

COMMITTEE OF NEIGHBORS DIRECTLY IMPACTED BY LAMB APPLICATION

December 18, 2017

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

VIA IZIS: 12/19/2017

RE: BZA Case #19581 – Response to Office of Planning's Supplemental Submission

Dear Chairman Hill and Members of the Board:

In the above referenced case, the Applicant, Latin American Montessori Bilingual (LAMB), is seeking special exception approval to allow the establishment and co-location of a public charter school with a private school – Kingsbury – in a well-established neighborhood, protected by a R-16 Zoning Overlay.

At the conclusion of its November 15, 2017 public hearing, the Board requested the Office of Planning (OP) provide additional information on how the Applicant's alternative condition would be implemented and whether a campus plan for this charter school be triggered.

BACKGROUND:

OP had several discussions and exchanges of e-mails with CNDI-LA and we express our appreciation to them for meeting with us and having those follow-up discussions and e-mail exchanges, which OP acknowledges and correctly surmises in their Supplemental Memorandum that CNDI-LA is, "... *not in support of this condition.*"

The Applicant has proposed this condition to OP, who in turn, discussed with the Zoning Administrator as *enforcement* conditions being required by DDOT, all to avoid having to return to the BZA – initially requested by OP following CNDI-LA's submission – in seeking its occupancy for 600-students.

Complicating this OP condition, if you employ any standard of reasonableness, the Applicant, (in its supplemental submission), invoked unsubstantiated lender's conditions, labeling it *lender's assumption of risk*, when none of the conditions offered, guarantees either the lender or the city, (who will be funding the per-pupil expenditure) that any of these numbers they aspire to can or will be reached.

Whether it's:

- A. 600-students at the conclusion of this hearing,
- B. 600-students in 3-years, (when the Applicant is scheduled to provide 2-years of DDOT/PMP compliance data); or
- C. 600-students in 6-years, (assuming Kingsbury leaves) and the Applicant is ready to obtain its C of O.

The Applicant's submission with its self-imposed condition, concerns CNDI-LA, because:

- A. Applicant is assuming the occupation of this property as a matter of right;
- B. The proposed condition, (wording aside), is rooted in the premise that the special exception application, shall and will be granted; and
- C. From a financing perspective, why is a DDOT conditional 3-years acceptable to a lender, but returning *conditionally* when the occupancy reaches 600 is not?

Lastly, OP was a participant in the BZA's April 26, 2000 order, which denied the current occupant's request for 400 students and 200 staff, setting it at 300 and 138 respectively;¹ and that was without the Office of Zoning's 2009 Zoning Overlay.

The Board is keenly aware that its focus is not on the numbers, but on compliance – and only compliance – with the R-16 Zoning Overlay requirements. Any and everything else presented by the Applicant, OP and the ANC, is a smoke screen that causes CNDI-LA, to date, to react to certain conditions, some of which makes no sense and have absolutely nothing to do with the R-16 Zoning Overlay.

1. CONDITION:

Our reasons for not supporting the condition(s)², despite a seemingly acceptable specific requirement that LAMB will notify CNDI-LA when it intends to apply for a Certificate of Occupancy, (C of O) are these:

1. OP is treating this case as if it's a matter of right;
2. Before Kingsbury departs the property, what C of O and under whose authority will a combined LAMB/Kingsbury³ operation be functioning?;
3. Notification to CNDI-LA is not on par with any other notices issued by the city, i.e.; drivers' licenses, tags or inspections that are about to expire, which come well in advance of their expirations – this condition does not;
4. Notification to CNDI-LA carries no authoritative condition, unlike the motor vehicle examples above, where non-compliance could lead to an arrest, impoundment of your vehicle or the revocation of your driving privileges. Notification, even month's in advance, is not sufficient, if the condition doesn't specifically state, what CNDI-LA should do with it;
5. Without date-specific notification to CNDI-LA, LAMB could notify CNDI-LA days or hours before they file for a C of O. The condition is open-ended and not specific enough to warrant otherwise;
6. There is no C of O form or regulatory authority (that CNDI-LA is aware of) that grants the Zoning Administrator authority to issue a C of O under a post-order condition; and
7. Any other notice should come with conditions of compliance that not only DDOT agrees to, but CNDI-LA as well.

2. CAMPUS PLAN:

While CNDI-LA accepts OP's DCMR submission – Subtitle X, Chapter 1 – offering the three plans sited, we believe the long-established history of this particular neighborhood that led to the eventual codification of the R-16 Zoning Overlay warrants a more thorough review and assessment. OP participated in that determination.

¹ See Exhibit 42A

² Any recognition by applicant and its other supporters to the "steps taken to implement this condition," has not been agreed to. CNDI-LA doesn't know if we're responding to the 1-paragraph alternate condition similarly offered at the 11/15/17 BZA public hearing or the alternate condition and its 8-step implementation.

³ Currently, Kingsbury's BZA-ordered occupancy is limited to 300 students; Applicant proposes an immediate 300 students added to Kingsbury's current 108-student enrollment, with a promise to add up to 67 more (175 total) for an immediate operational function of (potentially) 475 students, under a C of O for no more than 300.

