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April 6, 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 – National Child Research Center
3209 Highland Place, NW

Dear Chairman Griffis and Members of the Board:

On behalf of the National Child Research Center ("NCRC"), this letter responds to the submissions of the Cleveland Park Neighbors, ANC 3C, Henry Little and Linda Badami and Gaylord Neeley[1] (collectively, the "Party Opponents") that were filed with the Board on March 23, 2004. The record in this case, as highlighted in NCRC's March 23, 2004, submission, includes clear, uncontroverted, and convincing evidence that NCRC has satisfied all of the applicable standards for the Board to approve the construction of the new Carriage House, the addition to the Main House and the replacement of the existing maintenance shed.

In reopening the record in this case, the Board directed the parties to limit their analyses to one topic only: whether NCRC has satisfied the requirements of Section 205.5 of the Zoning Regulations. This letter will address only issues that are pertinent to that topic and NCRC urges the Board to disregard those arguments, and any new

[1] In their filing, Linda Badami and Gaylord Nelly make the scurrilous allegation that the attorney for the Applicant and the BZA Chair have improperly discussed the bifurcation issue once the record was closed. The Chair knows that this statement is false as does counsel for the Applicant, and counsel would be happy to provide an affidavit to that effect if the Board so requires. Counsel for the Applicant will also address in a subsequent filing the unfounded allegations that communications with corporation counsel are *ex parte*. As the Board is well aware, communication with counsel is permitted and is routinely done in all cases, and all parties have that right. Further, this Board has previously ruled in BZA Appeal No. 16405, that such communications are not *ex parte* and not prohibited, all of which will be addressed in our subsequent filing.

BZA
Case No. 16970
Exhibit No. 362

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.362

information, that were submitted for the first time by the Party Opponents on March 23, 2004[2].

NCRC believes that the following arguments should be noted:

The Board's determination to reopen the record is appropriate.

- The Board has the authority to review any aspect of a decision that it makes on an application until a written order is issued. In fact, in two recent cases, BZA Case No. 17043 and BZA Case No. 17087, the Board undertook reconsideration of its initial decision prior to the issuance of a written order. In this case, no written order has been issued.

- As discussed in detail in NCRC's March 23, 2004 submission, at its January 6, 2004, public meeting, the Board discussed the proposed new construction and reached a consensus that NCRC has met the requirements of Section 205.5.

NCRC's current operations on the property are not in violation of the existing BZA Order No. 16307.

- The Party Opponents make numerous references to NCRC's violations of BZA Order No. 16307 authorizing NCRC's use of the property. These statements are based on the Party Opponents' previously refuted assertions that BZA Order No. 16307 expressly limited NCRC to a maximum student enrollment of 120 and a maximum of 28 staff.

- NCRC is not in violation of the terms of BZA Order No 16307. As noted in the significant discussion on this issue during the February 11, 2003, public hearing, the Board did not agree that BZA Order No. 16307 expressly limited NCRC's maximum number of enrolled students or

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[2] For the record, NCRC disputes many of the assertions that are boldly presented in the submissions of the Party Opponents. As noted, these assertions go beyond the Board's discretion; therefore, NCRC will not use this letter as a form of rebuttal.

maximum number of staff. During this discussion, Commissioner Etherley noted:

> "I think some compelling arguments [regarding whether BZA Order No. 16307 includes an express cap of 120 enrolled students and a maximum of 28 staff] have been made on both sides, but I'm just simply not swayed that a condition was existent in the prior order that is cited by the party opposition. I hear the argument. If I perhaps saw some language in that condition section of the prior order that was there, I'd be more inclined to perhaps support that, but I'm just not there." (February 11, 2003 public hearing transcript, p. 280.)

The proposed new Carriage House building, the addition to the Main House, and the replacement of the maintenance shed have been designed and located on the property so as to minimize any objectionable impacts on adjacent or nearby properties.

- The submissions of the Party Opponents make numerous references to the institutional character of the existing and proposed structures on the NCRC property. NCRC notes that the HPRB found the proposed Carriage House to be compatible in its height, orientation, rooflines and materials with the residential character and density of the houses on Ordway Street and the historic district. Similarly, the HPRB determined that the addition to the Main House preserves the overall massing and rooflines of the House's side and rear elevations and has been designed in a manner evocative of the often-enclosed rear porches found in Cleveland Park. Finally, the HPRB concluded that the replaced and expanded maintenance shed is consistent in its size, mass and materials with garages found throughout the historic district. Thus, the proposed construction does not create an institutional setting on the property or in the immediate neighborhood.

- The submissions of the Party Opponents note the proximity of Mr. Little's "combination family room-kitchen-dining area" to the proposed Carriage House. NCRC notes that it is providing a side yard for the Carriage House that is in excess of the side yard required by the Zoning Regulations, while

Mr. Little chose to locate his addition in a portion of his required side yard.

- The Party Opponents claim that the proposed construction will cause adverse impacts due to loss of trees, inadequate landscaping and screening, soil erosion problems and noise problems due to "commercial" HVAC units. All of these issues were addressed in detail in NCRC's March 23, 2004, submission, including:

  - A minimal number of trees would be removed. Many trees would be relocated on site. No mature or historic trees would be affected by construction. Of the 21 trees to be removed, nine are trees that were planted by NCRC in 1994; none of these trees are deemed to be significant either in terms of size or history.

  - NCRC filed its preliminary landscape plan showing the species of trees to be planted along the adjacent Little and Badami property lines. This plan, along with additional landscaping and screening is subject to final review and approval by the HPRB— a process that would include the opportunity for input by the neighbors.

  - Issues of grading and drainage will be addressed by District of Columbia reviewing agencies during the permit approval process.

  - Mechanical equipment for the proposed new construction would be located within mansard roofs to mitigate any noise. The testimony of NCRC's architect established that this will actually be an improvement compared to existing conditions.

The Board's approval of the proposed construction will allow the Board to include conditions regarding NCRC's operations on the property

- With its approval of the new construction, the BZA can include conditions clearly limiting the enrollment to 171 students and the number of FTE staff to 32.

- NCRC will be bound by these conditions as is every other applicant that comes to the Board.

The Board did not reopen the record to hear further evidence on parking, traffic and traffic- related issues

- The Board's decision to reopen the record was expressly limited to the new construction and the Board specifically requested that the information submitted must be focused on how the proposed construction relates to compliance with Section 205.5.
- The submissions by the Party Opponents as to current traffic and pick-up operations are outside the scope pf the Board's reopening of the record.
- The Board has already made its decision regarding traffic and traffic-related issues.
- With appropriate limits on student enrollment and staff, NCRC merely carrying out its plans for the proposed new construction cannot result in any traffic-related impacts.

Based on the evidence submitted in the record of this case, as noted in NCRC's March 23, 2004, submission and this letter, NCRC has demonstrated that it fully satisfies the requirements of Section 205.5. Thus, NCRC requests that the Board approve the proposed new construction on the NCRC property at its April 13, 2004, public meeting.

Very truly yours,

Maureen Dwyer

Paul Tummonds by mcl

Paul Tummonds

cc: See attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2004 a copy of the foregoing was hand-delivered to the following parties:

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