.) Based on the plain language of Section 199.1 of the Zoning Regulations and the information presented by the Applicant's architect (Tr. of June 24, 2003 public hearing, testimony of C. Anthony p. 164-166), the Board determines that the existing building is a three-story structure and that no additional variance relief is required concerning the proposed addition.

On October 31, 2003, party opponents Steve Hunsicker, Henry Little and Gaylord Neeley/Linda Badami filed a motion with the Board for additional time in which to present their testimony. (Ex. 267.) At the November 4, 2003 public hearing, the Board denied this motion for additional time. It noted that the Board, in establishing the time limits for the parties in opposition, clearly stated that all such parties needed to coordinate their presentations. In addition, the Board questioned Mr. Hunsicker and Ms. Badami as to whether the issues that they planned to discuss would be similar to issues already addressed by the previous opposition parties. The Board determined that the issues Mr. Hunsicker and Ms. Badami proposed to address had been significantly dealt with and that the remaining time allotted to these parties would be sufficient to address any new insights on these issues or other issues. (Tr. of November 4, 2003 public hearing, p. 9, 12-15.)

On November 17, 2003 the party opponents (consisting of CPN, Gaylord Neeley/Linda Badami, R. Bruce and Sallie R. Beckner, Steven Hunsicker, and Henry Little) and ANC 3C filed a motion requesting that the Board provide them an opportunity to cross examine the DDOT representative regarding the "District Department of Transportation's Evaluation of NCRC TMP Operations" that was submitted into the record of this case on November 14, 2003 (the "November 14 Report"). In the alternative, the Party opponents requested that the November 14 Report be stricken from the record. (Ex. 320 and 321.) The Board determined that the November 14 Report from DDOT was self-explanatory and that cross-examination was not necessary for a full and true disclosure of the facts. Therefore, the Board determined that there

was no basis to remove the November 14 Report from the record. The Board did provide the opportunity for all parties to comment on the November 14 Report by written submission. Neither counsel for CPN, nor any of the party opponents, objected to the Board's decision. (Tr. of November 18, 2003 public hearing, p. 151-155.)

Satisfaction of Variance Standard from Section 3202.3

The Applicant is also seeking variance relief from Section 3202.3 of the Zoning Regulations in order to allow the construction of an additional principal structure on a record lot. The Board finds that the Property is subject to an extraordinary or exceptional situation due to a combination of several factors: its history of use, its large size, its significant grade changes, its existing historic buildings, and its location within an historic district. The Board also finds that a practical difficulty does exist in terms of complying with the subdivision requirements. The Board also finds that granting variance relief from the requirements of 11 DCMR §3202.3 will not adversely impair the intent, purpose or integrity of the Zone Plan.

The Board believes that the D.C. Court of Appeals decisions in *National Black Child* and *Monaco*, are pertinent to the present case. In these cases, the Court determined that the BZA is allowed to apply a more flexible standard when a public service or non-profit entity is the applicant. As a result, the needs of the institution can be considered as "other extraordinary and exceptional situations."

As the court stated in *Monaco*,

> When a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same site, then the BZA does not err in considering the needs of the organization as "other extraordinary and exceptional situation or condition of a piece of property."

In this case, the evidence clearly establishes that there is a need for NCRC to expand its facilities after 73 years of use of the existing buildings on campus. Even the opposition testified as to the School's need for space. There is also ample evidence in the record from NCRC as to its need for the new space.

There was a suggestion made that self-created hardship precluded the variance relief. The Board notes that self-created hardship is not applicable to area variance cases. The Board also finds that the Applicant has established that the property was historically one large lot, not separate lots that were subdivided by the School into one.

ANC 3C

ANC 3C opposed the application based on the concerns enumerated in finding of fact 66.

The Board has carefully considered the recommendations and reports of the ANC regarding traffic and parking impacts. However, as discussed above in the Findings of Fact relating to traffic impacts, the Board has credited the opinion of the School's traffic expert, as well as the recommendations and testimony of DDOT, that the School can be expanded in a manner that would not create objectionable traffic conditions. It also agrees with DDOT that the proposed mitigation measures will improve existing conditions. In addition, the School has agreed to the imposition of a stringent set of conditions. The Board has incorporated these conditions in its Order.

The Board further credits the testimony of Mr. Osborne George that the proposed TMP will not cause any unsafe situations for vehicles or pedestrians. The Board also found the testimony of Sgt. Wilson and NCRC teacher Tiffany Williams to be extremely persuasive. Both testified as to the safe and efficient operation of the School's TMP. The Board credits their testimony. As stated herein, the Board has determined that under the Zoning Regulations no parking is required and the building meets the variance requirement for the second principal structure.

