

Concerned Neighbors Directly Impacted by LAMB Application (CNDI-LA)

January 10, 2018

Chairman Fred Hill
D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 200S
Washington, DC 20001

Re: BZA Case No. 19581 – CNDI-LA’s Closing Statement

Dear Chairman Hill and Members of the Board –

Your statement to CNDI-LA at the December 20th hearing about not being able to discern our position – whether as you stated – we, “*just don’t want this*” or whether we’re “*just really worried about it*,” has prompted us to provide this Closing Statement.

In response to your question about our position, we accept LAMB’s submission that proposes 310 students and 36 faculty/staff, but **we strongly oppose** LAMB’s Application at the 600-student population level plus faculty and staff, **without them returning to the BZA for approval at 600, plus** the building of a 5000sf gymnasium. We are also “*really worried*” since LAMB’s Application represents a vast departure in the current use of this property from Kingsbury’s existing 108 older-student population and 71 faculty and staff.

I. LAMB’s Application is Inconsistent with the District’s Comprehensive Plan and the Rock Creek East Livability Study. It Fails to Meet Requirements of the R-16 Zoning Regulations

The purpose of creating the R-16 Zoning Overlay in our little corner of the world was two-fold:

- A. To promote the conservation, enhancement, and stability of a low-density, single dwelling unit neighborhood for housing and neighborhood-related uses, and
- B. To control the expansion of nonresidential uses thereby preserving neighborhood quality of life. LAMB’s Conditions, presented to CNDI-LA and the BZA, do not adequately address or ameliorate the adverse conditions, which new and expanded non-residential uses are required to address in the R-16 Zoning Overlay:

1. Failure to Address Screened Off-Street Visitor Parking Requirement.

LAMB proposes to give the community notice of large events, but defines large events as one that has overflow parking and/or outdoor activities, excluding PTA meetings and other school-related activities. However, Overlay regulations require new and expanded non-residential uses to provide screened off-street visitor parking. According to the regulations, “*there shall be adequate, appropriately located, and screened off-street parking sufficient to provide the needs of the maximum number of occupants, employees, congregants, and visitors who can use the facility at one time.*” LAMB has failed to identify how it will meet this requirement for events likely to have attendees needing more than the 107 spaces currently available onsite.

2. Failure to Fully Identify and Address Noise from its Operations

Affecting the Use and Enjoyment of Neighboring and Nearby Properties.

LAMB’s Application states, “any noise that the Applicant will produce will have a negligible effect on neighbors,” but provides no study or supporting data to substantiate this claim. The Overlay regulations requires LAMB to address whether or not, “*The non-residential use is capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions (U Section 205.2(a),*” which would include, but not limited to, traffic from student drop-offs and pick-up, delivery services, trash trucks – raising environmental concerns for a significant number of seniors near the property – as well as noise from outdoor playgrounds, (which are in close proximity to homes), HVAC units, etc.

Noise not adequately or fully addressed by the Application includes but is not limited to the following:

- a. **Noise from outdoor playground activities.** As indicated above, LAMB's Application says this will have a "negligible" effect and will be reduced with the building of the gym in later years. This does not address playground activities in the interim period. The Application further negates daytime noise from the playgrounds, which is of concern to many directly-impacted residents, who are retired or work from home. The community has experienced noise from Kingsbury play, several blocks away from the facility.
- b. **Noise from traffic.** LAMB's Application at page 8, while recognizing that the regulations require it to address traffic noise, it's not addressed; nor is it addressed in its traffic study. The traffic study addresses traffic routing, flow and timing at intersections, entry and exit points, transportation demand management and traffic operations plans, but not noise.

Moreover, as to traffic noise, CNDI-LA has consistently maintained that Piney Branch Road be used by faculty and staff only to reduce environmental (air quality) and noise impacts. Piney Branch lacks sidewalks and tree beds which places traffic close to nearby residents' bedrooms and homes. LAMB has not responded and has not explored alternatives, such as reconfiguring the property to allow for the 600 students arriving and departing by private vehicles to exit elsewhere or on 14th Street, thereby reducing the impacts on the community.

