GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

October 6, 2004

The Honorable Kathy Patterson
Councilmember, Ward 3
1350 Pennsylvania Avenue, N.W.
Suite 107
Washington, D.C. 20004

Re: BZA Application No. 16970 – National Child Research Center

Dear Councilmember Patterson:

The Office of Zoning received your letter dated September 15, 2004 (attached) on September 22, 2004. Your letter requests that the memoranda prepared by attorneys in the Office of the Attorney General (OAG) Land Use and Public Works Section in the above-cited application, be made a part of the official record in that proceeding. This memoranda was sent to the Office of Zoning for the use of the Board of Zoning Adjustment (Board) members after their January 6, 2004 public decision meeting in the NCRC case.

The Board takes the position that all such memoranda, including the subject memoranda in the NCRC case is privileged as an attorney-client communication. The attorney-client privilege exists to preserve the open and unimpeded flow of communication between attorney and client. The privilege rests with the Board as the client. The Board has embraced the same position taken by the Zoning Commission in a comparable request that the OAG memoranda be made a part of the record. To recapitulate the Zoning Commission's position as amended to fit the instant matter, the Board relies upon the Land Use and Public Works Section of OAG for legal advice. The Board is free to accept or reject the advice given. The written legal advice received is not a formal Opinion by the AOG and therefore has no official status. For example, the Zoning Administrator receives legal advice through the General Counsel of the Department of Consumer and Regulatory Affairs. Neither the Zoning Administrator nor DCRA's General Counsel must adhere to the legal interpretations of the Land Use and Public Works Section. Rather, it is the legal interpretations included in the written orders of this Board that establish zoning precedent. Thus, apart from general concerns about maintaining attorney-client confidentiality, the release of such written memoranda could create confusion to the extent that there may be differences between the

BZA
Case No. 16970
Exhibit No. 380

Board of Zoning Adjustment
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CASE NO.16970
EXHIBIT NO.380

analysis in an OAG memoranda and the analysis of the same issue in a Board order. For these reasons, the Board has chosen not to make the memoranda a part of the record in the subject case.

EACH CONCURRING MEMBER OF THE BOARD OF ZONING ADJUSTMENT APPROVED THE ISSUANCE OF THIS LETTER.

As always, please do not hesitate to call me directly, or Richard S. Nero, Jr., Chief, Support Services and Quality Control on (202) 727-6311, if we can be of further assistance in this matter.

SINCERELY,

JERRILY R. KRESS, FAIA
Director, Office of Zoning

Attachment
rsn

-1762

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

KATHY PATTERSON
COUNCILMEMBER, WARD 3

CHAIRPERSON
COMMITTEE ON THE JUDICIARY

OFFICE: (202) 724-8062
FAX: (202) 724-8118

September 15, 2004

Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210 South
Washington, D.C. 20004

Dear Chairperson Griffis:

I write regarding Board of Zoning Adjustment (BZA) case No. 16970, pertaining to the National Child Research Center (NCRC).

During an April 21, 2004, Judiciary Committee hearing concerning the Office of the Attorney General (OAG), several residents complained about what they viewed as a lack of transparency and alleged *ex parte* contacts in the case. At the time, I expressed my view that an OAG memorandum to the BZA members, prepared by attorneys in the Land Use and Public Works section after the BZA's January 6, 2004 public meeting, should be made part of the official record of case No. 16970, to ensure the transparency of the decision-making process. I made this statement in light of the principle that the decision should be made based upon the public record in the case.

Attorney General Spagnoletti advised me that the decision to make the memo part of the public record in the case rests with the BZA. Therefore, I ask that you make the memo part of the public record in case no. 16970. Thank you for your consideration, and I look forward to your response.

Sincerely,

Kathy Patterson

cc: Attorney General Robert Spagnoletti