BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of the National Child Research Center BZA Application No. 16970

SUPPLEMENTAL RESPONSE OF STEVEN R. HUNSICKER TO NCRC POST-HEARING SUBMISSION

The NCRC Post-Hearing Submission asks this Board to embrace an NCRC gambit that would effectively *reverse* the majority's January 6, 2004 vote to deny the NCRC application. Under the scheme inappropriately advanced by NCRC's counsel, the Board would issue an order approving virtually all aspects of the NCRC application, except NCRC's request for added staff and student enrollment (which NCRC could then be expected to self-implement), based on the false and irrational pretext that NCRC's failure to satisfy subsection 205.3 implicates only the request for added staff and enrollment. As explained by the Opposition's April 2, 2004, Request for Evidentiary Hearing on *Ex Parte* Contacts, NCRC's counsel has sought to effect this strategy through inappropriate statements and communications made after the record was closed, and the recent *ex parte* submission of related substantive materials to the Office of the Corporation Counsel that were clearly prepared in an effort to nullify the majority's January 6, 2004 decision to deny the NCRC application.

1. Subsection 205.3 bars the construction of new capacity which will exacerbate objectionable and unsafe conditions that already exist.

NCRC's effort to evade the majority's January 6, 2004 ruling should be defeated by a straight-forward application of subsection 205.3. Under subsection 205.3, if NCRC is not located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children – and the import of the majority's January 6, 2004 ruling is

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that NCRC is *not* so located and designed – then NCRC has *not* met the conditions specified and it is not entitled to a special exception. In particular, NCRC is not entitled to a special exception allowing "programs for 120 children at any one time . . . . 38 FTE staff", where such populations exceed the conditions of NCRC's current special exception and are already recognized to be creating objectionable traffic conditions and unsafe conditions for children. Further, NCRC is not entitled to a special exception for the proposed new construction, where the record establishes that the substantial increase in building capacity that NCRC desires is intended to accommodate additional volumes of children, staff and visitors to a location that is already experiencing objectionable and unsafe conditions.

Based on the record evidence, NCRC cannot in good faith now claim a willingness to bifurcate the proposed new construction from the intended increases in children, staff and visitors. The primary point emphasized by the NCRC Application is that the new classroom building will feature two classrooms, which will receive children from existing classrooms in order to reduce existing class numbers to optimum group size. But in order to avoid class sizes that NCRC claims is *less* than optimum, NCRC has made it clear that it will increase enrollment. It is irresponsible to pretend that NCRC would build the substantial and expensive new capacity at issue and not proceed to use it to accommodate additional children, staff and visitors as it has always intended. This is particularly true in light of NCRC's position that the current BZA order includes no limitation on enrollment and NCRC's undisputed willingness to defy the limitation on staff that is unequivocally expressed in the current order.

There is simply no reasoned basis for separating the proposed new building from the population increases it is specifically designed to accommodate. In fact, DDOT, OP and *even NCRC* previously have recognized that the proposed new construction is not properly

divorced from the issue of increased enrollment. As explained by the March 22, 2004 submission by ANC 3C, testimony from each of the OP and DDOT opposed NCRC's proposed new construction until existing traffic conditions are improved. *See* Sept. 16, 2003, tr. at pp. 289, 307 and 323. Even NCRC's counsel has recognized the failure of the premise that the proposed new construction could go forward and traffic conditions improved without implementing increases in enrollment. In a March 18, 2003, letter to DDOT, NCRC's counsel responded to the suggestion "that there be a period of time to measure the impact of these changes [to NCRC's TMP] before any increases in student and staff levels are approved by the BZA." In response to this suggestion, NCRCs counsel represented, in part, that "the hiring of additional staff to monitor traffic, the additional financial incentives for staff to use Metro, and many of the other changes [to the TMP] can only be funded by having the additional students at the school."

2. There is no evidence that the Ordway entrance to NCRC can safely accommodate greater numbers of children.

Nor can NCRC justify the proposed new construction on the pretext that the new building will facilitate greater use of Ordway Street for picking up and dropping off children, and thereby improve conditions. First, Ordway Street is *already* an unsafe pick-up/drop-off location, as NCRC Director Piggot has acknowledged. *See* June 24 tr. at pp. 268-269. Second, there is no record basis for any thought that DDOT's expected reconstruction of Ordway Street – the final design of which remains unknown – will somehow change an unsafe pick-up/drop-off location into a safe pick-up/drop-off location able to accommodate additional volumes of children. In fact, the evidence is to the contrary. DDOT already has recognized that "due to steep grade restrictions [along Ordway Street] NCRC cannot provide a dedicated drop-off area [along

Ordway Street]." *See* DDOT Feb. 5, 2003 report at 3. DDOT's preliminary plans for the Ordway reconstruction confirm that there can be no dedicated drop-off area along Ordway.

Moreover, there should be no dispute that the primary elements of the Ordway reconstruction – repaving the surface and installation of curbs – will reduce "self-calming" aspects of the uneven and broken surface condition of Ordway that exists at present, and will therefore *increase* the volume and speed of already dangerous commuter traffic on Ordway. *See* discussion in the March 10, 2004 e-mail from Mark Vershbow, NCRC trustee, to DDOT's Muhamed Khalid, attached hereto at Ex. A. In this email, Mr. Vershbow refers to a previously unknown NCRC plan for two crosswalks on Ordway, flanking the school's east and west boundaries, with signs and/or lights, as addressing the existing and increasing future need to make drivers slow down on Ordway.[1] Significantly, Mr. Vershbow also references DDOT's "reluctance to place crosswalks anywhere except at street intersections," presumably because DDOT believes that crosswalks located mid-block increases not decreases pedestrian risks from commuter traffic.

