APPLICANT'S DRAFT ORDER

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 19581 on the Motion for Reconsideration of the Application of Latin American Montessori Bilingual Public Charter School, pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under Subtitle U § 205.1(a), to establish a public charter school in the R-16 Zone at premises 5000 14th Street, NW (Square 2711, Lot 802).

HEARING DATES:	November 15, 2017; December 20, 2017; February 14, 2018
DECISION DATES:	January 17, 2018; January 24, 2018; February 21, 2018
ORDER DATE:	June 11, 2018
RECONSIDERATION DECISION DATE:	July 18, 2018

ORDER DENYING RECONSIDERATION

By order dated June 11, 2018, the Board of Zoning Adjustment (the "Board") granted the application of Latin American Montessori Bilingual Public Charter School (the "Applicant") submitted on June 29, 2017. The application requested a special exception to allow the establishment of a public charter school under Subtitle U § 202.1(m) and the colocation of a public charter school under Subtitle U § 202.1(n) in the R-16 Zone District at premises 5000 14th Street, NW (Square 2711, Lot 802) (the "Property"). After public hearings on January 17, January 24, and February 21, 2018, the Board granted the requested relief. The Board found that the Applicant has satisfied the burden of proof with respect to the request for a special exception under 11-U DCMR § 205.1(a) to establish a public charter school and to colocate a public charter school with another school. The parties to the proceeding were the Applicant, Advisory Neighborhood Commission ("ANC") 4C, and the Committee of Neighbors Directly Impacted by LAMB Application ("CNDI-LA"). The Board issued Order No. 19581 (the "Order") on June 11, 2018.

On June 21, 2018, CNDI-LA filed a motion for reconsideration of the Board's decision based on what it claimed was a lack of evidence in the record and lack of fair proceedings to support the Board's decision. CNDI-LA alleged that the Board's Order was inadequate because (1) the record did not support the Board's determination that the Applicant was the appropriate applicant; (2) the record did not support the Board's determination that the application provided sufficient detail regarding the off-street parking; (3) the record did not support the Board's determination that the application provided sufficient detail regarding efforts to mitigate objectionable playground noise; (4) the record did not support the Board's determination that the proposed non-residential use meets the R-16 Zoning Regulations requirement that the application not adversely affect the use and enjoying of neighboring properties due to traffic; (5) the record did not support the Board's determination that the proposed non-residential use meets the R-16 Zoning Regulations requirement that the application not adversely affect the use and enjoying of neighboring properties due to noise from traffic; (6) the record did not support the Board's determination that the Applicant will provide parking for the maximum number of occupants or employees or visitors who can use the facilities at one time; (7) the record did not support the Board's determination regarding compliance with the R-16 Zoning requirement prohibiting parking in the side-setback

area; (8) the Board should not have given great weight to the report from the Office of Planning ("OP"); (9) the Board gave inappropriate weight to the ANC report; and (10) the Board was predisposed to favoring the application and was therefore not impartial.

By pleading dated July 2, 2018, counsel for the Applicant responded to the motion, arguing that the Board's decision was based on an extensive record that supported the Board's conclusions, the Board invested extensive time and engaged in an extraordinarily deliberative process, the Board considered and weighed all of CNDI-LA's concerns, as evidenced by the numerous findings of fact and extensive conditions in the Order, and the motion is simply an attempt to re-litigate all of the arguments CNDI-LA raised throughout the case proceedings. The Applicant's pleading outlined the findings in the Order addressing CNDI-LA's contentions, the evidence in the record which supported the Order, and the points during the hearings and deliberations when the Board weighed each of the allegations raised in CNDI-LA's motion.

The Board considered the motion at its public meeting on July 18, 2018, and voted to deny the motion.

FINDINGS OF FACT

1. The Board invested extensive time and engaged in an extraordinarily deliberative process in the case. The Board reviewed over 150 exhibits in the record, heard testimony at three public hearings, and considered the case at three public meetings. The record shows that the Board considered all relevant issues presented in the case. The Board considered testimony and evidence from many stakeholders, including the Applicant's representatives, CNDI-LA's members, other community members, OP, the District Department of Transportation ("DDOT"), and the ANC. The Order was based on all of the evidence in the case record. The Order contained 42 findings of fact, 11 conclusions of law, and 35 conditions of approval. (Exhibits ("Ex.") 1-169; 11/15/17 Transcript ("Tr."); 12/20/17 Tr; 1/17/18 Tr.; 1/24/18 Tr.; 2/14/18 Tr.; 2/21/2018 Tr.)

2. CNDI-LA was provided ample opportunity to share its concerns, as shown 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. (*See, e.g.*, Ex. 161, 165.)

3. As explained in the Order, the Board has no authority to regulate a different use subject to a separate order in a case in which the user is not an applicant. This application pertained to the use (public charter school) and the Applicant, not to the property owner. Accordingly, in the Order, the Board considered CNDI-LA's allegation that the Applicant was not an authorized party to the application and the lack of the existing owner and user, Kingsbury invalidated the Order. The Board 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.)