Based upon the Findings of Fact, and as discussed below, the Board has given great weight to the ANC recommendations and has concluded that the use of the subject property for the expansion of a child development center, as conditioned by the Board, is in harmony with the Zoning Regulations and Map and the use is not inconsistent with the Comprehensive Plan of the District of Columbia.

Satisfaction of Section 205

With regard to the specific requirements of Section 205 of the Zoning Regulations, the Board concludes that NCRC is capable of meeting all code and licensing requirements. The Board heard testimony from the Executive Director of NCRC that the Applicant has obtained all necessary approvals and waivers from DOH. The Board also notes that DOH submitted a report into the record of this case stating that, with the approval of the proposed additional space requested in this application, NCRC could increase its licensure capacity to 150 children at any one time. As noted in the record of this case, NCRC has agreed to continue to limit the number of students on site at any one time to 120, despite the potential licensure capacity of 150 students. Based on these facts established in the record of this case, the Board concludes that Section 205.2 of the Zoning Regulations has been satisfied.

Based on the Applicant's traffic study and the recommendations of DDOT, the Board concludes that the development of NCRC's site with the additional ten students and additional staff will not alter the traffic volume significantly, provided that NCRC continues its implementation of its Transportation Management Plan. The Board also concludes that NCRC will not create any objectionable impacts in terms of parking. NCRC's traffic consultant, DDOT and the Office of Planning have demonstrated that there is available parking in sufficient quantity within the neighborhood to serve the demand created by staff and School visitors.

The Board notes that while the D.C. Court of Appeals has stated that an agency is not bound to accept expert testimony over lay testimony: "The opinions of qualified experts are not to be lightly disregarded and the probative value of lay opinions is often doubtful." *Washington*

Ethical Society. In this case, the BZA credits the expert testimony of Mr. George and the representatives of DDOT.

The Board finds that the enhanced TMP implemented by the School this fall, with the extended drop-off time in the morning, the identification of NCRC–related vehicles with parking stickers, and the presence of two uniformed personnel in the AM peak period, has resulted in a situation that fully addresses concerns raised by the parties in opposition and some members of the neighborhood as to the potential for the double standing of cars on Highland Place and other potential traffic safety issues on Highland Place. As evidence of the success of the enhanced TMP, the Board notes the rebuttal testimony of the Applicant's witnesses, as well as the submissions of DDOT's site visit traffic evaluation forms on November 14, 2003. The Board also agrees with the findings and determinations by DDOT that approval of the application and the enrollment of 10 additional students will have no perceptible impact on traffic operations in the area surrounding NCRC.

The Board does not believe that it is necessary to implement the engineering solution proposed by DDOT in order to prevent any objectionable traffic or parking impacts on Highland Place. Rather, the Board believes that the implementation of the enhanced TMP has demonstrated that the carpool operations on the NCRC property can be undertaken such that no adverse impacts will occur and there will be no unsafe conditions for picking up and dropping off children at the NCRC property. Therefore, based on the evidence of record in this case, the Board concludes that the Applicant has satisfied Section 205.3 of the Zoning Regulations.

The Board finds that NCRC is a contributing building and site within the Cleveland Park Historic District and is exempt from the off-street parking requirements of Section 2101, pursuant to Section 2100.5. In addition, the Board relies on the evidence and conclusions presented by the Applicant's traffic expert, as well as the opinions of OP and DDOT, that there is a sufficient supply of on-street parking spaces in the immediate area surrounding the NCRC property such that no objectionable impacts on the adjacent and nearby properties exist. Therefore, the Board concludes that the Applicant has satisfied Section 205.4 of the Zoning Regulations.

The Board finds that NCRC's use of the property does not create objectionable impacts on adjacent or nearby properties due to noise, activity, or visual or other objectionable conditions. The Board finds that the proposed application will provide a large playground that is well removed from neighboring properties. The Board finds that the Applicant allowing continued community use of its playground is an amenity to the surrounding community. As to a complaint raised by a neighbor regarding the use of a loudspeaker at the annual Pumpkin Party, the Board notes the Applicant's commitment to the prohibition of a sound amplification system in the future. Further, NCRC has agreed to use a "boom box" that will prevent sounds from having a negative impact on neighboring properties. The Board believes that the issue of potential objectionable noise impacts on neighboring properties has been appropriately addressed with the adoption of a condition in this order. The Board notes that the Office of Planning concurred in this decision. Therefore, the Board concludes that the Applicant has satisfied Section 205.5 of the Zoning Regulations.

