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August 4, 2017

VIA IZIS AND HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, NW, Suite 210S
Washington, DC 20001

**Re: Request for Modification of Consequence to Conditions of BZA Order No. 16569
5000 14th Street, NW (Square 2711, Lot 802)**

Dear Members of the Board:

This letter is submitted on behalf of The Kingsbury Center (the “Applicant” or “Kingsbury”), pursuant to Subtitle Y § 703 of the 2016 Zoning Regulations (“11 DCMR”) to request a Modification of Consequence to the conditions cited by the Board of Zoning Adjustment (“BZA”) in Order No. 16569, for property located at 5000 14th Street, NW (Square 2711, Lot 802) (the “Site”). Pursuant to 11Y DCMR § 703.4, “the term ‘modification of consequence’ shall mean a proposed change to a condition cited by the Board in the final order.”

The Kingsbury Center will continue to operate at the Site in accordance with the Board’s approval in Order No. 16569. In this case, the only modifications proposed are changes to two of the 13 approved conditions in BZA Order No. 16569, which govern the hours of operation and the ages of the students, and which are further described below. Therefore, this application is properly submitted as a Modification of Consequence.

In BZA Application No. 19851, the Latin American Montessori Bilingual Charter School (“LAMB”) is requesting a special exception under 11U DCMR § 205.1(a) to establish and co-locate a public charter school at the Site, which has been The Kingsbury Center’s home for 17 years. The conditions that are requested to be modified by The Kingsbury Center in this application are unrelated to LAMB’s BZA application.

Attached hereto as Exhibit A is a letter from the Applicant authorizing the law firm of Holland & Knight LLP to file and process this application on its behalf. Order No. 16569 is attached hereto as Exhibit B. Also included with this application is BZA Form 154 – Application for Minor Modification/Modification of Consequence, and BZA Form 126 – Fee Calculator. The

Board of Zoning Adjustment
District of Columbia
CASE NO 16569/A
EXHIBIT NO. 3A

Applicant notes that the filing fee for the Modification of Consequence has already been paid as part of BZA Case No. 19851. *See* Exhibit 2 of BZA Application No. 19851.

I. The Site

The Site is located in the 16th Street Heights neighborhood in Ward 4. The Site is irregularly shaped and is bounded to the north by Gallatin Street, NW, to the south by a public alley, to the east by 14th Street, NW, and to the west by Piney Branch Road, NW. The Site contains approximately four acres of land and is located within the R-16 Zone District.

The Site is presently improved with a three-story plus basement building that was originally constructed circa 1907 as a retirement home, but has been occupied since 2000 by The Kingsbury Center, which provides a transformative educational and social experience for children and adults with learning differences. Pursuant to BZA Application No. 19851, LAMB is requesting approval to establish and co-locate its charter school at the Site. The Kingsbury Center will continue to operate at the Site unless and until it moves to a different location. Although both schools will occupy the building on the Site, they will operate independently, other than where shared facilities and operations are necessary, as discussed in LAMB’s BZA application. As described below, this application is to modify two conditions to the prior BZA approval for The Kingsbury Center, and these conditions are unrelated to the special exception requested by LAMB.

II. Prior BZA Approval Conditions to be Modified

Pursuant to BZA Order No. 16569, dated April 26, 2000, and effective on May 23, 2000 (Exhibit B), the Board granted a special exception under Section 205 of the 1958 Zoning Regulations to establish The Kingsbury Center as a private school at the Site, with up to 400 students ages 5 through 18, and 200 staff persons, and to construct a small gym on the Site. BZA Order No. 16569 granted the request subject to 13 conditions, including two conditions (“Condition No. 3” and “Condition No. 4”) that the Applicant requests to modify herein. Condition Nos. 3 and 4, as approved, are as follows:

- 3. The hours of operation shall be Monday through Friday, 8:30 a.m. to 6:15 p.m., and Saturday, 8:30 a.m. to 1:30 p.m.
- 4. The ages of the children shall be 5-18 years.

III. Proposed Modification of Consequence

The Applicant requests a Modification of Consequence to modify Condition Nos. 3 and 4 of BZA Order No. 16569 as follows:

- 3. The hours of operation shall be Monday through Friday, 7:00 a.m. to 7:00 p.m., and Saturday, 8:30 a.m. to 1:30 p.m.
- 4. The school will serve students in grades pre-kindergarten through high school.

A. Hours of Operation

The classroom hours for the three divisions of The Kingsbury Center are as follows:

- Lower School (Pre-K through Grade 5) – Classes start at 8:30 a.m. and students are dismissed at 3:05 p.m., with an early dismissal (12:30 p.m.) each Wednesday.
- Middle School (Grades 6-8) – Classes start at 8:15 a.m. and students are dismissed at 3:15 p.m., with an early dismissal (12:30 p.m.) each Wednesday.
- Upper School (Grades 9-12) – Classes start at 8:05 a.m. and students are dismissed at 3:05 p.m., with an early dismissal (12:30 p.m.) each Wednesday.

