ADVISORY NEIGHBORHOOD COMMISSION 3C
GOVERNMENT OF THE DISTRICT OF COLUMBIA
CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS
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March 22, 2004

By Facsimile, Hard Copy Mailed

Mr. Geoffrey Griffis
Chair, DC Board of Zoning Adjustment
441 4th Street, NW
Washington, DC 20001

Re: BZA Application 16970, NCRC

Advisory Neighborhood Commission 3C Submission on Rescission and Reconsideration of Part of January 6, 2004 BZA Decision

Dear Mr. Griffis,

Advisory Neighborhood Commission 3C (ANC) protests the action of the Board of Zoning Adjustment (BZA) to rescind in part and reconsider in part their decision of January 6, 2004 in the National Child Research Center (NCRC) special exception case. While the Board is authorized under 11 D.C.M.R. Section 3124.2 to reopen the record, prior to the filing of a final decision, and require further hearing on designated issues that is not the motion that the BZA approved on March 9, 2004. The Board's extraordinary action to reconsider part of the decision is authorized under 11 D.C.M.R. Section 3126.7 up to 10 days **after** the filing of a final decision. No such filing has occurred. The explanation provided at the March 9, 2004 meeting, at which the Board considered its own motion to rescind and reconsideration the decision in part, centered on information provided by the Corporation Counsel. Rather than write the decision as they are required, apparently Corporation Counsel intervened after the decision and the closing of the record to persuade the BZA to overturn its decision. This privileged discussion between the BZA and Corporation Counsel outside public purview raises many questions of propriety. Corporation Counsel has responsibility for writing the decision based on the record and the vote of the BZA. The BZA has the option once that decision is filed to move to reconsider it in whole or in part. That process, which is fair to all parties, was short-circuited by the action taken on March 9, which left the applicant overjoyed and the opposition in shock.

The subsequent direction from the BZA that parties should apply the special exception criteria only to NCRC's proposed new construction is baffling. NCRCs efforts to increase enrollment and staff levels and expand facilities took the form of a unified campaign since they unveiled this project almost 3 years ago. Throughout the 9 BZA hearings both applicant and

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opposition approached this case as a single application. Indeed NCRC made it clear to the ANC that they would not expand without an increased enrollment. Now with the BZA's announced disinterest in compliance with the current order and in evaluating NCRC's argument that the BZA has no authority to challenge their interpretation that enrollment is governed only by their license and their occupancy permit, NCRC has aggressively urged the Board to separate the application. This was first publicly evidenced when counsel for the applicant violated rules of practice by interjecting the idea of separating the issues during the final stages of the decision meeting on January 6, 2004. Counsel followed this action with a letter to the Board, after the record was closed, urging the bifurcation of the application. It should come as no surprise that the applicant reacted with glee when the Board decided to rescind and reconsider the new construction part of the application. Since they view the current zoning order as silent on enrollment and the BZA has said they won't challenge that interpretation, they can unilaterally increase enrollment if they can expand their facilities, and the BZA has now provided them with a second opportunity to do just that.

The traffic, parking and safety issues that dominated the discussion on January 6, 2004 equally impact enrollment, staff levels and new construction. As I explained above, these issues are intertwined, and it is the opinion of the ANC that the decision has been made and that this exercise, which isn't even restricted to the record, is inappropriate. However, since it would have been appropriate for the BZA with proper notice to request further hearing on the issues, the ANC will apply the special exception criteria under Section 205 to the new construction proposals.

Section 205.2 The Center Shall Be Capable Of Meeting All Applicable Code Licensing Requirements.

If NCRC is given approval for new construction **then** they will meet child development center licensing requirements, but currently they are operating with a waiver of the acceptable limits for number of children in a classroom. While NCRC has said they would self-limit the numbers of children to 120 in the morning and 120 in the afternoon, or 240 children per day their certificate of occupancy would allow as many as 150 children in the proposed carriage house alone. And it should be clear that numbers of children on-site does not address the important issue of number of adults on-site.

Section 205.3 The Center Shall Be Located And Designed To Create No Objectionable Traffic Condition And No Unsafe Condition For Picking Up And Dropping Off Children.

The 1998 zoning order required monitored pick-up and drop-off at all times on Ordway Street. Testimony indicated that NCRC ignored this zoning condition for many years. Neighbors in opposition presented testimony, pictures, and video demonstrating the absence of any regular monitoring of the Ordway access to the child development center by school personnel.