We also note, Kingsbury's student population primarily uses buses, which enter and exit on 14th Street and Kingsbury's commitment to not use Piney Branch Road was a condition precedent to the community's support of the 2000 Kingsbury application.

3. Failure to Adequately Address Major Objectionable Traffic Conditions Resulting from the Non-Residential Use as Required by the Zoning Overlay Regulations.

LAMB's Application at page 6 states that LAMB's operations will not cause adverse impacts. Yet, LAMB's Traffic Report concludes that "*the project will not have detrimental impacts to the surrounding transportation network, assuming that all mitigation measures are implemented.*" LAMB, however, cannot implement the mitigation measures identified in the Report, particularly as to the significant-identified impact to traffic at 14th & Gallatin Streets.

By example: As part of its Conditions of Approval, LAMB and DDOT are calling for:

- A sidewalk along the southern side of Gallatin Street between Piney Branch Road and 14th Street, NW, with new curb ramps and crosswalks, as required, as well as crosswalks specifically across Gallatin Street, NW at both Piney Branch Road and Iowa Avenue, to connect pedestrians to the existing sidewalk on the northern-side;
- New curb ramps on the northern and southern-sides of Emerson Street at 15th Street, NW; and
- Upgrades to all existing sub-standard curb ramps at the intersection of 14th Street and Farragut Street, NW.

CNDI-LA responds by noting: Not one of these *conditions* addresses traffic or transportation delays, as if adding sidewalks on a side street will *mitigate* or *satisfy* travel-delayed impacts at nearby intersections, particularly 14th Street.

In addition, LAMB's Application, while highlighting the percentages of unused green space at that location and proposing to build a gym, does not address reconfiguring the space, which was set-up as a residence, to reduce the traffic impact on the community. In other words, LAMB did not explore other alternatives.

From a zoning compliance standpoint LAMB's Conditions of Approval, which are titled "transportation, traffic and routing," do not address the concerns identified in its Traffic Study and become mere window dressing, particularly since LAMB does not want to return to the BZA for approval of 600 student-level. Returning to the BZA for additional approval, gives teeth to the implementation of these conditions and affords the community the required protections.

II. LAMB'S Conditions of Approval Do Not Satisfy the Overlay Requirements and CNDI-LA's Responses to LAMB's Conditions of Approval are Limited to LAMB Operating with 310 Students.

LAMB has presented a long list of Proposed Conditions of Approval, covering aspects related to traffic, good neighbor policy, lighting/noise/design, school operations and construction. Most of these Conditions are either:

- A. Established legal requirements;
- B. Provisions already addressed in LAMB's application; or
- C. Responses to DDOT, which do not address traffic impacts identified in LAMB's Traffic Study, where queuing is used in place of the word idling.

While CNDI-LA has provided responses to these Conditions. It is important to state that all CNDI-LA's responses to LAMB's Conditions pertain to a school and property populations at the current limit originally granted to Kingsbury in its special exception and are not negotiations as to tolerance of conditions at the 600-student population level sought by LAMB

Even though the applicant LAMB claims to have been a good neighbor in all three of its current locations, it is the sum of all three locations that we, as a neighborhood, subject to a residential zoning overlay, are worried about.

CNDI-LA has reluctantly agreed to allow LAMB to copy Kingsbury's footprint, with provisions to ensure better behavior, knowing Kingsbury never came anywhere near their 300-student threshold and was in violation of its zoning order. We maintain that LAMB should return to the BZA, when they choose to increase their student population to 600 and expand its footprint with the building of a gymnasium, but not before having demonstrated it can manage the impacts on the community at the 310-student level.

We have attempted to narrow the gap on the proposed Conditions, and have reached agreement on some, have minor disagreements on others, **and significant differences on a few, but especially the need for LAMB to come back to the BZA to seek approval for the 600-student population level; that's a must.**

You are correct in stating that there is a "trust issue," but it is not against LAMB as an institution that we welcome at 310 students; it is against LAMB with a combined three campuses at a maximum of 600 students, along with an interim Kingsbury operation of 175 students, plus both faculty and staff. In addition, as to the trust issue, Applicant LAMB claims Kingsbury bears no responsibility for any conditions negotiated by LAMB and will not be held accountable to requirements under R-16, thus making Kingsbury an easy scapegoat and target should LAMB be found in violation of any of its Conditions; Kingsbury can easily be blamed.