4. 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 the Applicant is also in the building. (Ex. 31, 36.) The Board 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.

5. 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. As stated in OP's report, there are no contiguous residences to the Property, so no screening is required under the Zoning Regulations. (Ex. 46.)

6. The parking conditions at the property are known and will not change with the presence of the Applicant, so the Board was able to evaluate the impact of the proffered screening. While screening was not required, the Applicant agreed to the evergreens as a mitigation for the school, and as such, provided sufficient detail regarding the screening. The Board interpreted this particular regulation in making its findings and conclusions in the Order. Accordingly, the Board considered this issue and weighed the merits of the mitigation to arrive at its conclusion. (Order, pp. 11, 17, 25.)

7. CNDI-LA argued 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, the record clearly supports 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.)

8. As stated in the Order, the Board specifically considered the potential impacts of noise from the school, 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 was 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.

9. CNDI-LA alleged that the record does not support the Board's conclusions regarding traffic, noise from traffic, and parking. The record is complete with traffic and parking information and analysis, as traffic and parking were raised as the overriding issues in the case that the Board carefully considered. Traffic was addressed in nearly every exhibit in the record, and it was discussed at length at all of the hearings. 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. (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.)

10. CNDI-LA also alleged 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. 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.)

11. 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. The number of parking spaces provided satisfy the requirements in the Zoning Regulations. Accordingly, the Board 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.

12. CNDI-LA stated 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. 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 conclude in the Order that the existing parking in the side yard is legal and may continue. (Ex. 14, 46.)

13. CNDI-LA alleged 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.

14. CNDI-LA also alleged 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. After the Applicant introduced the alternate condition, the Board requested additional analysis from OP about it, and OP provided a supplement report. (Ex. 46, 128.) 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. 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.)

15. CNDI-LA alleged that the ANC's reports should not be given any weight. As the Order explains in 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. (Ex. 37, 71, 133.) 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 weighted in the Board's decision. (See Order, p. 19.)

CONCLUSIONS OF LAW

Pursuant to 11-Y DCMR § 700.2 of the Zoning Regulations, any party may file a motion for reconsideration of any decision of the Board, provided that the motion is filed within 10 days from the date of issuance of a final written order by the Board. In this case, the written order grating the application was issued June 11, 2018 and the motion for reconsideration was timely filed on June 21, 2018.

A motion for reconsideration must state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. (11-Y DCMR § 700.7.) CNDI-LA's motion states numerous allegations that the record did not support the Board's decision, that the Board gave improper weight to certain evidence, and that the Board was not impartial in rendering its decision. However, CNDI-LA's motion did not state the relief it sought.

The Board concludes that its decision was the result of a full, robust weighing of the merits of the case; the Board's decision as supported by the lengthy record that supported all of its findings and conclusions in the Order; and all parties were given the opportunity to participate in a fair and exhausting process prior to the Board's decision and Order.

Based on Findings of Fact ("FOF") 3-4 above, the Board concludes that the record supported the Board's conclusion that the Applicant was an appropriate party to file an application for the Property before the Board and the lack of inclusion of the existing Property owner as an applicant was not detrimental to the Order.

Based on FOF 5-6 above, the Board concludes that the record supported the Board's conclusion that the application provided sufficient detail regarding the screening of off-street parking in the R-16 Zone District.

Based on FOF 7-8 above, the Board concludes that the record supported the Board's conclusion that the application provided sufficient detail regarding noise mitigation.

Based on FOF 9 above, the Board concludes that the record supported the Board's conclusion that the proposed use met the R-16 Zoning requirement that it not adversely affect the use and enjoyment of neighboring properties due to traffic.

Based on FOF 9 above, the Board concludes that the record supported the Board's conclusion that the proposed use met the R-16 Zoning requirement that it not adversely affect the use and enjoyment of neighboring properties due to noise from traffic.

Based on FOF 9-11 above, the Board concludes that the record supported the Board's conclusion that the Applicant is providing parking as required by the Zoning Regulations.

Based on FOF 12 above, the Board concludes that the record supported the Board's conclusion that parking within the side-setback area was an existing condition that may continue.

Based on FOF 13 and 14 above, the Board concludes that it gave appropriate weight to OP's report.

Based on FOF 15 above, the Board concludes that it did not give undue weight to the ANC's report.

Based on FOF 1-2 above, the Board concludes that there is no evidence that the Board favored the Applicant over the other parties in the case, and therefore the Board concludes that its decision was reached by a fair and impartial process, as required by the Zoning Regulations.

Accordingly, it is **ORDERED** that the **Motion for Reconsideration** is **DENIED**.

VOTE: **4-0- 1** (Frederick L. Hill, Carlton Hart, Lesylleé M. White, and Anthony Hood to DENY; Lorna John not having heard the case, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.