

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

Architect's Name: <i>deBettencourt</i>		29. D.C. Lic. No.: <i>100756</i>	30. Architect's Address: (include Zip Code) <i>6821 Wm. H. H. Ave., McLean VA 22101</i>		31. Phone: <i>7/366-2215</i>
Engineer's Name: <i>David Guel</i>		33. D.C. Lic. No.: <i>9666</i>	34. Engineer's Address: (include Zip Code) <i>35 Rock Pointe Lane #200 Alexandria VA 22304</i>		35. Phone: <i>521/301-8388</i>
Building Contractor's Name:		36A. D.C. Lic. No.:	37. Contractor's Address:		38. Phone:
Type of Construction Masonry ☒ Steel Wood ☐ Other Concrete	40. Fire Suppression: ☒ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☐ None ☐ Other		41. Booster Pump ☐ New ☐ Existing ☐ None	42. Total Lot Area <i>4230</i> sq. ft.	43. Breakdown of Lot Area (= 100%) a. building <i>69</i> % b. paved area <i>12</i> % c. greenery <i>22</i> %
Present Gross Floor Area of Bldg. <i>4296</i> sq. ft.	45. Proposed Gross Floor Area of Bldg. <i>8975</i> sq. ft.	46. Floors involved in this permit ☒ All ☐ Floors		47. Projection beyond building line? ☐ Yes, Answer q. 48-52 ☒ No, SKIP q. 48-52	
Number and type of projection:		49. Distance of projection:	50. Width of projection:	51. Width of building frontage <i>36</i> ft.	
				52. Signature of Owner (projection only):	
Water or Sewer Emission? ☒ Yes ☐ No	54. Driveway Construction? ☐ Yes ☒ No	55. Sheeting/Shoring Necessary? ☐ Yes ☒ No	56. Elevators Involved? ☒ Yes, answer q. 57 ☐ No	57. No and type of elevator <i>1 hydraulic</i>	58. Plans Certified by Engineer? ☐ Yes, cert. attached ☐ No

Estimated Cost of Work		OFFICIAL USE ONLY			
New/Add.: \$ <i>400,000.00</i>	Alter/Repair FEE	New Const. FEE		Filing Fee	TOTAL PERMIT FEE
Alt/Repair \$ <i>350,000.00</i>	<i>\$ 7030.00</i>	<i>\$ 324.00</i>		<i>\$ 1250.00</i>	<i>\$ 6104.00</i>
Total \$ <i>1,250,000.00</i>	By: <i>[Signature]</i> Date: <i>9/1/07</i>	By: <i>[Signature]</i> Date: <i>9/1/07</i>	By: <i>[Signature]</i> Date: <i>9/1/07</i>	By: <i>[Signature]</i> Date: <i>9/1/07</i>	By: <i>[Signature]</i> Date: <i>9/1/07</i>
Volume of New Bldg. or Addition cubic ft. <i>10800</i>					

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

Raze Contractor's Name:		62. Contractor's Address: (include Zip Code)		63. Phone:	
Insurance Company		65. Policy or Cert. Number	66. Expiration Date	67. Raze Method	
Building Material	69. Raze Entire Building? ☐ Yes ☐ No	70. Building Condemned? ☐ Yes ☐ No	70A. Building Vacant? ☐ Yes ☐ No	71. Public Space Vault? ☐ Yes ☐ No	72. Disconnect Water and/or Sewer? ☐ Yes ☐ No
Owner's Name:	75. D.C. Lic. No.	76. Length ft.	77. Width ft.	78. Height ft.	79. Volume ft.
Box in the Building? (S, location)	82. Raze Contractor Signature		80. Party Wall ☐ Yes ☐ No		
	83. Owner's Signature		OFFICIAL USE ONLY FEE By: \$		

RETAINING WALL (COMPLETE ITEMS 84 THRU 93) The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations.

85. Material:	86. Height	87. Color	88. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land	
Adjoining Owner:		90. Phone: Home Work	OFFICIAL USE ONLY FEE By: \$	
Adjoining Owner:		92. Lot:	93. Square:	Date:

(J) APPROVALS (DO NOT WRITE IN THIS SPACE; OFFICIAL USE ONLY)

A. PERMIT CONTROL		C. PLANS AND APPLICATION APPROVAL	
☐ 1. Fine Arts by: <u>AB</u> Date: <u>2/9/06</u> ☒ 2. Historic by: <u>AB</u> Date: <u>2/9/06</u> ☐ 3. Cap. Gateway by: _____ Date: _____ ☐ 4. NCPC: _____ Date: _____ ☐ 5. W.H./Obs. Precinct by: _____ Date: _____ ☐ 6. Flood Control by: _____ Date: _____ ☐ 7. WMATA by: _____ Date: _____ ☐ 8. Condem. by: _____ Date: _____ ☐ 9. Rental Accom. by: _____ Date: _____ ☐ 10. Chinatown Distr. by: _____ Date: _____ ☐ 11. Utility Clearance by: _____ Date: _____ ☐ 12. General Liability Ins. Policy Clearance by: _____ Date: _____	☒ 1. Information Counter by: <u>AB</u> Date: <u>2/9/06</u> ☐ 2. Information Center by: _____ Date: _____ ☐ (a) ABRA by: _____ Date: _____ ☐ (b) Noise Control by: _____ Date: _____ ☐ (c) Industrial Safety by: _____ Date: _____ ☐ (d) Vector Control by: _____ Date: _____ ☐ (e) D.C. Animal by: _____ Date: _____ ☐ (f) Police Dept. by: _____ Date: _____ ☒ 3. Zoning by: <u>AB</u> Date: <u>2/9/06</u> Zoning Update by: _____ Date: _____ Zoning Overlay approval by: _____ Date: _____ ☐ 4. DDOT - Permit and Records Division/Deposit # _____ Sidewalk Deposit \$ _____ Driveway Deposit \$ _____ by: _____ Date: _____ ☐ 5. Water/Sewer Design Branch Consumer Eng. by: _____ Date: _____ ☐ 6. Environmental Regulation Administration ☐ Environmental Policy Review Control No. _____ ☐ Erosion Control by: _____ Date: <u>8/24/07</u> ☐ Storm Water Mgmt. by: _____ Date: _____ Plan No. _____ ☐ Air Quality by: _____ Date: _____ ☐ Underground Storage by: _____ Date: _____ ☒ 7. Mechanical Eng. Review by: <u>IM</u> Date: <u>8/23/07</u> ☒ 8. Plumbing Eng. Review by: <u>IM</u> Date: <u>8/23/07</u> ☒ 9. Electrical Eng. Review by: <u>ME</u> Date: <u>8/23/07</u> ☐ 10. Health Plan Review ☐ (a) Food Plan Review by: _____ Date: _____ ☐ (b) Medical X-Ray Plan Rev. by: _____ Date: _____ ☒ 11. Fire Protection Plan Review by: <u>AB</u> Date: <u>8/23/07</u> ☐ 12. D.C. Fire Dept. (Fire Prevention Plan Review Section) by: _____ Date: _____ ☒ 13. Elevator Plan Rev. Sec. by: <u>AB</u> Date: <u>3-30-06</u> ☐ 14. Plumbing Insp. Rev. by: _____ Date: _____ ☐ 15. Construction Insp. Branch (Field Check) by: _____ Date: _____ ☐ 16. Historic Pres. Div. by: _____ Date: _____ ☐ 17. EISF: <u>AB</u> Date: <u>2/16/06</u> ☒ 18. Structural Eng. by: <u>AB</u> Date: <u>8/11/07</u> ☐ 19. Permit and Certificate Issuance Counter by: _____ Date: _____ ☐ 20. QC By: _____ Date: _____		
B. CLEARANCE TO FILE PLANS			
☐ 1. Zoning by: _____ Date: _____ ☐ 2. DDOT - Permit and Records Division Access to Parking Street ☐ Street ☐ Alley Cleared by: _____ Date: _____ ☐ 3. DDOT - Consumer Engineer Cleared by: _____ Date: _____ ☐ 4. ERA - Erosion Control Cleared by: <u>PAE</u> Date: <u>5/30/06</u>			
Restrictions of the Permit: <u>As per HPRB approval & per stamped plans</u>			
TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639			
ZONING		DDOT - PUBLIC SPACE	
C of O Number _____ Date _____ Existing Use(s) _____ Proposed Use <u>POD for Addition w/ (3x8000)</u>		☐ New Bldg ☐ P.O.B. ☐ File in room 2124 Street Name: _____ Street Width: _____ Road Width: _____ Sidewalk Width: _____ Parking: _____ Restrictions: _____	
Job No. <u>37538-A</u>	BZA Case No. <u>#17532-</u>	PUD Order No. _____	
<u>406 -</u> <u>1/25/07</u>			