The Board believes that no special treatment in the way of design, screening of buildings, creation of planting or parking areas, posting of signs or imposition of other requirements is necessary to protect adjacent and nearby properties. The NCRC property will remain a large, open and appropriately landscaped property. Even with the new construction, the lot occupancy of the NCRC property will remain at approximately 20%, significantly lower than the permitted 40% in the R-1-B District. The Board believes that the proposed Carriage House and the addition to the main building have been appropriately designed by the architect to minimize any adverse impacts on the Beckner, Little, Badami or Ordway Street properties. The Board notes that HPRB has reviewed the design and approved it as compatible with the historic district and site. Further, OP has determined that the proposed new construction will not create adverse impacts on neighboring properties. Therefore, the Board concludes that the Applicant has satisfied Section 205.6 of the Zoning Regulations.

The Board notes that the final two provisions of Section 205, regarding off-site play areas and other child development centers in the area, are not applicable to this case because NCRC does not use an off-site play area and there is no other child development center within this Square or within 1000 square feet of the NCRC property. Therefore, Sections 205.7 and 205.8 are not applicable to this case. The Board further concludes that the application was referred to the appropriate DC agencies, thus satisfying the requirements of Section 205.9 and 205.10.

Some of the opponents asserted that this preschool is unusually large. The Board notes that filed in the record were the BZA orders for other child development centers, including the Barbara Chambers CDC that has 150 children, the Washington Hebrew Center that has 95 children, and the St. Columba's preschool that has 90 children. The Board also notes that the size of the preschool is not a determining factor under the Zoning Regulations.

An issue was raised as to whether NCRC was a neighborhood school. The Board notes that this is not a requirement of the Zoning Regulations. In fact, the regulations were amended in 1982 to eliminate the neighborhood requirement and to impose a new set of standards. The Board has made its decision based on the regulations in effect at this time.

Finally, an issue was raised about construction and stormwater management measures. The Applicant filed in the record the sections of DCMR that govern all of these areas. The Board notes that NCRC will be required, as would any permit applicant, to fully comply with all of the city's permitting and construction requirements.

The Board concludes that schools are an integral part of viable residential communities. All schools involve children arriving and departing from the site, all schools involve the sounds of children's voices, all schools involve the occupancy of a building by students. The Board concludes that NCRC has proposed conditions that address any noise or traffic impacts, provide controls on the number of students, and clearly demonstrate the School's responsiveness to its neighbors. The Board also notes that many of the neighbors in opposition have children who attended the School at points in time when the School's enrollment was virtually the same as it is today.

The Board's function in a special exception case is to determine whether a reasonable accommodation has been made between the school and the neighbors that does not interfere with

the legitimate interests of the latter or the legally protected interests of the former. The Board believes that NCRC and its witnesses have demonstrated just such a reasonable accommodation to the Board's satisfaction. Using clear and enforceable conditions, the Board has limited the School's enrollment, strengthened its TMP, limited the expansion to the size shown on its submitted plans, and required other adjustments to its program that are designed to prevent objectionable impacts. As a result of these conditions, the Board concludes that the evidence establishes that the incremental impact of ten additional children will not be objectionable.

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for EIGHT (8) YEARS.

2. The new construction will be in accordance with the plans filed in the record; except that NCRC has the flexibility to make minor changes to the design of the new buildings based on final permit review by the Historic Preservation Review Board. This review is required as a result of the property's location within the Cleveland Park Historic District. None of these changes would create the need for additional zoning relief.

Traffic Management Plan And Carpool Operations

3. NCRC shall prepare a document, separate from other school notices, that will define clearly the school's policies and regulations with regard to traffic and parking (hereinafter referred to as the "TMP"), recognizing the interests and concerns of neighbors. The document will be distributed at the start of the school year to parents, who will be instructed to provide the document in turn to their child care providers. The applicant will further distribute the pamphlet to individual drivers in response to documented violations of the policy.

4. NCRC shall include in all enrollment contracts a provision that the family agrees to abide by the terms and conditions of the TMP, with an escalating system of penalties for noncompliance, culminating in expulsion. NCRC will provide identification stickers to all parents and caregivers for NCRC students so that NCRC vehicles are easily identifiable. NCRC will maintain a list of license tag numbers for all student and staff cars so that complaints can be tracked and verified.

5. NCRC carpool operations shall commence at 8:30 AM and continue until 8:50 AM each day that school is in session. In this instance, "carpool" refers to any automobile used to drop off or pick up one or more NCRC students. NCRC shall clearly define the carpool waiting line on Highland Place with a white line so that cars are not waiting at the curve on Highland Place. NCRC shall have staff present to monitor the carpool waiting line.

