

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

Application of Latin American Montessori Bilingual Public Charter School  
BZA Case No. 19581

**APPLICANT’S OPPOSITION TO MOTION FOR RECONSIDERATION**

The Latin American Montessori Bilingual Public Charter School (“Applicant” or “LAMB”), hereby opposes CNDI-LA’s motion for reconsideration (the “Motion”), filed on June 21, 2018. The Board should deny CNDI-LA’s Motion because the Board’s decision was the result of a full, robust weighing of the merits of the case; the Board’s decision is supported by the lengthy record; and all parties were given the opportunity to participate in a fair and exhaustive process prior to the Board’s decision and Order.

First, the Board invested extensive time and engaged in an extraordinarily deliberative process in this case. The Board reviewed over 175 exhibits in the record, heard testimony at three public hearings, and considered the case at three public meetings. The Board undertook great effort to consider all issues presented in the case and carefully weighed all arguments presented to it. The Board considered testimony and evidence from many stakeholders, including the Applicant’s representatives, CNDI-LA’s members, other community members, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), and the Advisory Neighborhood Commission (“ANC”). Based on all of this evidence and consideration, the Board made a defensible, measured decision. The Board’s 42

findings of fact, 11 conclusions of law, and 35 conditions of approval in Order No. 19581 (“Order”) reflect this carefully considered decision.

Second, the Board clearly considered and weighed CNDI-LA’s concerns, which is evident by the numerous findings of fact and the extensive conditions of approval in the Order. The Applicant and CNDI-LA negotiated and mostly agreed on a set of proposed conditions that the Board included in the Order. The final conditions, including the alternate condition to allow the Applicant to increase enrollment to 600, were supported by OP and the ANC.

Finally, CNDI-LA’s Motion simply attempts to re-litigate all of the points it raised throughout the case proceedings. In many instances in the Motion, CNDI-LA alleges that the record did not support the Board’s decision, that the Board did not give appropriate weight to various evidence, and even, extremely, that CNDI-LA was deprived of its due process rights. The Board’s issuance of a decision not completely in accordance with CNDI-LA’s preferences does not mean the decision is not supported by the record or that the Board did not sufficiently and equitably consider all of the arguments. In fact, the record is replete with evidence on all relevant issues, and the Board’s deliberations at the hearings and public meetings illustrate that they carefully weighed this evidence in deciding each of the issues raised in CNDI-LA’s Motion.

## 1. Ownership/Kingsbury Use

CNDI-LA alleges that since Kingsbury was removed from the application and proceeded under its own BZA application, it was procedurally incorrect and CNDI-LA was put at a disadvantage. However, this allegation is without merit. The Board explained in the Order that it has no authority to regulate a different use subject to a separate BZA order in a case in which the user is not an applicant. Based on the Zoning Regulations, the Board was clear that this application pertains to the use (public charter school) and applicant (LAMB), not to the property owner. Accordingly, the Board correctly considered the issue, weighed the merits of the arguments, and decided this issue by noting: (1) Kingsbury would need to proceed separately to modify its own BZA order; (2) Kingsbury is not the Applicant in this case, and therefore may not be bound by conditions; (3) Kingsbury, as the property owner, consented to, but did not participate in, this application; and (4) CNDI-LA's opportunity to participate in proceedings pertaining to Kingsbury was during Case No. 16569A and/or by separate zoning enforcement action. (See Order, pp. 18-19.)

Nevertheless, the impacts of Kingsbury's use of the property were still considered by the Board. The Applicant's Comprehensive Transportation Review ("CTR") included and evaluated the existing traffic and operations of Kingsbury as well as the expected traffic for Kingsbury while LAMB is also in the building. (Exhibits ("Ex.") 31, 36.) The Board extensively reviewed the findings of the CTR and, because the traffic and parking conditions resulting from Kingsbury's operation are existing, those impacts were easily ascertainable.

## **2. Screened Off-Street Parking Plans**

CNDI-LA alleges that the application did not provide plans showing the evergreens proposed for screening the parking spaces and that such screening is required; therefore, CNDI-LA claims, plans must be provided. However, CNDI-LA's allegation is incorrect and is not dispositive in any event. CNDI-LA erroneously interprets the cited provision of the Zoning Regulations: Subtitle U § 205.2(b)(3) requires screened parking only contiguous to residential property; as such, plans are necessary only for required screening. In its report, OP opined on this issue, noting that there are no contiguous residences to the Property, so no screening is required under the Zoning Regulations. (Ex. 46.) The parking conditions at the property are known and will not change with the presence of LAMB, so the Board was able to easily evaluate the impact of the proffered screening. While screening was not required, the Applicant agreed to the evergreens as a mitigation for the Project, and as such, provided sufficient detail regarding the screening. The Board correctly interpreted this particular regulation in making its findings and conclusions in the Order. Accordingly, the Board appropriately considered this issue and weighed the merits of the mitigation to correctly arrive at its conclusion. (Order, pp. 11, 17, 25.)