D TAB 13

JOSEPH JORGENS, III
130 12th Street, N.E.
Washington, D.C. 20002

and

ILENE BLINICK
142 12th Street, N.E.
Washington, D.C. 20002

and

CHARLIE DONNELLY
144 12th Street, N.E.
Washington, D.C. 20002

and

DAVID SMALLEN
129 12th Street, N.E.
Washington, D.C. 20002

Petitioners,

v.

GOVERNMENT OF THE
DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001

Respondent.

Agency No. 17532

Appeal No. _____

Petitioners Joseph Jorgens, III, Ilene Blinick, Charlie Donnelly and David Smallen (“Petitioners”), hereby seek review by the District of Columbia Court of Appeals of the decision

and order of Respondent Government of the District of Columbia Board of Zoning Adjustment (“Respondent”) entered on July 25, 2007. A copy of the decision and order is attached.

The names and addresses of all other parties and their counsel who appeared in the agency are:

Curtis E. Gannon, Esq.
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Mr. Russ Williams
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Chairperson
Advisory Neighborhood Commission 6A
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Washington, DC 20013

Nicholas Alberti
Single Member District Commissioner 6A04
P.O. Box 75115
Washington, DC 20013

Matthew LeGrant, Acting Zoning Administrator
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Building and Land Regulation Administration
941 North Capitol Street, NE
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Washington, DC 20002

Tommy Wells, City Councilmember
Ward Six
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Washington, DC 20004

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, NE
4th Floor
Washington, DC 20002

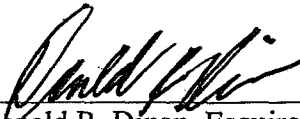
Alan Bergstein, Esquire
Office of the Attorney General
441 4th Street, NW
7th Floor
Washington, DC 20001

Jill Stern, Esquire
General Counsel
Department of Consumer and Regulator Affairs
941 North Capitol Street, NE
Suite 9400
Washington, DC 20002

DATE: August 24, 2007

Respectfully Submitted,

ROETZEL & ANDRESS, LPA



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Counsel for Petitioner

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 17532 of AppleTree Institute for Education Innovation, Inc., pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to require BZA special exception approval for a proposed addition to an existing building to accommodate a public charter school use¹. Appellant alleges that the Zoning Administrator erroneously relied upon the Zoning Commission's February 13, 2006 emergency rulemaking to require additional on-site parking spaces. The subject property is located in the R-4 District at premises 138 12th Street, N.E. (Square 998, Lot 820).

HEARING DATE: November 21, 2006
DECISION DATE: January 9, 2007

ORDER

PRELIMINARY MATTERS

This appeal was filed on June 27, 2006, by the AppleTree Institute for Education Innovation, Inc., ("Appellant"), which owns the property that is the subject of the appeal, 138 12th Street, N.E., Square 988, Lot 820, ("subject property"). The Appellant alleges that the Zoning Administrator ("ZA") erred in his decision to deny its February 9, 2006 application for a building permit. According to the April 28, 2006 letter communicating the Zoning Administrator's decision to the Appellant, he based his denial on the determination that the Appellant's proposed use of the property as a public school failed to meet the minimum requirements in an R-4 zone district for lot area, lot width, and number of parking spaces.

The Board held a public hearing on the appeal on November 21, 2006, at which the Appellant presented its case through counsel and the Zoning Administrator's decision was defended by the Zoning Administrator himself. Travis Parker, who was involved in reviewing this project with the Zoning Administrator, testified in support of the Zoning Administrator's decision, as did a representative of Advisory Neighborhood Commission ("ANC") 6A, the ANC within which the subject property is situated. The ANC also submitted a report in support of the Zoning Administrator's decision. A group of neighboring property owners, the "Northeast Neighbors for Responsible Growth" ("NNRG"), was granted opposition party status by the Board. At the end of the hearing, the Board set a decision date for January 9, 2007.

¹ The caption has been changed to delete the reference to "an addition to an existing public charter school". Based upon the record, the subject property was not being used as a public charter school at the time Appellant filed its application for a building permit.

After its deliberations at the January 9, 2007 public decision meeting, the Board voted 4-1-0 to grant the appeal and reverse the Zoning Administrator's decision to deny the building permit. An explanation of the facts and law that justify the Board's conclusion follows.

