ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

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RICHARD B. NETTLER
(202) 736-2720

April 15, 2004

BY HAND

Bruce Brennan
Assistant Deputy
Commercial Division
Office of the Corporation Counsel
441 4th Street, NW, Suite 1060N
Washington, DC 20001

Re: BZA Application No. 16970, National Child Research Center
3209 Highland Place, N.W.; Square 2072, Lot 30 (the Property)

Dear Bruce:

As you are aware, the Board of Zoning Adjustment ("Board") took up the issue of reconsideration of the proposed new construction in the above-referenced matter at its April 13, 2004 special public meeting. Although the Board voted to grant the special exception as to new construction (without overturning its vote to deny the application as to increased enrollment and staffing), given that you and other members of the Office of Corporation Counsel ("OCC")were absent during the Board's deliberations, it will be important that OCC review the transcript in drafting the order in this matter for the following reasons:

First, as it was made clear in the Opposition's pleadings regarding communications between OCC and counsel for the National Child Research Center ("NCRC"), NCRC has corresponded with members of your staff in an attempt to influence the drafting of an order that is favorable to NCRC with regard to enrollment and staffing. Specifically, by email dated February 9, 2004, Maureen Dwyer, Esquire engaged in discussions about the proposed order. With regard to staffing and enrollment, Ms. Dwyer stated that:

> The findings should also reference the existing enrollment (171) and the number of students at any one time (120 per the c/o) and staff numbers (32 FTE), the fact that there are morning and afternoon programs, and the activities that presently take place at the school (Pumpkin party, etc.)

See Attached email correspondence.

Contrary to the claims of NCRC, the Board did not approve enrollment of 171 or staffing of [illegible]. Instead, at the April 13, 2004 public meeting, the Board agreed that the numbers in the 1998

BZA
Case No. 16970
Exhibit No. 369

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.369

order in BZA Application No. 16307 (attached hereto) would stand and, as stated by Board member Zaidain, no where in those orders does it state "at any one time" but, rather, the limitation is as to 120 students and 28 staff. Clearly, from Mr. Zaidain's statements, NCRC is not authorized, by the prior order or the instant proceedings, to have enrollment of 171 or a staff of 32. Furthermore, as the record reflects, NCRC's current staff is well in excess of 32, let alone the 28 requested and granted in BZA Application No. 16307 – constituting a violation of the current order both in number of staff and enrollment.

In drafting the Board's final Order we request that you reflect the statements of the Board and confine NCRC to the total enrollment and staff limits established in the 1998 Orders. Additionally, in the event any of the parties to this matter, individually or through counsel, makes contact with your office without providing a courtesy copy to all parties, please be sure to forward a copy of such correspondence to all parties.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Richard B. Nettler

Enclosure (as stated)
cc: All parties per the attached list

By Hand
ANC 3C
Nancy MacWood, Chairperson
2737 Devonshire Place, N.W.
Washington, D.C. 20008

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

Mr. Denzel Noble, Deputy Administrator
Building & Land Regulation Admin.
Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.E. - Room 2000
Washington, D.C. 20002

Arthur Jackson
Office of Planning
801 North Capitol St., N.E.
Washington, D.C. 20002

Ellen McCarthy
Office of Planning
801 North Capitol St., N.E.
Washington, D.C. 20002

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

Katharine Marshall
3208 Highland Place, NW
Washington, DC 20008

By Email:

Gaylord Neely & Linda Badami
3207 Highland Place, NW
Washington, DC 20008

Bruce and Sallie Beckner
Fleischman and Walsh, LLP
1400 16th Street, NW
Washington, DC 20036

Steven R. Hunsicker
Baker Botts, LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2400

Henry P. Little
The Nature Conservancy
201 Mission Street, 4th Floor
San Francisco, CA 94105

Coaxum, Tarifah (OCC)

From: Bergstein, Alan (OCC)
Sent: Tuesday, March 16, 2004 11:13 AM
To: Coaxum, Tarifah (OCC)
Subject: FW: NCRC

This was in my deleted mail folder.