## **3. Playground Noise and Mitigation**

CNDI-LA argues that the record does not support the Board's conclusion in the Order that the school will not have an adverse impact on neighboring properties

due to noise because the Applicant has proposed sufficient mitigation. (Order, pp. 15-16.) However, CNDI-LA's argument is incorrect; the record does support the Board's conclusion. The issue of playground noise was discussed repeatedly in filings before the Board, including OP's analysis that the school would not have adverse noise effects, and was considered by the Board. CNDI-LA's concern regarding playground noise during the proceedings was generally that it could exist and should be addressed. The Applicant appropriately responded to this generalized concern by proposing to mitigate the potential noise impact of any future playground. Based on the filings in the record, the Board found the mitigations by the Applicant, including screening, appropriate to address any potential noise impacts from the school. (*See, e.g.*, Ex. 14, 36B, 39, 46, 121, 122, 131, and 163; 2/21/18 Tr. at 11.)

Therefore, as stated in the Order, the Board specifically considered the noise-related issue, weighed the various arguments, and concluded that the school would not have an adverse impact due to noise because of the mitigations like evergreen screening. CNDI-LA is incorrect that the Board could only have made this decision with plans showing the trees since the Board had site plans knowing the general conditions of the property, had no specific concerns about playground noise from CNDI-LA, and knew the specific noise mitigation from the Applicant.

#### 4. Traffic Impacts and Noise and the Number of Parking Spaces

CNDI-LA alleges that the record does not support the Board's conclusions regarding traffic, noise from traffic, and parking. This allegation is entirely baseless. The record is full with traffic and parking information and analysis, as traffic and parking were raised as the overriding issues in the case. Traffic was addressed in nearly every exhibit in the record, and it was discussed at length at all of the hearings. (*See, e.g.*, 14, 31, 36, 39, 45, 46, 49, 71, 121, 130, 131, 163, 165; 11/15/17 Tr. at 17-41; 45-48; 59-62; 12/20/17 Tr. at 55-59; 2/21/18 Tr. at 5.) The school's impacts on traffic and parking, and its proposed mitigations, were reviewed extensively by both the Applicant's traffic expert and DDOT. The Applicant's CTR, supplemental CTR, and testimony at the public hearings included exhaustive information regarding the traffic and parking impacts of and mitigation strategies for the school. DDOT's report and testimony was equally extensive, and DDOT remained in support of the school, with conditions to which the Applicant agreed, throughout. The Order includes 14 findings of fact regarding traffic, parking, and traffic noise, and all of these findings were well supported by the voluminous record. Therefore, as explained in the Order, the record clearly supports the Board's conclusions regarding traffic, parking, and noise from traffic.

CNDI-LA also alleges that the record does not support the Board's conclusion that the provided number of on-site parking spaces are adequate based on the "special events" that may happen at the school. This allegation is demonstrably incorrect. The CTR and traffic expert's testimony conclude that the provided on-site

parking is more than sufficient to meet all of the daily parking demands at the school during its various anticipated phases. (See Ex. 31, 36.) While “special events” may occur, there is no evidence in the record that the on-site parking is insufficient for these events, and the Applicant indicated that such events are likely to be infrequent occurrences. Nevertheless, the Applicant committed to, and CNDI-LA agreed with, specific conditions in the Order – nos. 14 & 17 – to accommodate on-site parking when such “special events” do occur. (Order, FOF 42.) Further, the requirements of the Zoning Regulations are not that the school must include parking for any potential event distinct from usual operations that may occur at some time. Accordingly, the Board reasonably found that, after review of extensive evidence regarding parking supply and typical demand, the provided on-site parking is appropriate for the school’s needs to avoid adverse parking impacts on the neighborhood.

## **5. Parking in Side Yard Area**

CNDI-LA states that the record does not support the Board’s conclusion that the parking in the side yard area is a legal nonconforming condition that may continue. This is patently wrong and is inapposite in any event. The Applicant’s submissions, including the current certificate of occupancy for the property, identify this parking condition as entitled. The OP report concludes that the parking is legally existing, having been previously approved by the Board, and may continue. Accordingly, the Board, as the interpreter of the Zoning Regulations, considered this

evidence to properly conclude in the Order that the existing parking in the side yard is legal and may continue. (Ex. 14, 46.)