FINDINGS OF FACT

1. The Property. The subject property is located at 138 12th Street, N.E in the R-4 zone district and is improved with a building constructed prior to May 12, 1958, the date on which the modern version of the Zoning Regulations became effective ("1958 Regulations").
2. The subject property has been certified by the State Historic Preservation Officer as contributing to the character of the Capitol Hill Historic District.
3. The subject property is situated between rowhouses on a primarily residential street, but has been used for non-residential purposes at least since the enactment of the Zoning Regulations.
4. On the effective date of the Zoning Regulations, the building was used as an office facility for a heating-oil company.
5. The subject property was used as an office facility for a hospice in the mid- to late-1960s and as a private club by the Knights of St. John and Women's Auxiliary from 1969 until 2005, when the Appellant acquired the property.
6. The building includes 4,296 square feet of gross floor area, as well as a cellar area.
7. The lot underlying the building is a rectangle with a lot width of 36 feet and a lot area of 4,230 square feet.
8. The area of the lot behind the building is paved with asphalt. The paved area is somewhat less than 36 feet wide (due to encroachments by the immediate neighbors on both sides), and somewhat less than 77 feet deep (due to the space behind the building taken up by a fire escape descending from the second floor, an exterior staircase into the cellar, and two large air-conditioning units).
9. The paved area is separated from a 30-foot-wide public alley at the rear property line by a chain-link fence, which includes a pair of gates that open to allow access from the alley through a 12-foot gap.
10. The chain-link fence was erected in 1970 by the Knights of St. John, along the rear property line, pursuant to a building permit certifying that "this fence will not obstruct any accessible parking area required by the Zoning Regulations of the District of Columbia." Exhibit No. 32, Attachment 4.
11. No legal, striped parking spaces are marked on the paved area, and there is no evidence that any such spaces have ever been marked on the paved area.
12. Between 1958 and 1969, a large portion of the current paved area was occupied by a storage shed that was 15 feet wide and 49 feet long and provided no parking. In 1969,

the Knights of St. John razed that structure, pursuant to a permit that indicated that the previous use of the building was “Storage Garages No Parking.”

13. The prior owner, Knights of St. John, would periodically use the paved area at the rear of the lot for stacked parking of up to approximately ten vehicles. Transcript of Nov. 21, 2006 Public Hearing at 399, lines 14-19 (“Transcript”).
14. On February 9, 2006, the Appellant applied for a building permit to expand the existing building on the subject property by adding an addition on the back, which would increase the total gross floor and cellar floor area to 8,975 square feet and would occupy a portion of the paved area at the rear of the lot.
15. Under the Appellant’s plans, the remainder of what is now the paved area would be occupied by a grassy area, a sidewalk, and three marked parking spaces roughly perpendicular to the rear property line and directly accessible from the public alley.
16. The Appellant also proposed changing the use of the property from a private club to a public charter school for approximately 50 pre-school and pre-kindergarten students and up to 15 teachers and staff members.
17. On February 13, 2006, the Zoning Commission adopted an emergency rule pertaining to public schools. *See* 53 DCR 2017 (Mar. 17, 2006). It re-adopted the emergency rule on June 12, 2006, *see* 53 DCR 5898 (July 21, 2006), and adopted a permanent version on September 25, 2006. *See* 53 DCR 9580 (Dec. 1, 2006).²
18. The new rule: (a) expanded the definition of “public school” contained in 11 DCMR § 199.1 to include schools “chartered by the District of Columbia Board of Education or the District of Columbia Public Charter School Board,” (b) increased the minimum lot area for a public school in an R-4 zone district from 4,000 to 9,000 square feet, and the minimum lot width from 40 feet to 120 feet; and (c) established a parking formula for pre-elementary and pre-kindergarten schools or facilities of two spaces for every three teachers or staff members.
19. Pursuant to the new rule, a school employing 15 teachers would have to provide ten parking spaces ($15 \div 3 = 5$; $5 \times 2 = 10$).

²The Appellant contends that aspects of that rulemaking “exceeded [the Zoning Commission’s legal] authorities in multiple ways,” but the Appellant also contends that the Board may hear this appeal without addressing those contentions. The Zoning Administrator contends that “the validity of the Zoning Commission’s action on adopting the emergency text amendment is not within the [Board’s] jurisdiction.” Transcript at 324, lines 12-14. The written report of the ANC does not directly address the question of jurisdiction, but the NNRG also contends that the Board lacks jurisdiction to address the validity of the emergency rule. *See*, Exhibit No. 23, ANC Report, and Exhibit No. 28, Reply Brief of Intervenor NNRG at 1–2. In this order, the Board assumes *arguendo* that the emergency rule is legally valid, without intending any prejudice to the Appellant’s ability to press its arguments to the contrary elsewhere.

20. On April 28, 2006, the Zoning Administrator denied the Appellant's building permit application on grounds that the Appellant's proposed use failed to meet the minimum-lot-area requirement of "9,000 square feet," the minimum-lot-width requirement of "120 feet," and the minimum-parking-spaces requirement of "10 spaces." Exhibit No. 13.
21. Appellant asserted to the Zoning Administrator and asserts in this appeal that the property is exempt from the minimum lot area and lot width requirements pursuant to 11 DCMR § 401.1. That provision states:

Except as provided in chapters 20-25 of this title, in the case of a building located on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.
22. Appellant asserted to the Zoning Administrator and asserts in this appeal that no more than three parking spaces are required.
23. Appellant relies on 11 DCMR 2100.5 as the legal authority for its parking space calculations.
24. Section 2100.5 exempts buildings certified as contributing to a historic district from providing additional parking.
25. At the hearing, the Zoning Administrator changed his position to assert that 7 parking spaces were required based on the theory that the previous club use required 7 spaces.
26. Neither the regulations in effect when the property changed from an office use to a private club use in 1969 nor the current regulations specify a parking space requirement for a private club.
27. In 1969, the Zoning Regulations contained a provision specifying that if the parking schedule contained no requirement for a particular structure, that structure was to provide the number of "parking spaces . . . required for a warehouse located in a C-M-1 District," Zoning Regulations of the District of Columbia §§ 7202.1, 7207.17 (1973 reprint) ("1973 Zoning Regulations"). In 1969, the parking requirement for a warehouse located in a C-M-1 District was one space "for each 2,400 square feet of gross floor area."
28. The private club use would therefore have required two parking spaces ($4,296 \div 2400 = 1.79$).³
29. DCRA computed the parking requirement for the private club use with the current catch-all requirement of one space for every 600 square feet of GFA, set forth in 11 DCMR

³The rules of interpretation for Chapter 21 provide that "whenever calculations based on the schedule set forth in § 2101 result in a fractional space, any fraction under one-half shall be disregarded and any fraction of one-half or over shall require one (1) parking space", 11 DCMR § 2118.6.

§2101, rather than with the catch-all requirement that was in effect when the private club use began.

