

COMMITTEE OF NEIGHBORS DIRECTLY IMPACTED BY LAMB APPLICATION

December 13, 2017

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

VIA IZIS: 12/13/2017

RE: BZA Case #19581 – Response to Applicant’s Supplemental Submission

Dear Chairman Hill and Members of the Board:

In the above referenced case, the Applicant, Latin American Montessori Bilingual (LAMB), is making their request for 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 Applicant provide additional information related to this matter, which was timely filed December 06, 2017. CNDI-LA, a party in this case, files this response to that submission.

1. Performance Monitoring Plan (PMP)

While Applicant may offer some provisional mechanisms that, “. . . *(capture) transportation metrics that work to minimize impacts and achieve multi-modal goals.*” Those impacts, as described, are the direct results of the Zoning Regulations that address a R-16 Zoning Overlay, where the Subject Property is located.

Reviewing those requirements, juxtaposed to the Applicant’s responses to the PMP, falls short of expectations, because it does not recognize the core issues that have placed the Applicant before the Board in the first place.

The ultimate purpose of the PMP is to, in effect, change certain patterns of behavior of LAMB parents, faculty, staff and visitors, in an effort to reduce vehicular traffic flow to and from the Subject Property.

- None of the school examples listed, are located in a R-16 Zone;
- No accurate or fair monitoring requirements, collected once, each year for 3 years, is going to give either the Applicant or the community the data it needs to make an informed decision – is this working – it’s insufficient;
- To be consistent, the vehicle count for all site driveways should be extended to *pick-up* and not just *“morning school drop-off;”*
- With projected 600 students, plus faculty staff and visitors, 295 vehicles per day is unacceptable – it’s impactful – half the student population;
- Vehicle occupancy counts may be misleading, as all occupants of a vehicle – especially children – may not be dropped-off at LAMB;
- Applicant should clarify the use of *video counts*, as opposed to other methodologies listed; i.e., traffic counts/counters;
- The *“Documentation of any changes to (TDM) program from previous year,”* should be a part of DDOT’s sign-off compliance with the PMP/TDM; and
- The provision requiring this inclusion, should be provided to CNDI-LA without demand.

Data Collection Efforts

Data collected once-per-year, on a loosely described *typical day*, does not get us where we need to be, if the goal is to ameliorate adverse impacts on the community, in accordance with the R-16 Zoning Overlay. If the Applicant's data collection is not going to be consistent - more than once-per-year - there should be no concern about returning to the BZA.

The Applicant's data collection efforts mirror the PMP, which CNDI-LA already finds to be unacceptable in that it:

- Fails to distinguish between uses of *manual counters vs. video counters*;
- Monitoring should address both pick-up and drop-off, with manual/video counters, if the Board is going to accept a once-per-year report.
- Counting the number of students, without putting the data into context, is dicey. Any child in a vehicle for drop-off or pick-up, depending on when the monitor views them, may not be a child going into or coming out of the Subject Property.

Analysis Methodology and Compliance

The Applicant's data collection and reporting to DDOT, will be over a 3-year period, to include the 2018-2019, 2019-2020 and 2020-2021 school years. We contend:

- This is inadequate; self-certification is not in our best interest in determining if LAMB is in compliance with any performance monitoring. With specific concerns and requirements under the R-16 Zoning Overlay - determining impacts - no one can offer any cogent analysis that any performance matrix is being met;
- Three (3) reports over 3-years, equates to 1.67% of the total 180 schooldays - not enough data to do a thorough analysis.
- Drop-off/pick-up area queues and video counts - manual counts should confirm video counts - should be consistent with the reporting process throughout.
- Before DDOT offers a compliance sign-off, they should meet with the community and explain how the data collected comports with the R-16 Zoning Overlay to:
 - Improve public review and control over the external effects of the Subject Property;
 - Explain any adverse impacts and how the Applicant has ameliorated those impacts on the immediate and nearby neighbors;
 - Recognize and control the external effects of the Subject Property's non-residential use; and in general,
 - Protect the integrity of this neighborhood/residential community.
- CNDI-LA should be required to sign-off on DDOT's approval; such approval not to be unreasonably withheld;
- If vehicle trip targets are exceeded or queues are shown backing into public space, causing the Applicant to both adjust and improve the TDM program, before gaining approval on adjustments, we request that:
 - There be sufficient data for two (2) more consecutive years showing compliance with the adjusted, improved conditions; and
 - The Applicant's Certificate of Occupancy shall not be issued until such certification is obtained.