## **6. OP Report**

CNDI-LA alleges that the Board should not have given great weight to OP's report because the report supposedly did not evaluate all of the R-16 zone standards. This contention is incorrect and misconstrues OP's obligations. The Board is required by law to give great weight to the recommendations – regardless of their content – of the Office of Planning. (*See* D.C. Code § 6-623.04.) OP's report clearly analyzed the case under each of the standards in Subtitle U § 205.2 for a special exception in the R-16 zone. (Ex. 46). CNDI-LA's disagreement with OP's conclusions does not mean that the OP report is deficient. If OP did not opine on an issue, then the Board did not give great weight to the OP report for that issue. (*See, e.g.* Order, FOF 33-35). The Board's findings and conclusions in the Order rely on the OP report only when OP opined and the Board agreed on the corresponding issue. Therefore, the Board appropriately gave great weight to OP's report.

CNDI-LA also alleges that OP's report was not entitled to great weight because it was not completely re-written when OP submitted a supplemental report regarding the alternate condition. This, too, is incorrect and is a red herring. After the Applicant introduced the alternate condition, the Board requested additional analysis from OP about it, and OP provided a supplement report. There is no regulatory requirement and no practice standard that OP re-analyze the entire case



when issuing a supplemental report on a discrete issue. The supplemental report in this case did not affect OP's unrelated conclusions in the initial report.<sup>1</sup> OP's supplemental report assessed only the mechanics and enforceability of the alternate condition. The Zoning Administrator testified that such a condition was enforceable, and OP's supplemental report explained the mechanics of how the enforcement would happen. (11/15/17 Tr. at 95-96.) Therefore, in concluding in the Order that the alternate conclusion is enforceable, the Board correctly gave great weight to the OP report and supplemental report.

## **7. ANC Report**

CNDI-LA alleges that the ANC's reports should not be given any weight. This is plainly incorrect. As the Order explains in great detail, the Board did not give great weight to the ANC's reports since the ANC was in support of the application and did not raise issues with the application. However, the ANC's reports are still evidence of a unique community viewpoint on the school and application, and as such, they deserve the same weight as any other relevant testimony in the record. The ANC thoughtfully and deliberately considered the application twice, and it gave its recommendation on the application as well as on the final conditions. Like the other parties in the case, the ANC offered its opinions as it was entitled to do. These opinions were useful to the Board where relevant, but they were not unduly

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<sup>1</sup> For example, where OP's report concluded that the school would not have adverse noise impacts, the supplemental report had no bearing on that conclusion.

weighted in the Board's decision. (*See* Order, p. 19.) Accordingly, the Board was correct in giving some weight to the ANC's reports in the Order.

## **8. Fair Consideration by the BZA**

CNDI-LA asserts throughout the Motion that the record did not support decisions by the Board and that the Board did not afford CNDI-LA fair consideration. This assertion is blatantly untrue. The proceedings and evidence in this case were extensive precisely because the Board gave great consideration to CNDI-LA. The Board held three public hearings and deliberated in three public meetings largely in response to CNDI-LA. The Board thoroughly discussed the many facets of the case in its multiple deliberations. (*See, e.g.*, 2/21/18 Tr. at 4-27). The 28-page Order reflects this. The process of reviewing the case was exhaustive, and, as shown by the 14 pages of findings and six pages of conclusions in the Order, the issues from all sides, especially from CNDI-LA, were considered. Accordingly, the Board arrived at its conclusion after careful, fair consideration of the issues and in no way discarded CNDI-LA's concerns during the process.

## **9. Conclusion**

This case has been thoroughly vetted by many stakeholders, and the Board's decision, as articulated in the Order, is soundly supported by the case record. Before issuing the Order, the Board acted in earnest to understand the opinions and the impacts with regard to both CNDI-LA and the Applicant. Reconsideration is unnecessary where, as here, the Board has thoughtfully and exhaustively weighed

the merits of the case and all arguments alleged before it and issued a decision supported by the record. In the Motion, CNDI-LA has not alleged anything new or different than the Board already considered, and CNDI-LA played an active role in the process that shaped the outcome. Accordingly, the Board should DENY CNDI-LA's motion for reconsideration.

Respectfully submitted,  
GOULSTON & STORRS, PC

/s/  
Cary R. Kadlecek

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 2, 2018, copies of the Applicant's opposition to CNDI-LA's motion were delivered via email to the following:

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