30. The parties in Opposition claimed that ten spaces were required, based on observations that the private club periodically stacked ten cars in the lot. (See Finding of Fact (“FOF”) 13.)
31. DCRA changed its position again in its Proposed Findings of Fact, No. 24, asserting that only five spaces were required on the theory that when the use changed, the parking requirement changed.
32. DCRA then based the five spaces requirement upon 11 DCMR § 2101.10, which reads as follows:

In the case of a building or structure for which the Zoning Regulations now require more parking spaces than were required when the building or structure was built, the following shall be required:

- (a) If the existing number of parking spaces *now provided* is less than or equal to the minimum number of parking spaces now required by this chapter, the number of parking spaces cannot be reduced; and
 - (b) If the existing number of parking spaces *now provided* is more than the minimum number of parking spaces now required by this chapter, the number of parking spaces cannot be reduced below the minimum number of parking spaces required by this chapter.
33. Although there are currently no parking spaces marked in the paved area in the rear of the building (as would be required by 11 DCMR § 2117.3), up to three angled spaces could be placed there while still allowing sufficient space for a 17-foot aisle and screens from contiguous residential properties (as required by 11 DCMR §§ 2117.5 and 2117.12).
 34. The Zoning Administrator claimed that six legal parking spaces could fit in the paved area. He conceded, however, that one of those supposed spaces was impermissibly placed in the midst of a fixed fire-escape staircase from the second floor. Transcript at 347, lines 12-14; 350, lines 7-9; and 368–69, lines 21-22 and 1. He also conceded that two of the remaining five spaces — located perpendicular to and immediately adjacent to the alley — would not actually be accessible without changing the existing chain-link fence. Transcript at 361, lines 4-9.
 35. The Appellant is planning to provide three parking spaces in the rear paved area and has secured a long-term lease in a nearby parking lot for a minimum of another ten parking spaces.

CONCLUSIONS OF LAW AND OPINION

The Board has jurisdiction to hear an appeal from any administrative decision of a District official "based in whole or in part on any zoning regulation." D.C. Official Code § 6-641.07(f) (2001). It may "reverse or affirm, wholly or partly, or may modify the order . . . , decision, determination, or refusal appealed from, . . . and to that end shall have all the powers of the officer or body from whom the appeal is taken." *Id.* § 6-641.07(g)(4); *see also* 11 DCMR § 3100.4.

This appeal was timely under 11 DCMR § 3112.2(a), because it was filed within 60 days of the date the Appellant had notice or knowledge of the decision being appealed.

There are two principal issues on appeal:

- (1) Whether the building on Appellant's lot may be enlarged for the purpose of accommodating a public school use without regard to the lot area limitations applicable to that use; and
- (2) Whether a change in the building's use to a public school requires the provision of any parking spaces on site.

For the reasons stated below, the Board concludes that the proposed change in use does not require adherence to either the lot size or parking requirements for the new use.

As set forth in the findings of facts above, on February 13, 2006, the Zoning Commission adopted an emergency rule pertaining to public schools. This rule was readopted as an emergency rule on June 12, 2006, and then adopted as a permanent rule on December 1, 2006. The new rule, in relevant part, amended the definition of public schools in § 199.1 to include charter schools, amended Chapter 4 of the Zoning Regulations to increase minimum lot area and width requirements in Residence Districts, and amended Chapter 21 of the Zoning Regulations to require parking for pre-elementary schools and pre-kindergarten schools or facilities. This appeal arises from the Zoning Administrator's denial of Appellant's application for a building permit on April 28, 2006 on grounds that the proposed use as a public charter school did not meet the requirements set forth in the new regulation. Specifically, the Zoning Administrator determined that the proposed use did not meet the minimum lot area and width requirements, nor the parking requirements.

1. Compliance with the Lot Requirements for a Public School.

Appellant argues that the subject property is exempt from the requirements of the new area restrictions by reason of 11 DCMR § 401.1. That section states as follows:

Except as provided in chapters 20-25 of this title, in the case of a building located on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the

building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.

The Board interprets this section to mean simply, that a building that was located on a lot on May 12, 1958, that does not meet the lot area or width of lot requirements prescribed in § 401.3 may be enlarged or replaced, provided it complies with all other provisions of the Zoning Regulations.

The new public school regulations added public school to the chart set forth in § 401.3. There is no factual dispute that the subject building was located on the lot on May 12, 1958 and that the lot does not meet the lot area or width of lot requirements prescribed in § 401.3 for use as a public school.

Accordingly, the only issues before the Board with respect to the lot requirements are whether the subject property is exempt from the public school lot requirements set forth in § 401.3 and whether the property complies with all other provisions of the Zoning Regulations. The new public school regulations, while amending several regulations in Chapter 4, including § 401.3, in particular, leave § 401.1 intact. The Zoning Administrator and the parties in opposition ask this Board to treat the omission to amend this regulation as an “oversight” on the part of the Zoning Commission and to read the inapplicability of § 401.1 to buildings used for public schools as consistent with the Zoning Commission’s intent with respect to the new public school regulations. The Board notes that the Zoning Commission specifically reviewed the regulations in Chapter 4 when adopting the new regulations, and that § 401.1 was a part of the regulatory scheme it was reviewing. Further, there is evidence in the record that this specific issue was brought to the attention of the Office of Planning prior to final action, (Exhibit 33, Attachment. N). Accordingly, the Board finds that it is beyond its purview to assume that the omission to amend § 401.1 was an oversight on the part of the Zoning Commission.

As stated by the Chair of the Zoning Commission, who participated in this decision:

To the extent that 401.1 is ultimately inconsistent with the Commission's intent but remains meaningful on its own terms, then it is the flaw of the Commission interacting (sic) [in enacting] the rulemaking, not an area of interpretation for the ZA.

The Board further recognizes that any such flaws of rulemaking are not for the Board to fix, in an appeal case, but rather within the authority of the Zoning Commission to correct in a rulemaking proceeding.

The Board therefore reverses the determination of the Zoning Administrator that the building on the Appellant’s lot may not be expanded because its lot has less area and width than is required for a public school.

2. Compliance with all other Provisions of the Zoning Regulations

To be successfully invoked, § 401.1 requires not only that the building have been on the lot as of May 12, 1958, but that the property comply with all other provisions of the Zoning Regulations (other than the lot area and width of lot requirements.) The Zoning Administrator and the parties in opposition allege that Appellant is not in compliance with the parking regulations. The Zoning Administrator argues ultimately that five parking spaces are required. Appellant will only be providing three, which Appellant argues is in compliance with the parking regulations. Appellant relies on 11 D CMR § 2100.5 for this conclusion, which the Board finds is controlling. § 2100.5 provides as follows:

No additional parking spaces shall be required for a historic landmark or a building or structure located in a historic district that is certified by the State Historic Preservation Officer as contributing to the character of that historic district.

There is no dispute that the building has been certified by the State Historic Preservation Officer as contributing to the character of the historic district. Accordingly, the issue in the first instance is whether “additional parking” refers to additional to the number of spaces required for the previous use or additional to what currently exists on the lot. As set forth below, the Board finds that the Applicant is compliant under either scenario and will be providing the maximum number of legal spaces that can fit on the lot, which is the greater number of the two scenarios.

