

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

WEDNESDAY, FEBRUARY 14, 2018

BZA CASE #19581

**PARTY: COMMITTEE OF NEIGHBORS DIRECTLY
IMPACTED BY LAMB APPLICATION (CNDI-LA)**

**WRITTEN STATEMENT AFTER
MOTION GRANTED TO
REOPEN A CLOSED CASE**

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CNDI-LA thanks this honorable Commission for granting our Motion to Reopen a Closed Case and hear arguments in favor of the Applicants¹ returning to the BZA when they are ready to seek occupancy for 600-students, plus 110 faculty and staff and the building of a gymnasium.

At the Chair's prerogative, discussion at this hearing has been limited to LAMB's 35 Conditions of Approval, specifically focusing on Condition #12 – LAMB's Community Committee (LCC) and Condition #30 – LAMB'S Certificate of Occupancy Approval Process for 600 Students. However, as the only party in opposition to the Applicant, we respectfully request permission to address other conditions than those noted, particularly where they may directly relate to the unique protections and requirements of the R-16 Zoning Overlay. We contend that it is only because of these protections that the Applicant's Conditions of Approval exist at all. In fact, Condition #30 relates directly to how to verify that the Applicant's performance during occupancy and student population growth adequately mitigates adverse impacts on the neighboring community; all relevant to protecting the integrity of this process and procedure.

We remind the Board that its longest serving and well-respected member, Commissioner Anthony Hood, twice noted during the January 17th hearing: ***"This would be the first time in my tenure of putting something in place where you don't have to return, but you depend on a condition. That's my hesitation; I think the community needs to have a venue."***² [Emphasis added]

¹ BZA Case #19581: See Exhibit #14 – Revised Statement

² BZA Case #19581 – Transcript from 01/17/2018: Page 25/Lines 5-7 and Page 29/Lines 10-23

We would like to explore Commissioner Hood's comments further, as they capture our concerns regarding LAMB's Conditions for Approval.

First, we would like to address Commissioner Hood's observation regarding the lack of future venue where this community's voice can be heard, if the Board approves LAMB's Application today with the presently proposed Conditions.

Throughout LAMB'S process for finalizing its Conditions, CNDI-LA has been relegated to begging LAMB to accept our comments or conditions, since after all, (as we have been reminded), they are LAMB's conditions; and we would like to remind this Board that LAMB and CNDI-LA have never been equal parties to an objective arbitration process.

Additionally, in the future, under the noted Conditions and others, CNDI-LA will continue to have to beg LAMB to be heard as a member of the LAMB Community Committee (LCC) discussed in Condition #12, where we have no vote and are treated similarly to the West Education Campus, which is not a party to this Application and has not raised any zoning issues.

Moreover, under Condition #30, we are being pushed off to agencies – DDOT and the Zoning Administrator – whose decision-making processes are opaque and who are frequently non-responsive and for which there are no formal procedures for community involvement in their review and deliberation processes. Additionally, under the Conditions proposed by LAMB, there are no identified penalties for non-compliance or the likelihood of a penalty is remote, given LAMB's control of the monitoring and reporting process. Any standards work primarily in LAMB's favor, given that these are LAMB's Conditions. This is in stark contrast to a case like the Lowell School's request for a zoning extension, in which school officials and parents both know violations come with financial penalties.

In other words, it is abundantly clear that the community will have little or no voice, will be relegated to being a proverbial “voice crying in the wilderness” and have to engage in future “heavy-lifting” for an eternity or as many years as LAMB occupies 5000 14th Street. The lack of such a future venue for the community, falls short of the Zoning Overlay’s intent for “*improved public review, to ameliorate adverse impacts on immediate and nearby neighbors.*”

It is most difficult for us to accept that in the future the community is expected to seek relief from “negative conditions” identified in the R-16 regulations resulting from LAMB’s operations, which are presently identified by LAMB’s own experts, (i.e., queuing and travel delays), by bringing them to LAMB’s attention through the LCC, or to DDOT and the Zoning Administrator. The onus for day-to-day oversight and reporting is squarely placed on CNDI-LA’s shoulders.

If this Board adopts these final Conditions “as is” and approves LAMB’s 600 student population without requiring LAMB to return to the BZA, this amounts to a denial of our due process rights as a party in this process, disenfranchisement as citizens of the District of Columbia, and an abdication by the BZA of its singular authority as the expert body mandated to address zoning standards in the R-16 “protective” regulations.

Second, we would like to focus on Commissioner Hood’s comment on the Board relying on Conditions, which only require executive branch-agency “oversight” rather than on BZA review of compliance with its Order.

As the party in opposition, CNDI-LA’s comments on LAMB’s Conditions were offered with the caveat that they applied to a 310-student population scenario, with LAMB returning to the BZA when prepared to go to 600 and build a gymnasium. This was also the position of both the Office of Planning and Advisory Neighborhood Commission 4C, until the Applicants interjected a financing component this Board

should not have heard, since Applicant financing is not within the purview of the Board, as advised by the Office of the Attorney General.³

Whether the Board approves the Applicant for 310 students, as we're requesting or 600, as LAMB would like, the Board has ordered CNDI-LA to negotiate a set of Conditions for Approval with LAMB, which in its "final" form, either does not comply with all R-16 Zoning Overlay regulations or which is not in CNDI-LA's best interest. There are numerous examples, including:

1. Conditions #14⁴ and #17, which do not provide for off-street, screened, visitor parking as specifically required in the R-16 regulations;⁵ in fact, LAMB only states that it: *"will use its best efforts to accommodate all parking for large events on the school property."*⁶
2. The vaunted LCC, discussed in Condition #12, which is of no value to CNDI-LA, as we will only be able to raise issues to a body predisposed to LAMB's positions, and most ironically, there is no CNDI-LA issue that will come before the LCC in the ensuing years that has not been raised in the last 6-months before this Board.
3. DDOT's proposed PMP implementation, at Condition #30, which is contrived, as there are no DDOT standards associated with the PMP; its process for addressing non-