III. Availability of Financing and LAMB's Popularity with Students' Parents Do Not Override Assessing Whether an Applicant Meets the Requirements of the R-16 Zoning Overlay Regulations.

Building Hope and LAMB are parties in this application: The opening statement of Applicant's Exhibit #14 reads in part: *This is the application of Building Hope and the LAMB Public Charter School (collectively, the "Applicant") for a special exception for the establishment of a public charter school and co-location of a public school with another permitted existing private school at 5000 14th Street NW. The Property is included in the R-16 Zone District.*

Applicant claims to have only one option for financing: to have the BZA approve the 600-student population level at the outset. It also claims, despite the proposed landlord/tenant relationship between co-tenants Kingsbury/LAMB, (with Building Hope being both their landlords), co-tenant, Kingsbury, cannot be legally held accountable to co-tenant LAMB and Building Hope's conditions.

- A. Financing is not a consideration in accordance with the rules associated with the special exception process applicable to the R-16 Zoning Overlay;
- B. The evaluation of the legitimacy of this claim falls outside the expertise of the BZA and cannot over-ride compliance with the Zoning Overlay regulations;
- C. CNDI-LA maintains LAMB has not clearly defined or described its financing challenges, especially during the interim period of 310-students. Instead, it is relying on 3rd party advocate and co-Applicant, Building Hope, to provide answers for LAMB. For its part, Building Hope wants to claim sovereignty on the conditions for its co-tenant Kingsbury – as being unenforceable – feigning no responsibility, which we find to be confusing and puzzling. As proposed, there must be other options available during the interim period, allowing LAMB to move in before meeting the 600 student population level;
- D. LAMB is not currently located at the Kingsbury site and therefore suffers no detrimental financial impact regarding the use of this site if disapproved;
- E. LAMB, as evidenced by its significant outreach to actual and prospective parents, is popular at its current locations;
- F. LAMB's desire to consolidate, does not trump compliance with zoning regulations intended to protect the residential characteristic and quality of life in this community; and
- G. Considering all of the above, perhaps this is not the right location for LAMB to consolidate its campuses.

IV. ANC 4C's Position Should Not be Given Great Weight: They Neither Demonstrated Neutrality nor Compliance with Zoning Regulations Requiring that ANC Review of BZA Applications Address Standards in the Zoning Regulations.

It was mentioned during the December 20th hearing, in discussions on the LAMB / Community Committee (LCC), the position of ANC 4C02 SMD Commissioner Maria Barry as neutral; yet another reason LAMB should come back to the BZA.

While neutrality is a desirable trait for any appointed or elected official, integrity of the process and accountability rank first. As to LAMB's Application, it has been our experience that SMD 4C02 Commissioner Maria Barry (Barry) is neither neutral, nor is there any immediately-available mechanism to hold her accountable for her actions. She has clearly sided with the Applicant and in the ANC4C review and public decision-making process, which in their design, favors the Applicant, she has consistently echoed LAMB's position. Evidence of ANC 4C and Barry's failures – lack of neutrality – include, but are not limited to the following:

- A. Before meeting with directly-impacted residents – identified by Applicant as being within 200ft. of the facility – Barry first notified parents in the greater 16th Street Heights community and beyond, effectively dividing the community into those supporting “the popularity of LAMB” vs. those concerned with “the impacts on the directly-affected residents.” Those directly-impacted were forced to play catch-up;
- B. Before scheduling the first ANC 4C vote on LAMB’s Application, Barry did not reach out or meet with directly-impacted community members, placing them at a continuing disadvantage, again forcing them to play catch-up;
- C. Without considering or evaluating (1) the failure of the combined applications of Kingsbury/LAMB (#16569A and #19581 respectively) and their eventual separation, causing non-compliance with the 200ft. rule; (2) Kingsbury’s failure to comply with the BZA’s original order (#16569); and (3) the impact of a combined Kingsbury/LAMB-operation on the community, Barry along with ANC 4C, introduced and passed a **deficient, undated** Letter of Support (uploaded to IZIS 09/27/17: BZA Case #16569A/Exhibit 7), leaving the directly-impacted community without direct or sufficient notice of the Kingsbury Application, as well as ANC 4C’s subsequent actions;
- D. Without ever addressing the R-16 Zoning Overlay requirements or LAMB’s traffic study findings, in late-September community meetings, ostensibly on the LAMB Application, Barry, now joined by Commissioner Charlotte Nugent (SMD 4C02), advocated for a broad DDOT traffic study to take place after the BZA rules on LAMB’s Application, obfuscating the issue; and
- E. CNDI-LA, a party to the case, repeatedly having to advocate to Barry, to postpone or reschedule ANC 4C’s vote and/or LAMB’s BZA Application, in order to accommodate meetings with the community to learn more about and address LAMB’s Application.

There is no evidence of neutrality where 99% of CNDI-LA members are located within 4C02 boundaries and CNDI-LA appears in this BZA process as an opposition party, yet Commissioner Barry appeared as a “proponent” witness at the Dec. 20th hearing (Exhibit #162) and three (3) Commissioners – Barry, Nugent and Hillev, (SMD 4C06) wrote letters of support, (Exhibits 72, 70 and 90), advocating that LAMB not return to the BZA for its 600-student approval.

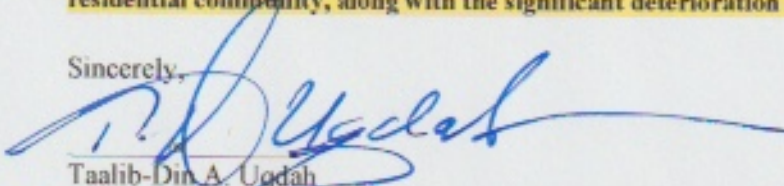
It is for these and other reasons, found in our response to ANC 4C’s Dec. 13th resolution, (Exhibit 157), we reiterate to the BZA to withhold granting *great weight* generally accorded any ANC representing its constituency, to protect the integrity of the process.

Y. Closing

In summary, to give assurances of compliance, consistent with the Comprehensive Plan and the Rock Creek East Livability Study, which maintain and recognize the R-16 Zoning Overlay, CNDI-LA urges the BZA to approve LAMB’s proposal for 310 students and 36 faculty/staff, but require LAMB returns to the BZA to increase their student population to 600 and build the gymnasium. This affords all parties an opportunity to test LAMB’s proposed Conditions of Approval.

To not have LAMB return to the BZA and prove they are operating within the Plan and the Study – R-16 guidelines – and in compliance with the conditions set by this Board, is to negate the purposes of the Overlay and to approve the continued expansion of non-residential uses in this single family residential community, along with the significant deterioration of residents’ quality of life.

Sincerely,



Taalib-Din A. Ugdah

On behalf of Committee of Neighbors Directly Impacted by LAMB Application (CNDI-LA)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Wednesday, January 10, 2018, in Response to BZA Chairman Fred Hill's concern in not being able to discern the position of the Committee of Neighbors Directly Impacted by LAMB Application (CNDI-LA) and his allowance for CNDI-LA to make a Closing Statement in BZA Case #19581, a Closing Statement was submitted and response delivered via e-mail to the following:

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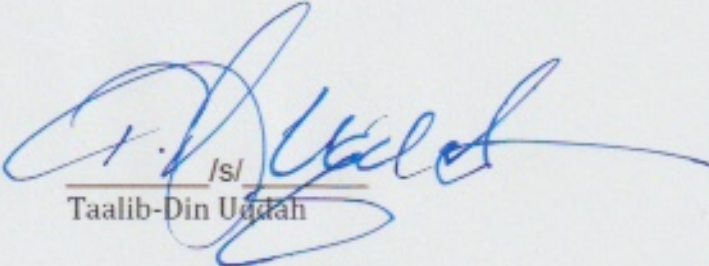
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/s/
Taalib-Din Uddah