The previous use of the building was that of a private club. The property changed to a private club use in 1969. Under the parking regulations in effect at that time, the parking requirement for the private club on this lot would have been two spaces. (See FOFs 27 and 28.) Accordingly, pursuant to § 2100.5, appellant’s parking requirement would be two spaces.⁴

The Board finds unpersuasive the opposition parties’ argument that the required parking for the previous use was ten spaces based on the neighbors periodically seeing ten cars stacked on the lot. The Board’s task is to determine the number of legally required parking spaces on the lot, not how many could be packed onto the lot.

Finally, the Board finds that only three lawful spaces can be accommodated on this lot. Of the potential five spaces identified by the Zoning Administrator, two would not actually be accessible without changing the existing chain-link fence. (That chain link fence was erected in 1970 pursuant to a building permit certifying that “**this fence will not obstruct any accessible parking area required by the Zoning Regulations of the District of Columbia.**”)

⁴ Because the Appellant has agreed to provide three spaces, one more space than is required, the Board need not determine whether any parking spaces were credited or grandfathered from the original 1958 use.

The Board finds that based on the size of the surface area, the existence of the egress stairs, the air conditioning units and the gate which creates the drive aisle, no more than three regulation size parking spaces will fit on the lot.

As “§ 2100.5 provides that no additional parking shall be required, Appellant is meeting this requirement by providing three spaces on the lot.

The Zoning Administrator relied on 11 DCMR § 2101.10 for his final determination that five spaces are required. That regulation provides that whenever the use of a property changes to a use that requires more parking than was previously required, additional parking spaces must be required to make up the difference.

The Board finds that this provision is not applicable to the property because § 2100.5 is controlling for properties that have been certified by the State Historic Preservation Officer. No additional spaces are required regardless of whether the additional spaces would be triggered by a structural addition or by a change in use. Any other interpretation would negate the protection to historic properties afforded by this provision. *See BZA Order No. 17459 of DC Hampton LLC*, (2006) (self-certified application for a parking variance dismissed because “§ 2100.5 operates to waive the requirement for additional parking spaces for new construction” in such instances); *See also, BZA Order No. 16307 of National Child Research Center* (1998) (parking variance not needed because § 2100.5 exempts such historic structures from providing additional parking when the use is changed.); and *BZA Order No. 16071 of the Washington International School* (1995) (pursuant to § 2100.5 no parking spaces required for the change of use of a school building to an apartment building.)

Great Weight to the ANC

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The ANC submitted a report in support of the Zoning Administrator’s decision in which it also argued that the Appellant did not meet the parking regulations. The ANC offered two bases for that assessment: First, it alleged that the property previously accommodated ten cars. The Board has already addressed that issue, finding that stacking ten cars does not equate with the provision of lawfully required parking spaces. Second, the ANC argues that the Appellant’s proposal to place a charter school in the existing structure is prohibited by 11 DCMR § 2002.3 and § 2002.5. These provisions regulate the expansion of nonconforming uses. In essence, the ANC argues that the charter school is a nonconforming use for that building because the building does not meet the lot area or lot of width requirements of §401.3. However, those nonconformities are structural. They are not nonconformities as to use. The use as a public charter school is a matter of right use in the R-4 zone. Accordingly, the ANC’s arguments with respect to nonconforming use are misplaced.

BZA APPEAL NO. 17532
PAGE NO. 10

The Board therefore concludes that the Zoning Administrator erred in determining that the Appellant needed to provide any more than three parking spaces for its contributing building.

For the reasons stated above, the Board concludes that the Appellant has met its burden of proving that the Zoning Administrator erred in denying the Appellant's building permit application. The Board has carefully considered the issues and concerns stated in the written report of the ANC and, for the reasons stated above, finds them unpersuasive.

It is hereby **ORDERED** that the Zoning Administrator's decision is **REVERSED**, and it is further **ORDERED** that this appeal is **GRANTED**.

VOTE: 4-1-0 (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II,
and Curtis L. Etherly, Jr. to grant; Carol J. Mitten to deny.)

Each concurring Board member has approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

ATTESTED BY: _____


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

FINAL DATE OF ORDER: **JUL 25 2007**

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPEAL NO. 17532

As Director of the Office of Zoning, I hereby certify and attest that on JULY 25, 2007, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Curtis E. Gannon, Esq.
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, S.E.
Washington, D.C. 20003

George R. Keys, Jr., Esq.
Jordan & Keys, LLP
1400 16th Street, N.W., Suite 520
Washington, D.C. 20036

Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 20013

Single Member District Commissioner 6A04
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 20013

Matthew LeGrant, Acting Zoning Administrator

BZA APPEAL NO. 17532

PAGE NO. 2

Matthew LeGrant, Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Tommy Wells, City Councilmember
Ward Six
1350 Pennsylvania Avenue, N.W., Suite 408
Washington, D.C. 20004

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Alan Bergstein, Esquire
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, D.C. 20001

Jill Stern, Esquire
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


JERRILY R. KRESS, FAIA 
Director, Office of Zoning

TWR

CERTIFICATE OF SERVICE

I hereby certify that on this August 24, 2007, a copy of the foregoing *Petition for Review* was mailed, first-class, postage prepaid to:

Curtis E. Gannon, Esq.
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, SE
Washington, DC 20003

George R. Keys, Jr., Esq.
Jordan & Keys, LLP
1400 16th Street, NW
Suite 520
Washington, DC 20036

Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, DC 20013

Nicholas Alberti
Single Member District Commissioner 6A04
P.O. Box 75115
Washington, DC 20013

Matthew LeGrant, Acting Zoning Administrator
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, NE
Suite 2000
Washington, DC 20002

Tommy Wells, City Councilmember
Ward Six
1350 Pennsylvania Avenue, NW
Suite 408
Washington, DC 20004

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, NE
4th Floor
Washington, DC 20002

Alan Bergstein, Esquire
Office of the Attorney General
441 4th Street, NW
7th Floor
Washington, DC 20001

Jill Stern, Esquire
General Counsel
Department of Consumer and Regulator Affairs
941 North Capitol Street, NE
Suite 9400
Washington, DC 20002


Donald R. Dinan

D TAB 14



David Holmes
Advisory Neighborhood Commission 6A03
P. O. Box 15053
Washington, DC 20003-0053



August 30, 2007

Acting Director Linda Argo
Department of Consumer and Regulatory Affairs
941 North Capitol Street
Washington, DC 20002

Re: 138 12th Street NE

Dear Director Argo:

1). My constituents on 11th and 12th Streets NE are concerned about the proposed excavation and soil removal to be undertaken as part of the construction at 138 12th Street by AppleTree Institute.

This property is not and has never been a residential property, despite its R-4 designation. Instead, for fifty years, it was owned and operated industrially by the Steuart Petroleum Company as an office and distribution site for oil and other petroleum distillates.

There is every reason to believe that the soil underlying the current asphalted parking surface should be treated as a brownfield. Among other problems, Steuart's vehicles, we believe, drained residue into the ground after the end of the day's deliveries. Seventy-five years ago, there was little concern for the long-term health effects of such dumping.