Thanks

Alan

Alan Bergstein
Commercial Division
Chief, Land Use and
Public Works Section
Room 6N96
(202) 442-9777

-----Original Message-----
From: Maureen.Dwyer@shawpittman.com [mailto:Maureen.Dwyer@shawpittman.com] <mailto: [mailto:Maureen.Dwyer@shawpittman.com]>
Sent: Monday, February 09, 2004 5:21 PM
To: alan.bergstein@dc.gov
Subject: NCRC



16811_2243-27-28-65.pdf

Alan:
You are already very familiar with this order (which was the denial of the Edmund Burke school case back in 2001) since your office is now working on the new order, but it may also be a helpful model for the NCRC order. The Order makes clear that the denial was based on traffic impacts and that in all other respects (parking, noise impacts,) the school met the requirements of the regulations. In NCRC's case, the Board was clear in its decision that all requirements were met except for section 205.3 so it seems that the order could address the new construction in that respect and make clear that there were no issues with the buildings themselves (location, noise, etc.) Additionally, the order can, and should address the preliminary issues the Board decided so that those do not have to be revisited. These include the parking exemption for the entire site so that no variance relief is required for parking, the Board's conclusion that the building was three stories not four, and the Board's conclusion that no variance from section 3202.3 was required since the new building was accessory. The findings should also reference the existing enrollment (171) and number of students at any one time (120 per the c/o) and staff numbers (32 FTE), the fact that there are morning and afternoon programs, and the activities that presently take place at the school (Pumpkin party, etc.) All of these are in our draft order.
These are just my thoughts after re-reading the Burke order.
Thanks.
M.

----- Forwarded by Maureen Dwyer/SPPT/US on 02/09/2004 04:53 PM -----

Sheryl Jackson
02/09/2004 04:42 PM

To: Maureen Dwyer/SPPT/US@SPPT
cc:
Subject: Burke School 2001 order

(See attached file: 16611_2243-27-28-65.pdf)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16307 of National Child Research Center, as amended, pursuant to 11 DCMR 3108.1 for a special exception under Section 205 to establish a child development center for 120 students ages 2 ½ to five years and 28 staff in the basement through third floor of an existing building in an R-1-B District at premises 3209 Highland Place, NW [Square 2072, Lot 30 (855 & 866)].

HEARING DATE: **January 21, 1998**
DECISION DATE: **January 21, 1998 (Bench Decision)**

SUMMARY ORDER

This application was amended at the public hearing to eliminate the variance from 11 DCMR 2101 for off-street parking. The applicant submitted into the record a letter dated November 12, 1997, from the State Historic Preservation Officer for the District of Columbia stating that the subject building is either a historic landmark in the D.C. Inventory of Historic Sites or is located within a historic district and contributes to the character of the historic district. The Board determined that a parking variance is not needed based on Subsection 2100.5 of the Zoning Regulations which exempts such historic structures from providing additional parking when the use is changed.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C Register, and by mail to Advisory Neighborhood Commission (ANC) 3C and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 3C. ANC 3C, which is automatically a party to this application, submitted a written statement of issues and concerns in support of the application.

As directed by 11 DCMR 3324.3, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 205. No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board

further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of **FIFTEEN (15) YEARS.**
2. The maximum number of children shall not exceed 120.
3. The maximum number of teachers and support staff shall not exceed 28.
4. The hours and days of operation shall be between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-0 (Betty King, Susan Morgan Hinton and Sheila Cross Reid to grant; Maybelle Taylor Bennett to grant by absentee vote; Laura M. Richards not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Sheri M Pruitt-Williams
SHERI M. PRUITT WILLIAMS
Interim Director

FINAL DATE OF ORDER: JUN 17 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ord16307/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16307

As Director of the Board of Zoning Adjustment, I certify and attest that on JUN 17 1998 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Matthew Watson, Esquire
1701 Q Street, N.W.
Washington, D.C. 20009

Phil Mendelson, Chairperson
Advisory Neighborhood Commission 3C
2737 Devonshire Place, N.W.
Washington, D.C. 20009

Attested By: Sheri M Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Iterim Director

Date: JUN 17 1998

attest/ljp

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16307 of National Child Research Center, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Section 205 to establish a child development center for 120 students ages 2 ½ to five years and 28 staff in the basement through third floor of an existing building, and a variance from the provisions of Section 2101 for off-street parking in an R-1-B District at premises 3209 Highland Place, N.W. (Square 2072, Lot 30 (855 & 866)].

