GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

March 9, 2004

R. Bruce Beckner
Sallie R. Beckner
3225 Highland Place, N.W.
Washington, D.C. 20008

Re: BZA Application No. 16970 – NCRC

Dear Mr. & Mrs. Beckner:

The Office of Zoning (OZ) received your faxed letter on March 8, 2004, concerning the above-referenced application. The OZ is returning this correspondence to you because the record in this case was closed at the time your letter was received. As you know, by your presence at the Board's special public meeting, on Tuesday, March 9, 2004, the Board voted to reopen this case to receive specific written submissions from the parties. Additional OZ correspondence will follow with specifics on the Board's action.

Please call Richard Nero, Chief, Support Services, on (202) 727-6311, if you have any questions relevant to the foregoing.

SINCERELY,

JERRILY R. KRESS, FAIA
Director, Office of Zoning

Attachment
rsn

Case No. 16970
Exhibit No. 349

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.349

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* MI AND IL BAR ONLY
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*** IL BAR ONLY

March 8, 2004

Via Facsimile

Mr. Geoffry Griffis
Chairperson
Board of Zoning Adjustment
D.C. Zoning Commission
441 Fourth Street, N.W., Room 201
Washington, DC 20001

Re: BZA Application No. 16970
National Child Research Center

Dear Mr. Chairman:

As a party to this proceeding, I want to join in the objection to the proposed "public meeting" now scheduled for tomorrow, March 9, at 9:00 a.m. that was first made by Richard Nettler, Esq., counsel for the Cleveland Park Neighbors and dated February 24, 2004.

I understand that, under its Rules, the Board has the power to reconsider, on its own motion, its January 6, 2004 vote denying the above-referenced application.

However, Section 3127.2 of the Board's Rules requires that any Board action must be based exclusively on what is properly in the record – that is, on what has been briefed and argued by the parties. The record was closed by your order, as of December 22, 2003, when the parties were to have submitted their proposed findings of fact and conclusions of law. The action of "bifurcation" was neither briefed nor argued by the parties during the time when the record in this case was open. Therefore, it is not possible at this time for the Board to reopen the record to consider "bifurcating" the application. Such a decision necessarily would be based on extra-record pleading.

"Bifurcation" was first raised by counsel for NCRC on January 6, 2004, when she improperly interrupted the Board's deliberations to suggest such an action. Because the record was closed, that interruption was out of order and should not have been permitted. Therefore, counsel's January 6 statement can not be part of the record and cannot be considered by the Board in making its decision. Likewise, counsel for NCRC made a written submission to the Board on January 12, 2004, repeating her January 6 oral suggestion of bifurcation. That January 12 letter also should not be part of the record. I was advised by the Zoning Office that it was "returned" as having been improperly submitted; but personal inspection of the file showed that it continued to be in Folder #8 and available to the Board, even after I received such advice.

For that reason, *any* action now by the Board to reconsider or reopen the record to consider "bifurcation" would be irrevocably tainted – because it necessarily would be based on information and argument made outside of the record. If NCRC wishes to suggest bifurcation, in the current procedural posture of the case, the only time permitted under the Rules for it to do so is within 10 days of the issuance of the Board's written decision by way of a motion for reconsideration or rehearing. At that time, and only at that time, would it then be permissible for the Board to consider such a step.

For the Board to do so now would be clear error.

Respectfully submitted,

R. Bruce Beckner

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Sallie R. Beckner
3225 Highland Place, N.W.
Washington, DC 20008

Cc: (by fax) Maureen Dwyer, Esq.
(by hand delivery): All other parties.

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TO: Mr. Geoffry Griffis

FAX: 202-727-6072

ACCOUNT: 1053.9999

FROM: R. Bruce Beckner

DATE: March 8, 2004

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