You should be aware that there has been no contact by DCRA with the DC Department of Health about this permit. I believe this inadvertence comes from a belief that this property was residential, rather than light industrial. Certainly if this had been a gas station, DCRA would have consulted the Environmental Impact Coordinator. As it happens, this site is far more likely to constitute a brownfield than a mere gas station.

I urge you to require your permitting office to consult with Mr. Imbrahim Bullo, Environmental Impact Coordinator at the Department of Health, before there is an Environment sign-off on the permit. This has not been done to this date.

In addition, the environmental danger comes not just from the dust and polluted dirt to be scraped and exhumed by the project's earthmoving equipment, but also from the threat of possible underground storage tanks, now covered by asphalt. An excavating blade cutting into a tank could lead to an explosion. We do not know that they are there, but there is reason to believe that vehicles were fueled from that site. Remember there is particular danger because this excavation is closely surrounded by rowhouses.

Therefore I ask that an investigation be done to determine the threat before the permit is issued. I assert that due diligence on the part of DCRA requires it. The hazard of explosion and the near certainty of polluted soil necessitates a predetermination of environmental safety for the nearby residents.

2). A second matter of concern is the threat to the neighboring properties of the proposed underground construction. The excavation will remove the lateral support from the foundations of the adjacent properties. The proposal would also dig deeper than the deepest underpinnings of the surrounding houses.

Has the structural permitting process examined this matter? What plan do they have for protecting yards and houses/carriage houses from possible structural failure or collapse? There are no agreements yet with the neighbors. If your permitting center has received one, I need a copy of the contractor's Support of Excavation plan (SOE) to share with the neighbors. Neither the applicant nor the contractor has provided this to the property owners most affected.

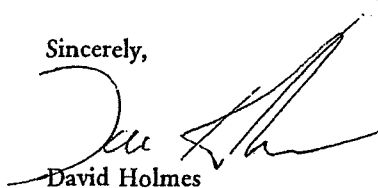
Neither permission to enter adjacent properties nor any easement agreement has yet been obtained. I'm informed that neither the applicant nor the contractor has even spoken with the neighbors about the excavation.

3). The immediate neighbors have yet seen any proposal for the HPRB-required sound-baffled fencing to protect neighbors from the noise of what is nominally proposed to be a school. Historic preservation permitting should not sign off on this permit until this and other HP matters have been resolved.

4). Construction on this scale will be difficult to intolerable in this quiet residential community. Where will the laborers and contractors vehicles park? Let me repeat, this is a narrow street, filled with residents' parked cars on both sides? There is no place to park vehicles in the alley without depriving other property owners of the use of their garages. There is no alternate street parking for the residents of this block. Even from 9 am to 5 pm, there are very few empty spots. It would be unjust and inequitable to set aside more than the street front footage as the on-street parking for this project. This is one of the principal reasons the Office of Planning and the Zoning Commission found this and similar sites to be presumed as inappropriate for public schools.

What measures will DCRA impose on the applicant and contractor to protect the fabric of the surrounding historic homes from the vibrations of earthmoving equipment and dump trucks? The property is located in the midst of other rowhouse properties. Families with babies and toddlers, day-sleeping workers, the elderly, and work-from-home residents are about to be assaulted by the clamor, clanging, and shuddering of heavy construction. The scale of work in this project is unprecedented in my experience in the middle of two rows of historic rowhouses on narrow residential streets.

Sincerely,



David Holmes

cc: Mayor Adrian Fenty
Councilmember Tommy Wells
Council member Harry Thomas, Jr.
All at-large Councilmembers

D TAB 15



District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013



August 30, 2007

Linda Argo
Acting Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Washington, DC 20002

Re: Permits for 138 12th Street, NE

Ms. Argo:

I request the permits approved (see enclosure #1) on August 23, 2007, to modify the property for a charter school located at 138 12th Street, NE be retracted for two reasons. First, the applicant, AppleTree Institute for Education Innovation, has not received approval to operate a charter school at this location by the Public Charter School Board (see enclosure #2). Second, the Board of Zoning Adjustment (BZA) meeting held to dispose of our Commission's appeal of BZA Case #17532 is under investigation by the Office of the Inspector General (IG) for not providing the proper public notice as required by the ANC Act (see e-mail from IG entitled "BZA impropriety" at enclosure #3).

The prima-facie issue is that in order to apply for a school "use" under the zoning regulations necessitates the applicant to be approved for a charter school at the permit location. Simply put, the cart can not be placed in front of the horse. At the heart of the issue is matter of right development. If a charter school is not approved for a location, and the applicant asserts a "use" not yet obtained, the permits should not be issued. This is not the first time we have written the Zoning Administrator on this issue (see enclosure #4). On March 14, 2007, the Zoning Administrator stated that actions would be taken to ensure entities are not posing as charter schools in attempting to gain matter of right uses. As these permits were issued, what changed between March and August?

The secondary issue relates to proper public notice. The DC Code requires 30 days advance notice of any hearing where matters will be considered that affect the ANC. We were only provided seven days notice. Mr. Clifford Moy, Secretary to the BZA, has informed our Commission that he will be unable to comply with our request for an investigation into the question of proper notice, since the matter is under investigation by the IG. I request that you follow BZA's direction and suspend and retract all actions that occurred after August 9, 2007 (the day we receive the first notice from BZA) regarding these permits until the IG completes their investigation.

In close, I ask that your office respond to this request to retract these permits by September 7, 2007 as well as to explain the change between the March and August positions of the Zoning Administrator. In addition, I extend an invitation for you to attend our September 13, 2007, Commission meeting to update our community on the status of the permits as well as to discuss how DCRA handles permits for charter schools.

Respectfully,

Joseph Fengler, Chair

Cc: Matthew LeGrant, Acting Zoning Administrator
Linda Singer, Attorney General
Councilmember Tommy Wells

Enclosure #1

Building Plan Review Status

Project Information

- Bottom of FormTracking number: 3758 A 2006
- Date filed: 2/9/2006
- Address: 138 12TH ST NE
- Agent: MIKE WILSON (301) 731-4767

Application Status

Pending. Review of your application has not been completed yet. DCRA will make all efforts to complete the review of your application on or before 3/11/2006 . Please contact us only after 3/11/2006 .

To view comments from the plan review team, select from the links in the left column below. On the page that follows, enter your DC.Gov username and password. If you don't have a username and password, please register.