Osborne George, the applicant's traffic expert, testified on September 16, 2003 that he couldn't provide any information about existing daily trips on Ordway St. and importantly how much of the traffic on Ordway St. is related to NCRC. He also could not provide data on NCRC use of parking on Ordway St. (p.116, 127). He testified that he twice surveyed Ordway St. parking from 10AM to 3PM and found parking available, but he did not study the street during the peak Ordway St. drop-off and pick-up times, which were listed by Ms. Piggott in her testimony, or at the time employees would be arriving at the site. Yet, while Mr. George observed that he didn't know where an increased need for parking could be accommodated, he offered that 37 NCRC employee cars (up from current 21) would park in the area if application were approved (p.134.)

He also didn't study the parking impacts of summer camp sessions, after 5 PM or on weekends (p.220). Mr. George further testified that he never studied the traffic or parking impact of school sponsored events on Ordway St. or Highland Place, or any other street in the area (p.105).

If the new construction fronting on Ordway St. were approved, Mr. George testified that there would be an inducement for additional use of that access to the site. Ms. Piggott testified similarly that NCRC would not implement use of Ordway St. access until new construction, providing 2 new classrooms, was completed. Yet, according to Ms. Piggott 30% of their enrolled children already arrive via the Ordway St. access point. Since the projected new classrooms in the proposed new building will account for 25% of the total number of classrooms (8) and since Ms. Piggott testified that it would be the children using those new classrooms that would be directed to use Ordway St. it is unlikely that more than 30% of the enrolled children would be directed to use Ordway St. Thus, the traffic and parking impacts on Ordway St. could have been studied and evaluated. The new TMP is in essence in effect on Ordway, albeit in an informal way, and the new building should not be expected to divert significant traffic from Highland Place.

The BZA should credit the breadth of testimony regarding the parking and traffic impacts from the Ordway St. residents, in the absence of any studies or data from the applicant's traffic expert, and this testimony provides an evaluation of the TMP on Ordway St. Two academics, who testified that they often work at home, stated that

-the street is often clogged during the "hectic scene" when children are going to and from the school;

-children are often entering or exiting cars on street side;

-cars speed on Ordway;

-there is no parking capacity on Ordway (11/4/03, p. 111, 145).

Ms. Leila Afzal testified that Ordway St. is a "speedway" and that Hurricane Isabel provided a preview of a worsening condition on Ordway St. if the new construction occurs and NCRC directs more traffic to Ordway St. Since a downed tree blocked Highland Place, NCRC traffic used Ordway St. blocking traffic while waiting for parking spaces and uniformed persons did nothing to improve traffic flow. (11/4/03, p.113)

Mr. Steve Hunsicker, who lives across from the Ordway St. access to NCRC, testified that double-parking routinely occurs on Ordway St. during pick-up and drop-off periods (11/4/03, p. 21). Still others testified about blocked driveways, and the video provided by Mrs. Beckner highlighted many of these events occurring over many months on Ordway St. The Ordway St. residents testimony was supported by the ANC 3C testimony and resolutions.

Ms. Piggott testified that absent traffic calming measures on Ordway St. NCRC would not use Ordway in order to alleviate the conditions on Highland Place. Both Ms. Piggott and Mr. George mentioned the projected upgrading of Ordway St. as a potential solution to what all parties describe as a dangerous speedway. Now that DDOT has presented its plans to upgrade Ordway, it is clear that they cannot engineer the street to improve safety. When residents, who have complained for many years, about the dangerous hydroplaning that occurs on the downhill curve of the street during any kind of inclement weather, asked that that portion of the road be re-engineered, they were told by the DDOT project manager and the contract engineers at an ANC meeting that there was little they could do because the street was developed. The DDOT engineers also acknowledged that upgrading would result in faster speeds. (The plan also includes curbs, which will narrow the street where cars currently park into public space, and an uninterrupted sidewalk from NCRC to 30th St.) The plan will not alter parking capacity.

Currently, as NCRC representatives testified, teachers use Ordway St. parking spaces next to the school property. That situation will not change, so any formal pick-up or drop-off activity at that location will result in double parking and queuing.