- Applicant is calling for analyzing its own data, to determine accuracy; there are no community fail-safes that target solving any issues observed, only the Applicant's assurance that it will adjust to its own failures; and
- Recognizing and resolving any of the Applicant's adverse impacts on the community, by offering *adjustments, education, improvements, reductions*: then what? The Applicant will still want to occupy the space with a failed plan.

PMP Timing and Completion

Not sure what the Applicant is relying on or what is meant by, "exceeding the DDOT conditions" because they have not pointed it out.

The implementation of the PMP has always been a DDOT condition of approval; to say you're going to implement it, "starting in the first year," is a forgone conclusion; Applicant's approval hinges on the collection of its *scant data*.

Three-years of reports, is exactly 3 reports, not twelve (minimum), which CNDI-LA would like to see – one each quarter – for the next 3 years.

The alternative being offered by the Applicant – "whichever is later" – should be stricken. It diminishes the effectiveness and delineation of the reporting data, (minimal as it is). The Applicant could wait out its 600-student enrollment period and never provide any data.

Data, consisting of the two latest consecutive years, assumes the first year will draw compliance. If this is accepted, data should be collected more frequently – once every three months – as 2 out of 3 successful consecutive reports, when there are only 3 reports to start with, is not a good harbinger of things to come.

The Applicant addresses no remedy, if they do not meet the PMP conditions, preferring instead to increase its enrollment to 600, and once it does, be under no more scrutiny.

The Applicant's proposal and responses in this sub-section, coupled with and what has been responded to thus far, does not adequately and directly address our concerns:

- The Applicant is not viewing its use of the space, as if there is a problem that can't be fixed;
- Their proposals and remedies, and that of both DDOT and OP, offers no improved public review and control over the external effects of LAMB's use of the space; and
- It does not ameliorate any adverse impacts on the immediate and nearby neighbors.

2. Anticipated Mode Splits

There is skepticism in the numerical data and tables; each party conforming them to what we would like to be reflected. We are not so much concerned with what the numbers do say, but what they don't say.

The Applicant is expecting less reliance on vehicular traffic because of, "... *the concentration of families in Ward 4,*" but we view this as a flawed assumption and should not be a serious consideration for two reasons:

1. Often described as one of the largest and most influential Wards in the city, it is inconceivable that because you live in the Ward, you will more than likely not drive. The very opposite is true; and

2. As a public charter school, accepting students from all over the city, versus a *neighborhood public school*, affected by specific geographic boundaries, the concentration of families outside of the Ward are equal to or greater than those within its Ward 4 boundaries. From statistical data provided – Exhibit #96 – 51% of the student body's current enrollment lives outside of Ward 4, leaving the balance of the student/family population, residing within its boundaries. Ward 4 has at least 15 recognized communities; of those, it is reasonable to assume, only children residing in parts of Brightwood and 16th St. Heights would walk or bike to school; and at their primary to elementary ages that could be debated. The rest – 2 out of 15 neighborhoods – would drive, leaving the rest of the student population, citywide – 51% – driving or taking public transit.

The only constant in both Tables is “*Passenger in car that drives*” – 4% – that we assume are children in a car pool, which equates to 24 out of 600 children.

Taking the Applicant's numbers associated with Table 2: Expected Mode Splits upon Consolidation at Kingsbury, we don't see how the Applicant arrives at numbers, anywhere near compliance, assuming the student population were at its requested 600-pupil capacity, not including an additional 110 faculty and staff.

By using the Applicant's Table 1 compared to Table 2, which shows changes in percentages up or down, we calculated / interpreted the Applicant's numbers to mean, on average:

414 – Driven
24 Passenger in car that drives
45 – Public Transportation
33 – Bike
84 – Walk

By our calculations, if these numbers hold true, we're looking at a significant number of vehicles converging at one location, passing through other congested locations – day cares and schools – in the immediate area. There is no adequate demonstration of how the Applicant proposes to get this number down to an acceptable level; even 295 vehicles per day is daunting when you consider over the past 17 years there may have been that number in a week.

3. **LAMB's Student Population Growth Plan**

REQUIRES FURTHER EXPLANATION

4. **Good Neighbor Policy**

The Applicant's Good Neighbor Policy is particularly lacking. Nowhere in the *policy* does the Applicant recognize CNDI-LA, by name, as it did in its November 15, 2017 presentation;¹ preferring the term, *surrounding community* instead.