Discipline	Review Status	Status date
Department of Environment	Approved. We approved this discipline of your application.	8/10/2007
Electrical	Approved. We approved this discipline of your application.	8/23/2007
Elevator	Approved. We approved this discipline of your application.	3/30/2006
Fire	Approved. We approved this discipline of your application.	8/23/2007
Mechanical/Plumbing	Approved. We approved this discipline of your application.	8/23/2007
Structural	Hold for correction. This application requires correction. Please contact the Permits Division staff to address the requirement.	7/13/2006
Zoning	Approved. We approved this discipline of your application.	8/23/2007
Historic	Pending. We are currently reviewing your application.	2/9/2006

Building permit application status data current as of: 8/30/2007, 7:00:48 AM

Enclosure #2



District of Columbia Public Charter School Board

March 2, 2007

Councilmember Tommy Wells
The John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Councilmember Wells:

The D.C. Public Charter School Board (the "Board") received your letter dated February 26, 2007. In response, I am drafting this letter on behalf of the Board to (1) state that the Board has no jurisdiction over the AppleTree Institute for Education Innovation; (2) clarify the role of the Board regarding the selection and location of facilities of the charter schools it authorizes; and (3) invite you to discuss with the Board the general charter school facility selection issues you raise in your letter.

First, please be advised that the AppleTree Institute for Education Innovation (the "Institute") is a D.C. non-profit organization and is not a public charter school. The Board has issued a charter to AppleTree Early Learning Public Charter School (the "Charter School"), a separate legal entity. The Charter School is located at 680 I Street, SW.

The Board recognizes that the commercial property in question, 138-140 12th Street, NE, has been the subject of an ongoing controversy between the Institute and some residents of the neighborhood, and that the site was acquired by the Institute with the plan to complete renovations and to lease the facility to the Charter School. However, to date the Board has received no petition from the Charter School to modify its charter agreement to approve an additional campus at this site.

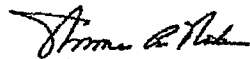
At our last monthly meeting, on February 26, 2007, the Board did approve a request from the Charter School for an enrollment increase. For your information, I have enclosed copies of our Decision Memorandum for the approval of the recent enrollment increase request by the Charter School. In addition, the Charter School provided us with preliminary information on two additional sites under negotiation – in a new building under construction in Columbia Heights, and in a potential co-location with St. Thomas More Catholic School in Washington Highlands. In order to operate at either or both of these prospective new sites, the Charter School must receive Board approval.

Because we have had no request from the Charter School to add a new campus located at 138-140 12th Street, NE, this Board has no jurisdiction to intervene in the matter. As mentioned above, the Institute is not a charter school, and the Board has no jurisdiction over the operations of the organization, including where it chooses to locate.

Enclosure #2

Finally, the Board shares your concerns for the safety and welfare of D.C. school children, and considers the location of charter school facilities to be an important one. Since you raise other general issues regarding the availability of space for charter school facilities, the Board welcomes the opportunity to meet with you, to discuss these issues further, and to establish a direct line of communication between us.

Sincerely,



Thomas Nida
Chair

Enclosure

cc: Victor Reinoso
Advisory Neighborhood Commission 6A
Appletree Early Learning Public Charter School

Enclosure #3

From: Sean McCaney <sean.mccaney@dc.gov>
To: Fengler6a02@yahoo.com
Sent: Tuesday, August 28, 2007 3:50:05 PM
Subject: BZA impropriety

August 28, 2007

Joseph Fengler
Fengler6a02@yahoo.com

Dear Chairman Fengler:

This correspondence will acknowledge receipt of your August 21, 2007, electronic mail message requesting that this Office review the propriety of a meeting conducted by the Board of Zoning Adjustment.

Your request has been forwarded to the Audit Division of this Office for review and action, as appropriate.

Please be advised that our investigative files are not public documents, and we do not provide updates regarding ongoing investigations or unsolicited resolution reports once our cases have been resolved. However, if you wish to obtain the status of a case, you may obtain documentation from the investigative files by making a D.C. Freedom of Information Act (FOIA) request pursuant to D.C. Code §§ 2-531 to 2-539 (2001). You should address your FOIA request to:

ATTN: FOIA Officer
The D.C. Office of the Inspector General
717 14th Street, N.W., Fifth Floor
Washington, D.C. 20005

A response to this electronic mail message is not necessary.

I hope this information is helpful to you. If we may be of further assistance, please do not hesitate to contact this Office. Thank you for bringing this matter to my attention.

Sincerely,

Charles J. Willoughby
Inspector General

CJW/sm

Enclosure #3

August 21, 2007

Charles J. Willoughby
Inspector General
District of Columbia
717 14th Street, NW, Fifth Floor
Washington, DC 20005

Re: Sunshine laws regarding the Board of Zoning Adjustment

Inspector General Willoughby:

On August 9, 2007, the Board of Zoning Adjustment (BZA) notified our Commission via electronic e-mail of public meeting on August 16, 2007 (Attachment #1), to rule on an appeal filed by our Commission regarding BZA Order #17532 regarding AppleTree Institute for Education and Innovation's attempt to construct a charter school at 138 12th Street, NE. (Attachment #3). On August 16, 2007, BZA notified our Commission that the public meeting would be delayed one day to August 17, 2007 (Attachment #2). Accordingly, I request that your office review these BZA notifications as executed by Ms. Ruthanne Miller and Mr. Curtis Etherly, Jr. as Chair and Vice Chair, respectively, of BZA, to determine if they were executed in accordance with:

- (1) Section 13(a)-(c) of the Advisory Neighborhood Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135, D.C. Official Code Section 1-309.10(a)-(c) (collectively, the ANC Act) sets forth that proposed government action for which ANCs are to receive thirty (30) days advance written notice.
- (2) Title 11, Chapter 31 Board of Zoning Adjustment Rules of Practice and Procedure, Section 3124.3 that states notice of further hearing shall be forwarded to any party who participated in the earlier proceedings or to representative parties at least ten (10) days prior to the date set for further hearing.

Based on the above dates, it appears that BZA did not comply with either the ANC Act or the rules that govern the BZA by providing less than ten (10) days notice of the initial hearing as well as only one (1) day notice of the change of date. As the decision on our appeal was made at this meeting, your swiftest possible review to determine if proper notice was executed is appreciated. Moreover, I request your office to determine if that decision would be null and void for lack of proper public notice and if a new public meeting is required to rule on our appeal.

Regards,

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A

Cc: Councilmember Wells
Councilmember Cheh
Councilmember Mendelson
Attorney General Singer

Enclosure #3

Attachment #1

From: "Nero, Richard (DCOZ)" <richard.nero@dc.gov>
To: Joseph Fengler <fengler6a02@yahoo.com>
Cc: "Moy, Clifford (DCOZ)" <Clifford.Moy@dc.gov>; "Rose, Tracey (DCOZ)" <tracey.rose@dc.gov>
Sent: Thursday, August 9, 2007 9:41:13 AM
Subject: BZA Public Meeting on Appletree

Mr. Fengler:

Please be advised that the Board of Zoning Adjustment has scheduled a public meeting on Thursday, August 16, 2007 to consider a couple of matters including the ANC's Motion for Reconsideration of the AppleTree decision. The meeting will start at 10:00 AM.