The modification to the hours of operation is necessitated for a number of reasons. As a practical matter, faculty and staff often arrive by 7 a.m. in order to prepare for the school day, and all faculty and staff are expected to arrive by 7:45 a.m., with several members designated for “morning duty.” In order to accommodate working parents, Kingsbury offers a Before Care Program to all students, starting at 7 a.m. Although offered, this program is not heavily used (for instance, during the last school year, no students were enrolled in the Before Care Program). The Applicant also provides breakfast and lunch to school children as part of the National School Lunch Program (“NSLP”). Because a large percentage of Kingsbury students qualify for free or reduced meals, all Kingsbury students qualify for the program under the NSLP regulations, and therefore students are permitted to arrive at school at 7:00 a.m. for breakfast. During the last school year, 25 to 32 students were supervised for breakfast before the start of classes. In addition, student projects occasionally require students to arrive early or stay late to meet with faculty or other students.

Kingsbury also offers an After Care Program, which is dismissed at 6:00 p.m. During the last school year, three full time students were enrolled in the After Care Program. The HOPE Program (described below) can also keep students on-site later than the regular dismissal time. In prior years, Kingsbury has had only a few HOPE Program students with schedules extending to 7:00 p.m.

B. Age Range

The proposed change from age ranges to grade ranges is needed because the age designation unnecessarily excludes students older than 18 years of age who were held back or delayed entry into school, but are still pursuing their high school diploma at Kingsbury. In fact, the D.C. Human Rights Act of 1977 (D.C. Official Code § 2-1401-01 *et seq.*) (the “Act”) prohibits schools from discriminating on the basis of age. The Act provides that it is an unlawful discriminatory practice for an educational institution:

(1) To deny, restrict, or to abridge or condition the use of, or access to, any of its facilities, services, programs, or benefits of any program or activity to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon the actual or perceived: race, color, religion, national origin, sex, *age*, marital status, personal appearance, sexual orientation, gender identity or expression, familial

status, family responsibilities, political affiliation, source of income, or disability of any individual.”

D.C. Code § 2-1402.41(1) (emphasis added). The Act defines “Age” as “18 years of age or older,” and defines “Educational Institution” as “any public or private institution including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university; and a business, nursing, professional, secretarial, technical, or vocational school; and includes an agent of an educational institution.” D.C. Code § 1401.02. Thus, Condition No. 4 as it currently exists in BZA Order No. 16569 unlawfully discriminates on the basis of age.

In addition, a very important program to Kingsbury and the DC community is the HOPE Program, which is designed to serve non-traditional young adult students with learning differences and ADHD who want to earn a high school diploma. The HOPE Program is a Kingsbury program with its own Certificate of Approval through the OSSE. The program serves funded students from local education agencies, such as the District of Columbia Public Schools (“DCPS”), due to the lack of a comparable program within DCPS. HOPE offers a relevant, rigorous, and engaging academic program in small student-directed classroom settings, with the support needed for students to obtain a standard high school diploma. The interests, experiences and knowledge of each student contribute to their individualized learning program. HOPE operates Monday through Friday, 7 a.m. to 7 p.m., with staff available to assist mornings, afternoons, and evenings. HOPE students meet the same requirements as regular Kingsbury Upper School students and participate in extracurricular activities and events, including community service, prom, capstone, graduation, and athletics. It is important to note that the District encouraged Kingsbury to establish HOPE, since statistics show that earning a high school diploma translates into life success even more than earning a GED.

IV. Community Engagement

The Applicant has not yet presented the proposed modifications to the conditions of BZA Order No. 16569 to the community or the affected Advisory Neighborhood Commission (“ANC”) 4C. The Applicant will coordinate with LAMB in presenting the proposed Kingsbury modifications to the community and requesting a formal vote from ANC 4C on this application prior to LAMB’s BZA public hearing. As indicated in the Certificate of Service attached hereto, this application is being served on ANC 4C.¹

V. Conclusion

We respectfully request that the Board take the following action:

1. Per 11Y DCMR § 703.13(b), grant this request at an upcoming public meeting on or before October 4, 2017; or

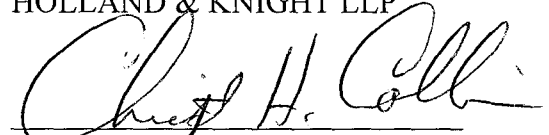
¹ In addition to the ANC, the Carter Barron East Neighborhood Association (“CBENA”) was a party to the original Kingsbury BZA case. The Applicant has made diligent inquiries to identify an officer of CBENA for service of the request, and has been informed by the Mayor’s Office of Community Relation Services that the CBENA is no longer an active association, and only operates as a community listserv.

2. Per 11Y DCMR § 703.13(c), establish a timeframe for the parties to the original application to file a response to this request, and for the Applicant to respond thereto, so that this request can be scheduled for deliberation on or before October 4, 2017, which is the date that LAMB's BZA Application No. 19851 is scheduled for review.

Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff contact us. Thank you.

Very truly yours,

HOLLAND & KNIGHT LLP



Christopher H. Collins



Jessica R. Bloomfield

Enclosures

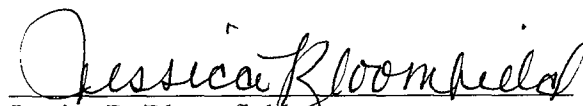
CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2017, a copy of this request for a Modification of Consequence was served by electronic mail on the following at the addresses stated below, with hardcopies hand delivered to the Office of Planning and by U.S. Mail to the ANC on August 7, 2017.

Mr. Joel Lawson
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Advisory Neighborhood Commission 4C
P.O. Box 60847
Washington, DC 20039-0847

Commissioner Maria Barry
Single Member District Commissioner ANC 4C02
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