Testimony from the Office of Planning (OP) and the District Department of Transportation (DDOT) was unambiguous regarding the new construction. Mr. Jackson testified that if the TMP does not resolve the traffic impacts that were recognized by both OP and DDOT expansion should not proceed (9/16/03, p.289). When pressed by applicant's counsel to allow them to expand before traffic conditions are improved, Mr. Jackson did not waiver. In response to questions from Mr. Nettler, counsel for the Cleveland Park Neighbors, Mr. Jackson stated that OP would not support new construction and increased staff and enrollment levels until the traffic and safety issues are resolved (p.307). When Mr. Nettler posed a similar question to Mr. Laden, he concurred that new construction and its potential to create dangerous and objectionable traffic conditions and increase vehicular volume on neighboring streets was not supportable (p. 323). He further agreed with Mr. Jackson that regulatory solution, suggested as an option by DDOT, should be proven to work before any new construction was approved (p.330). Mr. Laden in addressing a question about the DDOT February 5, 2003 report that cited significant physical features of Ordway St. that made it inappropriate as a safe pick-up and drop-off location for NCRC suggested that reconstruction of the street might have potential to address these issues. But as we know now DDOT will not be able to improve safety beyond installing some length of sidewalk on the south side of the street, and they have acknowledged that an improved surface will result in faster speeds.

Both Mr. Anthony, the NCRC architect, and Ms. Piggott described the dual function of the proposed carriage house motor space as conference space. There are two conferences spaces that are the appropriate size for parent/teacher conferences provided in the main house. This new space will be used for the workshops/conferences that Ms. Piggott described in her testimony (6/24/03, p. 228) The argument that this space is needed to accommodate parents for the once a year Back to School Night is questionable since Mr. Anthony testified that the motor activity room would house 177 persons based on building code space allowances (p.163), a number too small to meet the meeting room needs for a gathering of all the parents of the 171 students. More likely, the space would be used for the 100+ person conferences described by Ms. Piggott. It is undeniable that 100 adults driving to a conference/workshop at NCRC would present impossible traffic and parking demands on the neighboring residential streets. It is unclear from the testimony whether the single event held in early 1990 and again in mid-1990 were held at NCRC or off-site and there was no testimony about the size of the event. But it is clear that the plan to intensify this use is contingent on the new construction and that these events are not part of the mission of a child development center and that they would contribute to an intolerable traffic and parking situation.

The BZA should affirm its denial of the application based on this element of the special exception test.

205.4 The Center Shall Provide Sufficient Off-Street Parking Spaces To Meet The Reasonable Needs Of Teachers, Other Employees, And Visitors.

The previous section included argument on this element of the special exception. The ANC would add that counsel for NCRC has argued that only their license and certificate of occupancy restrict the number of children (is there no limit on numbers of adults?) that can be at NCRC, and indeed NCRC has expanded their enrollment as though the zoning order doesn't exist. With this view toward enrollment levels, there is considerable room for additional enrollment if new

construction is approved. The current level of 300 applications, involving 270 applicants visiting the center at least once, could rise. While nursery age children do not drive, their parents do and they need parking space when they visit. Likewise, the conference/workshop attendees need parking spaces. There was no data provided by either DDOT or Mr. George to support the notion that there is parking at the level needed available in the neighborhood. Indeed, Mr. George's information about parking capacity was based on observing parking on some unidentified portion of Ordway St. between 10AM and 3PM (6/24/03, p. 217). It is unclear whether these observations were made when school was not fully operational, as was the case with other traffic information provided by Mr. George.

Application denial should be reaffirmed based on the intensity of use from new construction that will adversely impact the parking capacity on neighborhood streets.

205.5 The Center, Including Any Outdoor Play Space Provided, Shall Be Located And Designed So That There Will Be No Objectionable Impact On Adjacent Or Nearby Properties Due To Noise Or Activity, Or Visual Or Other Objectionable Conditions

The proposed carriage house would be 4, 397 square feet, considerably larger than the surrounding homes on Ordway St. Facing the building from the northside of Ordway, homeowners will view an 84 foot long building with lengths of windows typical of an institutional rather than residential use. Since the new construction will join the existing playhouse building and use similar exterior materials it will present as an uninterrupted 127foot long structure. Testimony explaining the potential adverse impacts included

-mass of proposed building would be 2 times the size of next door neighbor and overwhelm his house; new construction would extend well beyond end of neighbor's house and with only 15 feet separating this building from the homeowner the eastern light into and view from his family room, kitchen, TV room, and patio and garden would be lost and replaced with shadow. (11/4/03, pg. 79)

-lighting in proposed building would be florescent rather than the softer incandescent light typical of residential lighting; lights would often be left on all night as is the practice of many schools; safety institutional exterior lighting would be bright and on throughout the night -- - these lighting conditions would transform the residential block from one with typical limited night time lighting to one with bright, imposing lighting that could impact quality of life. (11/4/03, pg. 20-31).