³ See BZA Case #19581: 01/17/18 Transcript – Page 27/Lines 11-20 – “ *talking with the Office of the Attorney General, the finance is not really something that applied to zoning, but that's not really something that is in our purview but it's something that we took testimony about.* ”

⁴ See Applicant's Conditions for Approval – #14: “*Large event*” shall be defined as one occurring, either during or after regular school hours, **where parking is expected to overflow outside the property and into the neighborhood.**”

⁵ “*Off-street screened parking for visitors*” referenced in the regulation (“*There shall be adequate, appropriately located, and screened off-street parking sufficient to provide for the needs of the maximum number of occupants, employees, congregants, and visitors who can use the facility at one (1) time*”).

⁶ See Applicant's Conditions for Approval – #17: “*At any large event, LAMB shall engage the services of staff as needed to enforce parking, traffic, queuing, noise, traffic entry/exit conditions, and provide safety and security services. LAMB will use its best efforts to accommodate all parking for large events on the school property.*”

compliance with over 550 vehicles per day – coming and going – and queuing in the public space, carry no penalties, just loosely-worded statements like “*best efforts*,” “*to the greatest extent possible*,” “*address*,” “*advise*,” “*assure*,” “*encourage*,” “*mitigate*,” and “*support*,” missives that pretty much amount to, “*we – DDOT and LAMB – will do our best to work it out.*”

4. DDOT’s unsubstantiated recommendation, in Condition #1: that a sidewalk on the Southside of Gallatin and upgrades to curb ramps elsewhere, will serve “*to encourage a reduction in automobile mode share and to mitigate travel delay impacts at nearby intersections*,” not only lacks any supporting data or study, but doesn’t make common sense. No one is required to review whether this works as an adequate mitigation, only whether or not the construction has occurred.

5. Condition #15, which requires CNDI-LA and the West Education Campus to notify LAMB regarding large events to avoid simultaneous hosting, should include the large non-residential neighbors, which surround 5000 14th Street.

Our willingness to give-up certain regulatory requirements in the spirit of negotiation, provided that the student population is 310 with a return to the BZA for 600 students, is not a willingness on our part to accept the same conditions with a student population of 600; but 600 was the starting point for the Applicant. This student occupancy level later became the starting point for the ANC and OP, now it appears to have become the starting point for this Board.

Again, we must reiterate that if this Board adopts these Conditions, with their “questionable oversight” by other executive branch agencies, this Board will have abdicated its responsibility to address negative conditions that are known and admitted to in this Application. Under the guise of 35 Conditions of Approval, the Board will have handed-off its decision-making to LAMB, where many of these conditions contain promises LAMB cannot keep and cannot guarantee will be kept, giving its pending

change in leadership, and where these “final Conditions” do not protect this residential community under the Zoning Overlay.

It is also important that the Board not be swayed by the sheer number of conditions or statements that noncompliance with any condition could result in denial of a certificate of occupancy. Not only is the latter not clearly stated in Condition #30, the question which the Board should address is whether the conditions protect the community’s residential character and quality of life as prescribed by the R-16 zoning regulations. Clearly, this Board must stay involved in over-seeing LAMB’s operations in this R-16 community.

In conclusion: Look at us as that guest at the wedding, who when asked by the priest (BZA) if there is anyone here who objects to this couple being married – LAMB to this community – we’re standing-up to say, Yes! **We object**; this is a bad marriage. They must be made to come back before the BZA when they’re ready to have 600 children, plus 110 caregivers and build a playroom.

We contend, whether the number is 310 students or 600 students, all the parties, including this Board, know that there are going to be violations. All the models, including the Applicant’s own submissions, predict this. Having the Applicant return to the BZA at either occupancy level ensures compliance and protection under the R-16 Zoning Overlay.

In addition, the presence of co-tenant Kingsbury and the cumulative effect of the “objectionable conditions” from both Kingsbury and LAMB operations,⁷ though Kingsbury is not included as a party to these Conditions, only serves to exacerbate our concerns. Disavowing Kingsbury during the interim period, when data will be collected, makes LAMB’s stated self-monitoring audit mechanism susceptible to “gaming the system.”

⁷ The R-16 Zoning Overlay rules requires that: *"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"*

The Applicant's Final Conditions before you now, with appropriate changes, should remain the conditions the Applicant will be required to comply with and demonstrate to the BZA, and would be protective of this residential community in the R-16 Zoning Overlay once they are prepared to increase their student population. Anything less than their return is unacceptable to us.

While this Board may feel the 35 conditions help to mitigate the adverse impacts of infusing 600 students and associated staff, with all of the concomitant problems they bring, into an established neighborhood of single-family homes, we don't share your optimism and remain extremely concerned about this application and its impact on our neighborhood and its residents.

Our stance is fact-based, consistent and strongly linked to the requirements under the Zoning Overlay that succinctly address identified "negative conditions" and impacts under specific categories, which the Applicants have not met.

Respectfully submitted,

/s/

Rami Rihani
Doreen Thompson
Taalib-Din Uqdah
obo/CNDI-LA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Wednesday, February 14, 2018, in Response to a Motion to Reopen a Closed Case – BZA Case #19581 – a **Written Statement After Motion Granted to Reopen a Closed Case**, the Committee of Neighbors Directly Impacted by LAMB Application (CNDI-LA), submitted and delivered its response via e-mail or by hand to the following:

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/s/
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