6. NCRC will hire two uniformed persons or off-duty police officers to monitor the daily carpool operations from 8:15 to 9:15 a.m. each morning that classes are

held. If, based on DDOT input, conditions warrant a uniformed person or off-duty police officer to monitor student pick-up operations during the peak p.m. pick-up period, NCRC will require such additional monitoring. These uniformed individuals will be used to regulate any carpool traffic in a safe and efficient manner along Highland Place, N.W.

7. NCRC shall direct the uniformed persons referred to in Condition No. 6 to report to NCRC the license tag numbers of all vehicles identified by an NCRC sticker that do not comply with the parking and other restrictions outlined in NCRC's TMP.

8. NCRC will schedule all admission play sessions and prospective parent tours for non-peak times of traffic. Non-peak times are when there are no carpool operations.

9. NCRC will continue to hire three uniformed persons or off-duty police officers to monitor traffic coming to the NCRC property and assure that no objectionable or unsafe conditions arise for the following events: Back to School Night, Family Work Day, the Pumpkin Party, Community Service Day and the Pajama Picnic.

Faculty and Staff

10. The maximum number of faculty and staff is 38 FTE. The formula used to calculate FTE staff shall be based on the formula provided in the record, i.e., each part-time employee is calculated as one-third of a full-time employee. For the purposes of this Condition, "faculty and staff" shall not include any person hired for the sole purpose of administering the TMP.[2]

11. NCRC will provide its staff a financial incentive to use public transportation by participating in the Metrocheck program.

12. NCRC will include in all teacher contracts a provision that the individual agrees to abide by the terms and conditions of the TMP.

Hours of Operation and Approved Events

13. The normal hours and days of operation shall be between 8:00 a.m. and 5:00 p.m., Monday through Friday. Limited evening and weekend activity is permitted as described in Conditions 14 and 15.

14. As part of its educational mission, NCRC may host workshops or conferences on the NCRC property. No more than three such events shall take place in any twelve-month period. Further, these events shall take place only Monday through Saturday (which may include holidays) and when school is not in session. NCRC

[2] NCRC notes that its December 15, 2003, submission of proposed Conditions to the BZA erroneously uses a different formula for calculating FTEs. The formula used in this submission is based on the evidence of record and the formula used here supersedes it.

shall make arrangements for off-site parking sufficient to accommodate thirty (30) vehicles for any such event, with transportation provided by NCRC from the off-site location to the NCRC property. NCRC shall also use a uniformed person or off-duty officer to monitor parking in the area surrounding the NCRC property on the dates of these workshops or conferences.

15. The use of the property as a child development center shall be understood to include school-related events (for example, events such as those listed in Condition No. 9, parent-teacher conferences, parent lectures and meetings, meetings of the Board of Trustees, or its committees and the like). These events are not limited to the hours of operation in Condition No. 13 of this Order; rather they shall be permitted to go from 8:00 a.m. to 11 p.m. on weekdays or 9 a.m. – 5 p.m. on weekends.

16. The use of the property as a child development center shall be understood to include a summer camp program that shall be subject to the same conditions as the traditional academic year program.

17. NCRC shall not lease its property to groups not affiliated with NCRC for any events.

18. Subject to the right of NCRC to reserve the playground for its exclusive use as required by programmatic needs or for school events, after 3:30 p.m. on weekdays and all day Saturday, Sunday and holidays, NCRC's playground will be available for use by the community.

19. There will be no outdoor sound amplification system used at school events although use of a "boom box" is permitted.

Enrollment and Maximum On-Site Occupancy

20. The maximum number of students on the site at any one time during normal school hours and the Summer Camp program shall be 120.

21. Until the new classroom building (the "Carriage House") is constructed, the maximum enrollment shall remain at 171. Once the Carriage House is ready for occupancy, the maximum total enrollment of students in the school shall not exceed 181; provided, that the school has the flexibility to exceed this number by up to two percent (2%) (not more than 4 students) in a given year. (In any case, the maximum occupancy of 120 students at any one time shall apply as specified in Condition No. 20.)

Community Dialogue Process

22. At the beginning of each school year, but in no event later than October 15th, the school shall provide to the Board and the Zoning Administrator documentary evidence to demonstrate its enrollment figures together with a copy of its traffic and parking regulations referenced in Condition No. 3.

23. NCRC shall form a Liaison Committee for the purpose of fostering consistent communication between NCRC and the community. A representative of DDOT will be invited to the meetings. The committee shall meet twice a year, once during the fall semester and once during the spring semester, to address any traffic issues or community concerns. NCRC shall invite the community to designate representatives to serve on the committee: its composition should include equal representation between the school and the community.

24. NCRC will designate a staff person as Traffic Liaison for the community to call with any complaints about NCRC related cars or traffic impacts.

For the reasons stated above, the Board concludes that the applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**.

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____

SECRETARY TO THE BOARD

Document #: 1370168 v.3