HEARING DATE: January 21 and April 1, 1998
DECISION DATE: January 21, February 4 and May 6, 1998

SUMMARY ORDER UPON REHEARING

The application was amended at the public hearing to eliminate the variance from 11 DCMR 2101 for off-street parking. The applicant submitted into the record a letter dated November 12, 1997, from the State Historic Preservation Officer for the District of Columbia stating that the subject building is either a historic landmark in the D.C. Inventory of Historic Sites or is located within a historic district and contributes to the character of the historic district. The Board determined that a parking variance is not needed based on Subsection 2100.5 of the Zoning Regulations which exempts such historic structures from providing additional parking when the use is changed.

For the January 21, 1998 hearing, the Board provided notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3C and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 3C. ANC 3C, which is automatically a party to this application, submitted a written statement of issues and concerns in support of the application. However, on, February 3, 1998, ANC 3C submitted a letter dated January 27, 1998 protesting the inadequate public notice in the application and requested that a new public hearing be held after proper notice has been given. The ANC noted that the notices were received very late due to the holiday season and new hearing would allow for a full discussion about parking and child drop-off and pick-up.

The Board considered the request at its public meeting of February 4, 1998 and granted the rehearing. The new hearing was held on April 1, 1998.

For the April 1, 1998 hearing, the Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3C and to owners of property within 200 feet of the site.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 205. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for **EIGHT (8) YEARS.**

2. The applicant shall prepare a pamphlet, separate from other school notices, which will define clearly the school's policies and regulations with regard to traffic and parking. The pamphlet will recognize specifically the interests and concerns of neighbors regarding school-related traffic and parking. The pamphlet will be distributed at the start of the school year and three additional times during the school year to parents and child care providers. In addition, the pamphlet will be given to families that change caregivers, and the applicant will further distribute the pamphlet at such other times to individual drivers if violations of the policy are noted by the monitors or neighbors.

3. The applicant shall clearly define the carpool waiting line on Highland Place and any carpool waiting line, and the location of its starting point shall be marked with a traffic cone placed in the street at each scheduled pick-up time to minimize blocking of traffic, particularly at the curve on Highland Place. In this instance, "carpool" refers to any automobile used to pick up one or more NCRC students.

4. Formation of the carpool waiting line shall not be permitted prior to 10 minutes before dismissal time.

5. Clearly identifiable NCRC staff using walkie-talkies (or other communication technology) shall monitor drop-off and pick-up points on Highland Place and Ordway Street with specific attention to ensuring that driveways and traffic is not blocked.

6. The applicant and ANC 3-C shall jointly request that the Department of Public Works mark no-parking areas at all the corners of Highland and 33rd Places with both signs and pavement markings to indicate clearly the limit of parking close to these corners. They will further request that parking adjacent to the school property along Ordway Street be limited to 15 minutes on school days between 7:00 a.m. and 8:30 a.m. with appropriated signage and pavement markings.

7. The applicant's staff shall warn violators of traffic regulations and shall request enforcement by the Metropolitan Police if violations persist.

8. The applicant shall not object to or in any way discourage any extension of residential permit parking on streets within the area of the school (except with regard to the actual frontage of NCRC on Highland Place and Ordway Street, N.W.).

9. The hours and days of operation shall be between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

DECISION DATE: February 4,1 998

VOTE: **4-0** (Susan Morgan Hinton and Sheila Cross Reid to **APPROVE** the request to **REHEAR** the application; Betty King and Maybelle Taylor Bennett to approve by absentee vote).

DECISION DATE: May 6, 1998

VOTE: **3-0** (Betty King and Sheila Cross Reid to grant; Herbert M. Franklin to grant by absentee vote).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

Final Date of Order: MAR - 3 1999

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL

COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

16307ord/twr/ljp

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16307

As Interim Director of the Office of Zoning, I certify and attest that on MAR - 3 1999 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Matthew Watson, Esquire
1701 Q Street, N.W.
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 3C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Attested By: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

Attest/ljp