GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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January 13, 2004

Maureen E. Dwyer
Paul A. Tummonds
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Re: BZA Application No. 16970 (3209 Highland Place, N.W.) NCRC

Dear Ms. Dwyer and Mr. Tummonds:

The Office of Zoning (OZ) received your letter to the Board of Zoning Adjustment dated January 12, 2004, requesting the bifurcation of its January 6, 2004, decision in the above-cited application. Your letter was not filed in a timely manner in accordance with the requirements of 11 DCMR § 3121.9 of the Zoning Regulations, which reads: "Any material received by the Board after the close of the record that bears upon the substance of the appeal or application shall be returned by the Director and not received into the files of the Board." Please be advised that you are entitled to re-file your request (motion) within 10 days from the date of the issuance of the final written order by the Board pursuant to 11 DCMR § 3126.2. For these reasons the OZ is returning your letter to you.

SINCERELY,

JERRILY R. KRESS, FAIA
Director, ~~Office~~ of Zoning

Attachment
cc: Certificate of Service w/o attachment
rsn

BZA
Case No. 16970
Exhibit No. 344

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.344

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16970

As Director of the Office of Zoning, I hereby certify and attest that on JAN 1 3 2004 a copy of the attached letter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Maureen E. Dwyer, Esq.
Paul Tummonds, Esq.
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037

Nancy MacWood, Chairperson
Advisory Neighborhood Commission 3C
3417 Woodley Road, 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

Gaylord Neely & Linda Badami
3207 Highland Place, N.W.
Washington, D.C. 20008

Sallie R. Beckner and R. Bruce Beckner
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1400 16th Street, N.W.
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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

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

Henry P. Little
The Nature Conservancy
201 Mission Street, 4th Floor
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Steven R. Hunsicker
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The Warner
1299 Pennsylania Avenue, N.W.
Washington, D.C. 20004

ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning

rsn

ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

January 12, 2004

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 - 3209 Highland Place, NW; Applicant's Request for the Board to Rule Solely on Application Related to Proposed Construction on the NCRC Property

Dear Chairman Griffis and Members of the Board:

The National Child Research Center ("NCRC" or "Applicant") hereby requests that the Board of Zoning Adjustment ("BZA" or "Board") bifurcate its decision on this application and make a separate ruling regarding the satisfaction of 11 DCMR §205 with regard to the proposed construction on the NCRC property. This request for bifurcation does not impact the Board's decision to deny the Applicant's request for ten additional students and six additional full-time equivalent ("FTE") staff. Rather, this request seeks a separate ruling on the new construction to conform the Board's decision with the evidence of record in this case, as well as the Board's discussion of this application at the January 6, 2004 public meeting, both of which provide indisputable evidence that the proposed new construction on the NCRC property fully satisfies the requirements of 11 DCMR §205.

It is entirely appropriate for the Board to bifurcate its decision in this case. The Applicant's request for relief in BZA Application No. 16970 clearly differentiated the request for new construction of the Carriage House, the addition to the main building and the larger maintenance shed on the NCRC property pursuant to §205. The notice of public hearing clearly made this distinction regarding the separate aspects of the BZA application. Moreover, the Applicant provided substantial evidence in the record identifying the need for this additional space to serve the *existing* student population. The Applicant also provided testimony that final approval by the Historic Preservation Review Board ("HPRB") could not occur until the BZA approved the proposed construction. The Applicant's witnesses noted that the HPRB approval, building permit review, and construction processes will take a considerable amount of time and that NCRC needs to move forward with the proposed construction as soon as possible in order to provide appropriate facilities for its students and staff.

While the Board determined that the proposed increase in the student and staff population does not satisfy 11 DCMR §205.3 at this time (regarding objectionable traffic conditions related to the drop-off and pick-up of NCRC children), the Board also determined that the proposed new construction on the NCRC property fully complied with the requirements of 11 DCMR §205. In

addition, the Board determined that the Applicant was not required to obtain variance relief from 11 DCMR §§ 3202.3 and 2100.6 in order to undertake the proposed construction activity. NCRC's representatives, as well as the Office of Planning, testified and submitted evidence in the record that the proposed new construction would not create objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. At the January 6, 2004 public hearing all of the BZA Commissioners recognized this fact and stated so on the record. Therefore, the Board's decision to deny the Applicant's proposed new construction is not based on the evidence of the record in this case, or even on the views expressed by the BZA Commissioners at the public meeting.

For these reasons, we request that the Board make a separate ruling regarding whether the Applicant has satisfied the requirements of 11 DCMR §205 with regard to the proposed new construction on the NCRC property. The Board clearly has the authority to address this request at this point in the case. In addition, the Board has the ability to address this request based on the existing record and there is no need for the Board to reopen the record to allow additional information on this issue. As discussed above, there is substantial evidence in the record of this case evidencing that the Applicant has satisfied this burden, and that the BZA Commissioners determined that the Applicant met the standards of 11 DCMR §205. We request that the Board address this request for a ruling at its January 27, 2004 public meeting.

Respectfully submitted,

SHAW PITTMAN, LLP

Maureen Dwyer

Paul Tummonds

cc: See attached Certificate of Service

ShawPittman LLP

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2004 a copy of the foregoing letter was hand-delivered 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.
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