The telling, unavoidable fact in this: DDOT has long-known of the plan for reconstruction of Ordway (*see* DDOT April 14, 2003 Report at 4) but, as noted above, DDOT has *never* regarded the reconstruction of Ordway as a sufficient basis to recommend the expansion of NCRC. To the contrary, DDOT's continuing position is that it does *not* support the NCRC application. *See* DDOT Feb. 5, 2003 Report at 4.

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[1] Before Mr. Vershbow's letter was produced in response to a FOIA request, Ordway Street neighbors had no notice that NCRC was seeking to engineer the installation of two cross-walks with lights and signs on Ordway Street. Like NCRC's support for making Highland Place into a one-way street for its benefit, this e-mail shows the impacts that NCRC would impose on the

3. Conclusion: This Board should reject NCRC's bifurcation scheme by denying reconsideration.

In sum, following the majority's January 6, 2004 vote to deny the NCRC application, there is no record justification to support NCRC's desire to proceed with its expansion project while deferring fights over increased enrollment and staff levels to another day, most likely following self-implementation of such increases by NCRC as a *fait accompli*. For the additional reasons set forth herein, reconsideration of a "bifurcated" application for approval of new construction as a separate matter from enrollment and staff increases should be denied.

Respectfully submitted

By: _____
Steven R. Hunsicker

Dated: April 6, 2004

cc: See attached Certificate of Service
D.C. Council Chair Linda Cropp
D.C. Council Member Phil Mendelson
D.C. Council Member Kathy Patterson

neighborhood to further its own agenda. To an increasing extent, NCRC seeks to engineer neighborhood streets to serve as both driveway and parking lot for an expanded NCRC campus.

Certificate of Service

I hereby certify that on April 6, 2004, a copy of the foregoing letter was served, as indicated, on the following parties:

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Steven R. Hunsicker

Exhibit A

Khalid, Muhammed (DDOT)

From: Mark Vershbow [mvershbow@aol.com]

Sent: Wednesday, March 10, 2004 12:46 PM

To: Muhammed Khalid

Subject: Ordway Street Reconstruction

Mr. Khalid:

This is Mark Vershbow, a Trustee at the National Child Research Center. You met with me and Maryann McGowan on March 1st to discuss the reconstruction project for Ordway Street, NW.

Since then, you have had an on-site meeting with neighbors and a session with the Transportation Subcommittee of ANC 3C.

I wonder if you have any update for us on the status of the project? I know that you have heard different points of view on various aspects of the design. I thought it might be appropriate to summarize from NCRC's perspective:

1. Sidewalks. We certainly prefer sidewalks on both sides of Ordway Street as an important safety enhancement.

2. Crosswalks. You indicated your reluctance to place crosswalks anywhere except at street intersections; we had hoped for crosswalks flanking the school's east and west boundaries. I'm sure you heard a great deal from neighbors about the need to slow down drivers on Ordway and a concern that improving the roadway design may perversely increase the speed at which people drive. I just want to suggest to you that the crosswalks we proposed, with appropriate signs and/or lights, could have the beneficial effect of making drivers slow down significantly.

3. Parking. We strongly urge that there be no change in the parking designation - currently, unrestricted - in front of NCRC's frontage on Ordway Street. There is no need for a change and any restriction would have the effect - unintended by DDOT, I'm certain - of disrupting the settled pattern of parking usage that has developed between the school and its neighbors.

4. Retaining walls. I gather that the retaining walls are getting a bit higher, due to some tinkering with the roadway design. I don't expect that this will be a problem for NCRC - however, I do urge you to share your thoughts about this with us as soon as possible. You are aware that we hope to get permission at some point from the BZA for additional construction on our site. Some of your proposed changes - such as sidewalks and gutters - would only have a minimal impact on any future NCRC construction. Retaining walls, obviously, are much more substantial. We would value the opportunity to see the details of any changed design so that we can evaluate the situation and get our feedback to you in a timely way.

5. Stormwater management. To the extent that there will be disruption of the drainage systems already in place - something we discussed with you - we will be anxious to coordinate with you. Also, storm drains in the street are obviously of a different character than sidewalks and gutters - so, thinking again about our future construction, we'd be eager to see any changes you might make to the number or location of storm drains along the school's frontage. This is something where an on-site visit between representatives of the school and you and anyone else at DDOT who deals specifically with this issue may be productive.

6. Timing. I have heard some suggestion that the project may be delayed until September? Whenever the work takes place, it will be important for DDOT and NCRC to coordinate their efforts to minimize disruptions and potential unsafe conditions. However, a September start could pose more problems than a May start

- so, again, I urge communication with us to address this issue.

Mr. Khalid, NCRC is very supportive of this effort to create a better Ordway Street that will improve safety for everyone in the neighborhood. Our goal is to work cooperatively with you and DDOT to achieve a superior project design and to ensure a timely start (and completion) of the project. I am always happy to hear from you be reply email. Here is other contact information for you to keep on hand:

Mark Vershbow (NCRC Trustee):

Maryann McGowan (NCRC Business Manager):

Thank you.