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June 29, 2004

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Richard S. Nero, Jr.
Chief, Support Services and
Quality Control
District of Colombia Office of Zoning
441 4th Street, NW, Suite 210-S
Washington, DC 20001

Re: BZA Application No. 16970

Dear Mr. Nero:

On June 16, I filed a motion on behalf of opposition parties in this proceeding, which was returned by your letter dated June 17 on the ground that it was received after the close of the record withing the meaning of 11 DCMR § 3121.9. I respectfully request that you reconsider this action and permit the motion to be filed. I have enclosed a copy for your reference.

The BZA application of NCRC is awaiting issuance of a final order by the Board. The motion we filed on June 16 does not address the substance of the application, but rather the question whether the Board's Chairman is disqualified from participating in a decision upon the application. Accordingly, the motion is not of the sort described in § 3121.9. Furthermore, an interpretation of the regulations that prevented a party from timely raising a question of disqualification before a decision is rendered seems contrary to common sense and to the purpose of the regulations. We realize this is an unusual situation and suggest that it may be appropriate for your office to consult the Office of Corporation Counsel for advice in the matter.

Please feel free to call me if you have any questions.

Sincerely,

William H. Jeffress, Jr.

WHJ:arh
cc: Robert J. Spagnoletti w/encl.
Maureen E. Dwyer w/encl.
Richard Nettler w/encl.

DC01:391118.1

BZA
Case No. 16970
Exhibit No. 372

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.372

JK/EL
RSN

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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

MOTION TO DISQUALIFY CHAIRMAN GEOFFREY GRIFFIS AND TO VACATE VOTES TAKEN MARCH 9 AND APRIL 13, 2004

The Cleveland Park Neighbors, Steve Hunsicker, Sallie R. and R. Bruce Beckner, Henry Little and Linda Badami and Gaylord Neely (collectively referred to as the "Opposition parties") hereby move to disqualify Chairman Geoffrey Griffis on the grounds of personal bias and to vacate decisions of the Board taken by votes on March 9, and April 13, 2004.

This relief is requested based upon the recent discovery of incontrovertible evidence that Chairman Griffis does have today and has had for many months a close personal relationship with a Trustee of NCRC who has been deeply involved in the school's effort to seek favorable action from the BZA with respect to the school's application to expand. This individual, both as a Trustee and as a member of a working group specially constituted by the school for the purpose of pursuing this initiative, has spent more than two years working on NCRC's Application before this Board and has been an active proponent of it. She has submitted at least two letters addressed to the Chairman, and has regularly attended public hearings on the application. Out of respect for the privacy of Chairman Griffis and the Trustee in question, the Opposition parties do not identify the Trustee or provide particulars of the nature of the relationship in this motion. We are, however, supplying the Trustee's name to counsel for NCRC and will submit particulars of the relationship to the Board either publicly or in executive session as the Board may decide.

The criteria governing recusal of judicial officers apply equally to agency decisionmakers acting in an adjudicative capacity. Morrison v. Board of Zoning Adjustment, 422 A.2d 347, 349-50 (D.C. 1980); Dupont Circle Citizens Ass'n. v. Alcoholic Bev. Control Bd., 766 A.2d 59, 65 (D.C. 2001). Judicial disqualification is required when "the judge's impartiality might reasonably be questioned." ABA Model Code of Judicial Conduct, Canon 3 E(1); 28 U.S.C. § 455. A judge is automatically disqualified when his or her spouse, or a person within the third degree of relationship to either of them, is a party in the proceeding. Canon 3 E(1)(d). When the judge's relationship with a party is other than blood or marriage, the question is whether the relationship "would convince a reasonable [person] that a bias exists" that is "personal, as opposed to judicial, in nature." Carter v. Carter, 615 A.2d 197, 199 (D.C. 1992). The relationship between Chairman Griffis and the NCRC Trustee is personal. It is not merely social and is not casual. It is unquestionably one that would convince a reasonable person that bias exists toward her.

The history of these proceedings demonstrates that in order to avoid taint in these proceedings, decisions made by the Board on March 9 and April 13, 2004, should be vacated.

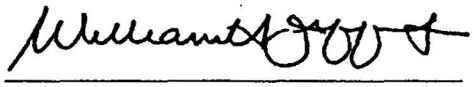
Hearings on NCRC's application for permission to construct a new classroom building, to construct an addition to the existing building, to replace a small shed on the property, and to increase enrollment and staffing commenced in February 2003. On May 6, 2003, the Board ruled that the application required a variance, not a special exception. NCRC moved for reconsideration. After soliciting the views of other members, Chairman Griffis announced that there was "a consensus of the Board that we will not at this point have a reconsideration deliberation on that motion." Tr. June 24, 2003, at 155.

On January 6, 2004, the Board sua sponte reversed itself on the question whether a variance was required. Having reversed its earlier ruling that NCRC's application required a variance, the board proceeded to treat the application as if it were an application for a special exception. The Board nevertheless voted to deny NCRC's application by a 3-1 vote (Chairman Griffis dissenting). On February 17, however, at a "Special Public Meeting" without notice to the Opposition parties, Chairman Griffis announced that "I believe that it is the Board's intention to reopen the deliberation and reconsider part of a vote on a recent application. And that is for the application of NCRC." Tr. February 17, 2004, at 9. As Chairman Griffis predicted, the Board did reconsider and, on March 9, it decided to reopen deliberations on the application insofar as it sought approval of new construction. On April 13, the Board voted 3-1 (Commissioner Etherly dissenting) to reverse itself and approve the construction as requested by NCRC.

It is extraordinary for the Board to reconsider and reverse itself not just once but twice in the same proceeding. Since January 6, 2004, the Chairman has – without disclosing the nature of his personal relation with Trustee – used his position behind the scenes as well as in public hearings to advance the school's cause. The Chairman has identified issues, prepared agendas, scheduled hearings and served as an advocate for the school's cause with the internal discussions and deliberations of the BZA. He has also voted (either in the majority or in dissent) in favor of NCRC's position at every turn. The Opposition parties aver on information and belief that the Chairman's relationship with the NCRC Trustee was either ongoing or anticipated by the Chairman on and after January 6, 2004. The Chairman's failure to disclose both the fact and the nature of his personal relationship with the NCRC Trustee has tainted these proceedings. To eliminate the taint and to restore integrity to the process and procedures of the BZA, it is

necessary that the actions taken by the Board at these proceedings be vacated. Accordingly, the Opposition Parties request that all actions since January 6, 2004 – including the votes of March 9 and April 13, 2004 -- be vacated.

Respectfully submitted,



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Of counsel for Cleveland Park Neighbors
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Bruce and Sallie Beckner

Henry P. Little

Linda Badami and Gaylord Neely

Steven R. Hunsicker

OTHER PARTIES IN OPPOSITION TO THE APPLICATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion To Disqualify Chairman Geoffrey Griffis and To Vacate Votes Taken March 9 and April 13, 2004 was served by Fax to Maureen Dwyer and by regular mail on the following:

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

Mr. Denzel Noble, Deputy Administrator
Building & Land Regulation Admin.
Department of Consumer & Regulatory Affairs
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