-noise from 3 commercial air conditioning units on top of the proposed new carriage house will be much more noticeable to neighbors both due to the placement of the equipment on the roof of the 27 foot high proposed building and the strength of the commercial equipment. This will adversely impact the neighbors to the west of NCRC, in particular.

Additionally, there was testimony from the neighbor to the east, Ms. Linda Badami, that the proposed expansion of the main house will adversely impact the enjoyment of her property. The Badami-Neely residence side yard is less than 8 feet from the property line. The NCRC historic house has been designed to move 8-10 feet closer to the Badami/Neely residence and to extend 19 feet to the rear and beyond the rear wall of their house. This extensive addition will remove the rear porch facing the neighbor's residence and replace it with a two story enclosed structure. Ms. Badami testified that the new addition would cut off the light from her kitchen, breakfast room, a bedroom, the hallway, and the 2nd floor sunroom. She submitted photos of the current condition and altered photos to show the condition after the addition. Ms. Badami also testified to the lost sight lines that would be caused by the addition. She also submitted exhibits demonstrating the current open view and altered ones to show the view of the building wall and new sub-roof of the

proposed addition from the windows of her property. Ms. Badami expressed concern for the potential loss of approximately 21 trees, many of which provide a screen between the NCRC property and the Little property to the west and screen the western expanse of Ordway St. where it intersects 34th St. from the Badami-Neely property. Lastly, Ms. Badami testified that the more intensive use of the NCRC property resulted in numerous noise-related nuisances that are more associated with institutional property than residential property, including regular and year-round use of leaf blowers and large metal dumpsters that are stationed near her property and are moved for twice a week pick ups. She expressed strong opposition to any increase in activity that would result from the large expansion and transformation of the current bike shed bordering her property into a maintenance shed, which would be used regularly by workers who maintain the property. The narrowed corridor between the school and the neighbor's property, she stated, would become a regular pathway for workers accessing equipment and would deprive her of the normal enjoyment of her property (11/4/03, p. 45-51).

The intensity of the use of the NCRC property is causing an adverse impact on neighbors, and the addition of new structures would exacerbate the adverse impact from the mass of the structures, noise, light, and increased level of activity. The ANC agreed with this assessment of the new construction in its resolution.

The BZA should affirm its decision that denies the application based on the location and impact of the proposed construction at the center.

Summary

There are probably no other child development centers in the District of Columbia that have the enrollment of NCRC. The number of sessions, the staff levels, the enrollment are atypical and as such, the BZA should take great care in allowing this center to further expand. The center's location in a historic, dense neighborhood with inefficient, but charming, street layouts should be carefully considered in evaluating any new construction that would be used to intensify the use. Both the OP and DDOT have opposed expansion unless a history of safe traffic, parking and drop-off and pick-up patterns can be established **before** any expansion is approved. The ANC, the Ward 3 councilmember, and the at-large councilmember, who lives in the neighborhood and participated in the last NCRC special exception zoning case, oppose the application in its entirety. The testimony of many of the surrounding neighbors, who strongly oppose the application, addressed in great detail the breadth of adverse impacts that the center has visited on its residential neighbors. The approval of this application, which includes new construction, would present adverse impacts and worsen a situation that has been evaluated as unsafe and negatively impacting the residents. What was once a small, neighborhood-oriented nursery school has grown into one of the largest educational institutions for 2 ½ to 5 year olds. It schedules multiple sessions, after school care, numerous special events on weekends and evenings, and seeks to develop conferences and workshops. It also seeks to enlarge its facilities on a residential lot that cannot accommodate it without seriously impacting its near neighbors, none of whom would be allowed to entertain this level of development on their own properties. The merit of NCRC's expansive vision of their mission is not the issue, what is at issue is whether there is any room for NCRC to build and expand without exacerbating the negative impacts on the residents. ANC 3C takes the position that t he adverse impacts cannot be ignored and no further development should be authorized.

Submitted by,
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Chair, ANC 3C