Further, the Applicant's Good Neighbor Policy reads more like a *conditions manual* for LAMB families – how they are to behave – where we believe it should address a policy that is sensitive to our enumerated asks and concerns, as addressed in our detailed Stand-Alone and Construction Conditions,² along with the amelioration of adverse impacts on the neighborhood required in a R-16 overlay zone.

¹ See Exhibit #114 – Applicant's Power Point Presentation – Bottom of Page 24

² See Exhibit #118 – Stand-Alone Conditions; and Exhibit #119 – Construction Conditions

Whether or not the Applicant's Good Neighbor Policy submitted here or at the public hearing meets the Board's expectations is their decision to make, but we respectfully recommend the Board consider the following conditions:

- Adopt Good Neighbor Policy and other conditions by CNDI-LA – Exhibit #118;
- A disciplinary response towards misbehaving staff, families and students, should require a written report provided to CNDI-LA – identifying info redacted – without demand, consistent with other notices outlined in our conditions;
- Use of 14th Street, should be the only driving route, not the primary one. We reiterate, the two West-gates at the Subject Property is for staff and faculty only; no other use permitted; and
- The Good Neighbor Policy should include CNDI-LA in all instances and not just a reference to the *surrounding community*.

5. **LAMB Community Committee Meetings**

Applicant's proposal for a LAMB/Community Committee (LCC) comprised of nine (9) representatives is troubling.

- The LCC process should be one of cooperation and information gathering, not authoritative. It should address any and all conditions that pertain to a R-16 Zoning Overlay, in protecting the integrity of the affected neighborhood;
- We object to an odd number LCC-body, which suggest decisions by vote;
- The make-up of the LCC, is heavily weighted in favor of the Applicant;
- ANC 4C is represented by 10 SMD Commissioners, equating to 20,000 residents; and
- CNDI-LA, while welcoming LAMB, has been the driving force behind opposition to the Applicant's resistance to returning to the BZA, setting down enumerated conditions, if incorporated into the Board's order, should give us a larger representation on the LCC.

Further, the Applicant's final offer of a "self-imposed flogging," is insulting and ludicrous, carrying no force of law – words on a page – just making up "stuff".

- What is filing a grievance with the LCC/ANC going to accomplish when the make-up of the LCC is heavily in favor of the Applicant?;
- Appointing the ANC as a mediator, when they are on record as being supportive of the Applicant's special exception, with minimal to no conditions or even depending on them to "*escalate the concern*," does not make them *mediator-worthy* and it contradicts their *authority to not* address it, leaving one option for a complainant;
- Once the Applicant is granted special exception, even with its "alternate condition" of presenting compliance with DDOT's approved PMP and sign-off on its Certificate of Occupancy by the Zoning Administrator (ZA), the Applicant is fully aware that the integrity of that process – going to the office of the ZA – offers the community no protections under the R-16 Zoning Regulations, as it relates to Overlays;
- The ZA's own testimony before the Board November 15th confirms this;³ he does not look at other conditions – "*DDOT is actually making the determination . . . if the Board were to accept the language, then I would agree*;" and
- The Applicant has omitted any mention of "*timeliness*," – what will drive any concerns – relating to the above conditions.

³ See ZA's 11/15/17 testimony – BZA Case #19581 – Transcript: Pages 94-97

6. Financing Challenge for Public Charter School

This submission mirrors Applicant's earlier testimony that this Board found to be lacking. The Applicant is not being forthcoming to the Board and by extension, the community.

If the Applicant's desire and intention is to comply, there should be no claim of "*lender uncertainty*," if you meet the conditions in either scenario; whether it's 3-years of reporting/2 consecutively, or 2-year compliance, with conditions; do either and you're in.