The subject property is an *atypical* example of a proposed 700+ population public charter school enrollment being located directly across the street – literally – from a DC Public School – West Education Campus – scheduled for rebuilding and enrollment increases equal to or surpassing that of the Applicant in the very near future. The subject property is in the middle of the R-16 Zoning Overlay protections, West is just outside of the Overlay’s eastern 14th Street boundary, by address only.⁴

OP’s initial reporting to the Zoning Commission, when it took under consideration the establishment of the Zoning Overlay, recognized that the overuse of properties zoned residential, being utilized for non-residential purposes:

- A. Created certain “*known affects*” on the community;
- B. Created “*a problem that needs to be addressed;*”
- C. Established the highest concentration of non-residential uses of residential property in the city;
- D. Called for “*improved public review and control over the external effects of nonresidential uses;*” and
- E. “***New and significantly expanded** nonresidential use facilities should be governed by improved public review to ameliorate adverse impacts on immediate and nearby neighbors and preserve a predominantly single-family residential character;*” (emphasis added)

It would follow, in this instance that a reexamination of the R-16 Zoning Overlay is in order; that the establishment of some sort of *campus plan*, while currently legally deficient, merits further consideration in creating such an entity. This body, while it doesn’t create law, it does have the authority to order OP to further study this specific issue.

Such a report should not delay these current proceedings, but in the best interest of the residents in the immediate, affected neighborhood and the city, we believe it should be made a part of the conditions offered by this Board.

CONCLUSION

CNDI-LA request that the plan be modified, to have the applicant return to the BZA, once they wish to expand to 710 occupants – 600 students, plus faculty and staff – along with the building of a 5,000sf gymnasium, which in our opinion, is not being unreasonable, but the Applicant and their supporters, continually refer to it as a non-starter.

Therefore, in addressing OP’s supplemental response, we encourage the BZA to:

- Accept our Stand-Alone and Construction Conditions that requires a *sign-off* by CNDI-LA on those conditions, before the Applicant can apply for their C of O, such a sign-off not to be unreasonably withheld;
- Require the parties to return to the BZA, if that compliance – the conditions the BZA sets out – are not met;
- Consider acceptance of OP’s steps to implementation by:
 - Expanding the frequency of Applicant’s PMP, ordered by DDOT to 3-times per year for 3-years – 2 years to be consistently within compliance;

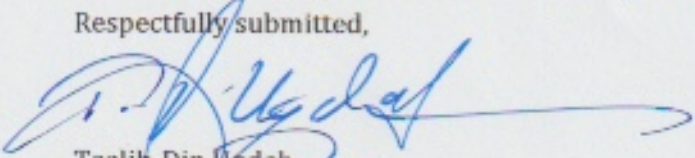
⁴ West fronts Farragut St., at the corner of 14th. The side of West’s building, the public school’s gymnasium, spans the front of the Subject Property’s front entrance.

- Requiring all parent, faculty and staff vehicles show clearly identifiable, (color-coded) placards on their dashboards;
- Requiring all PMP reports be accompanied by unedited video recordings of all drop-off/pick-up queuing that are consistent with written submissions;
- Restricting entry/exit at Piney Branch Road to faculty and staff with coded key cards;
- Specifying no less than 120-days notification to CNDI-LA when Applicant seeks its C of O;
- Expanding OP's #5 and #7 requirement to include CNDI-LA providing a letter or statement, confirming DDOT's PMP annual provisions have been met (#5) and the inclusion of a letter from CNDI-LA stating that the Applicant has not met the BZA-ordered conditions (#7)⁵, such documentation not to be unreasonable withheld;
- Stipulating, should the Zoning Administrator be required to conduct an investigation, because of alleged violations by the Applicant of BZA-ordered conditions, the Zoning Administrator shall:
 - Not issue a temporary or conditional C of O, pending the conclusion of any investigation;
 - Provide a written report that at a minimum, contains the methodology and steps that were taken to initiate the investigation;
 - Collect and maintain any verbal or written evidence that was presented in the conduct of the investigation, including interviews and testimony from witnesses;
 - In its conclusion, address all alleged violations, whether they were substantiated, accepted or rejected and why, and how the final ruling was derived; and
 - State, in conclusion, what appeal rights CNDI-LA has, if the C of O is being approved for the Applicant.

OP knows CNDI-LA has held firm and not waived on our insistence that the R-16 Zoning Overlay is what is in play here; it is what's driving this process. This alternate condition doesn't help that aim, despite CNDI-LA not getting any support from any elected officials and OP pulling its own support in (now) favoring this condition, we're still holding firm.

This is not a referendum on the virtues of the widely regarded public charter school or its national exposure of its previously unblemished record, it's about reason and fairness that dictates this honorable Board will review our submission and apply the appropriate standards, as they pertain to the R-16 Zoning Overlay.

Respectfully submitted,



Taalib-Din Uddah
obo/CNDI-LA

⁵ Meeting the requirements outside of public space, routing traffic and transportation, is not within DDOT's purview. It is not clear why OP is requiring such a letter from DDOT.