In other words:

- We don't see the difference in requiring compliance with the conditions of the PMP, which is, (at minimum), a 3-year ordeal, or accept a 2-year return to the BZA, show compliance as we've outlined and get your 600; by the numbers - 2 vs. 3 years - our offer is better, if, in either instance, compliance is the goal;
- Other financing tools are available, but there's no indication they were considered:
 - There are other companies, some that have been in business over 100-years that are dedicated to charter school lending and financing services;
 - Tax-exempt bonds are available, which may be issued as letters of credit or floating rate bonds or long-term fixed-rate bonds. There's an extensive list that can be tailored to the needs of any charter school, should they care to.
 - On the federal level, instead of taxpayer-backed bonds that school districts can float, charters have a mix of financing tools at their disposal to reduce the cost of capital for them in acquiring buildings to suit their needs.
 - Tax-exempt private activity bonds for nonprofits
 - New Markets Tax Credits; and
 - Qualified Zone Academy Bonds
- According to the Applicant,⁴ the lending issue is not LAMB's, but a Building Hope one. Continuing to invoke LAMB's name, as if they are owners, is misleading. Their involvement as a *tenant* is secondary to Building Hope's as an *owner*;
- If the loan is being structured to accommodate both landlord and tenant, that needs to be said and provide (we think) proof of that relationship - a MOU, LOL, or pre-loan conditions. Otherwise, as a non-public charter school purchaser, there is no need for any lender or Building Hope to be concerned about enrollment numbers.
- Any lenders *risk aversion* doesn't magically go away just because the words "*come back*" disappears from the Board's order; there are still other conditions which need to be addressed, more specifically any that pertain to the R-16 zoning overlay;
- The Applicant's claim, "*...returning to the BZA for an enrollment increase . . . risk the viability of the lender's investment in the school*," is false on its face, because LAMB is not the purchaser, Building Hope is;
- Building Hope is most concerned about returning to the BZA, not LAMB; and
- This relationship leaves the community in the unenviable position, should there be any issues, do we deal with LAMB as the tenant, or Building Hope as the owner.

⁴ See Exhibit #14

7. Applicant's Proposed Conditions

In this and previous statements, CNDI-LA has succinctly stated its support for the Applicant occupying the Subject Property, with the condition they return in 2-years and demonstrate to the BZA that it is full compliance with the Board's conditions.

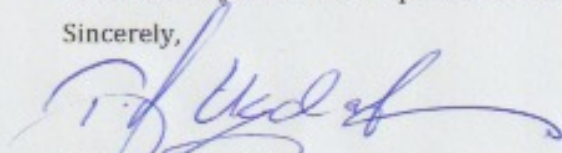
We are relying on the integrity of this Board and its interpretation of the R-16 Zoning Overlay - its stated intent and purpose - in determining which conditions will or will not cause an adverse impact on a neighborhood that for the past 17-years has only known a private school with an enrollment - currently at 108 - that never got close to its allowable BZA-approved 300 students.

We will not insult the collective intelligence of this Board by repeating our objections to the alternate condition proposed by the Applicant; we believe we've made that position clear.

The Applicant did not make several attempts before or at the time of its filing - only one - Monday, December 04, 2017. We acknowledged and apologized to the Applicant, twice that its *Final Stand-Alone Conditions* was an internal *title*, distinguishing it from numerous others circulated amongst us. It was never intended to suggest that CNDI-LA was not willing to talk with the Applicant's and did so December 08, 2017, with an agreement to speak again before the BZA hearing December 20, 2017.

CNDI-LA looks forward to vetting these issues before the Board on the 20th and stand ready to answer any concerns or questions either the Applicant or Board may have.

Sincerely,



Taajib-Din Uqedah
obo/CNDI-LA
Attachment

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Wednesday, December 13, 2017, copies of the Committee of Neighbors Directly Impacted by LAMB Application (CNDI-LA) Response to Applicant's Supplemental Submission were delivered via e-mail to the following:

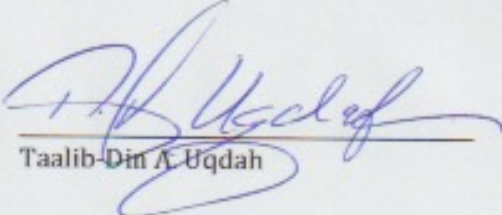
Attorney Cary Kadlecek
Goulston & Storrs
ckadlecek@goulstonstorrs.com

Maxine Brown Roberts
DC Office of Planning
Maxine.brownroberts@dc.gov

Aaron Zimmerman
District Department of transportation
Aaron.zimmerman@dc.gov

Advisory Neighborhood Commission 4C
c/o Commissioner Jonah Goodman, Secretary - SMD 4C10
4C10@anc.dc.gov

and
Commissioner Maria Barry, SMD 4C02
4C02@anc.dc.gov



Taalib-Din A. Uqadah