Regards,

Rick Nero

Richard S. Nero, Jr.
Deputy Director of Operations
Government of the District of Columbia
Office of Zoning
441 4th Street, N.W., Suite 200-S
Washington, D.C. 20001

Tel: (202) 727-6311
Fax: (202) 727-6072
richard.nero@dc.gov
www.dcoz.dc.gov

Attachment #2

----- Original Message -----

From: "Moy, Clifford (DCOZ)" <Clifford.Moy@dc.gov>
To: Joseph Fengler <fengler6a02@yahoo.com>; David Holmes <holmes.anc6a03@gmail.com>
Cc: "Moy, Clifford (DCOZ)" <Clifford.Moy@dc.gov>; "Nero, Richard (DCOZ)" <richard.nero@dc.gov>
Sent: Wednesday, August 15, 2007 1:59:24 PM
Subject: BZA Special Public Meeting Rescheduled Date

Gentlemen:

This is your notice that the BZA's Special Public Meeting on Thursday, August 16, 2007 has been rescheduled to Friday, August 17, 2007. The 10:00 a.m. starting time is unchanged.

If you have any questions, please call me.

Enclosure #3

Cliff Moy

* * *
[REDACTED]
[REDACTED]

Clifford W. Moy
Secretary of the
Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street, N.W.
Suite 200-210 South
Washington, D.C. 20001
U.S.A.

clifford.moy@dc.gov
Tel: +1-(1)202.727.0348
Fax: +1-(1)202.727.6072
Front Desk Tel:
+1-(1)202.727.6311
www.dcoz.dc.gov

Enclosure #4

----- Original Message -----

From: "Crews, Bill (DCRA)" <Bill.Crews@dc.gov>
To: Joseph Fengler <fengler6a02@yahoo.com>; Tommy Wells (Council) <twells@dccouncil.us>; Charles (COUNCIL) Allen <Callen@dccouncil.us>; "Rogers, Eric (DCRA)" <Eric.Rogers@dc.gov>
Cc: ANC 6A Open <anc-6a@yahoogroups.com>
Sent: Wednesday, March 14, 2007 4:01:10 PM
Subject: RE: ANC 6A requests denial of Apple Tree permits for 138 12th Street NE (they are not a charter school)

Commissioner Fengler,

I appreciate receipt of this information and will take appropriate actions to ensure entities are not posing as charter schools in attempting to gain 'matter of right' uses when they should not.

Thank you for all your service to your ANC Neighborhood and the District as a whole.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia
Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov

From: Joseph Fengler [mailto:fengler6a02@yahoo.com]
Sent: Wednesday, March 14, 2007 3:44 PM
To: Bill Crews (ZA DCRA); Tommy Wells (Council); Charles (COUNCIL) Allen; Eric (DCRA ANC) Rogers
Cc: ANC 6A Open
Subject: ANC 6A requests denial of Apple Tree permits for 138 12th Street NE (they are not a charter school)

Mr. Crews, please accept this signed, electronic copy until the original arrives by postal service.

The DC Public Charter School Board states that the AppleTree Institute for Education Innovation is not a public charter school and that they have not received a petition from the (AppleTree Public) Charter School to approve an additional campus at this site.

To that end, any building permit application for 138 12th Street, NE that claims public school status for matter of right construction of a charter school should be denied.

We share your commitment that all construction should be done according the zoning regulations and we support your continued firm stance in this instance.

Ms. Nelson, please post to our website.

Commissioner Holmes, please mail the appropriate copies.

Enclosure #4

Respectfully,

Joseph Fengler, ANC Commissioner 6A02
Phone: 202-423-8868
fengler6a02@yahoo.com
Please visit our website - www.anc6a.org

Text of attachment:

March 14, 2007

Mr. William Crews
Zoning Administrator
Department of Consumer and Regulatory Affairs
District of Columbia
941 North Capitol Street
Washington . DC 20002

Mr. Crews:

At our regularly scheduled meeting on March 8, 2007, and with a quorum present, we voted unanimously to bring to your attention a letter (attached) received by Councilmember Wells from Thomas Nida, Chair of the Public Charter School Board, addressing concerns raised by Board of Zoning Adjustment (BZA), case #17532, an appeal by AppleTree Institute for Education Innovation (the Institute) of the denial of building permits at 138 12th Street, NE, by the Zoning Administrator.

In his letter, Mr. Nida states that the Institute: "*...is a D. C. non-profit organization and is not a public charter school.*" He further states that the PCSB: "*...has received no petition from the (AppleTree Public) Charter School ...to approve an additional campus at this site.*"

Since the applicant for the permits is not a public school, and since no public school has been authorized at this site by the chartering authority, our Commission asserts that no valid request for a school "by-right" modification of 138 12th Street is, or ever has been, pending. We consequently assert that the original application is void, and the subsequent appeal by the Institute of the decision of the Zoning Administrator is moot.

Accordingly, we request that any building permits for this site, located at 138 12th Street, NE, that claim public school status for a matter of right development be denied.

On behalf of the Commission,

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A

Cc: Councilmember Wells

D TAB 16

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DC GOVERNMENT


 MAYOR
 Adrian M. Fenty


Consumer & Regulatory Affairs

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 Zoning Requirements

INFORMATION

ONLINE SERVICE REQUESTS

Building Plan Review Status

Project Information

- Tracking number: 3758 A 2006
- Date filed: 2/9/2006
- Address: 138 12TH ST NE
- Agent: MIKE WILSON (301) 731-4767

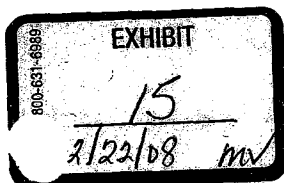
Application Status

Pending. Review of your application has not been completed yet. DCRA will make all efforts of your application on or before 3/11/2006. Please contact us only after 3/11/2006.

To view comments from the plan review team, select from the links in the left column below follows, enter your DC.Gov username and password. If you don't have a username and pas

Discipline	Review Status	Status date
Department of Environment	Approved. We approved this discipline of your application.	8/10/2007
Electrical	Approved. We approved this discipline of your application.	8/23/2007
Elevator	Approved. We approved this discipline of your application.	3/30/2006
Fire	Approved. We approved this discipline of your application.	8/23/2007
Mechanical/Plumbing	Approved. We approved this discipline of your application.	8/23/2007
Structural	Approved. We approved this discipline of your application.	8/31/2007
Zoning	Approved. We approved this discipline of your application.	8/23/2007
Historic	Pending. We are currently reviewing your application.	2/9/2006

Building permit application status data current as of: 9/6/2007, 11:01:00 AM



D TAB 17

**DISTRICT OF COLUMBIA
COURT OF APPEALS**

JOSEPH JORGENS, III
130 12th Street, N.E.
Washington, D.C. 20002

and

ILENE BLINICK
142 12th Street, N.E.
Washington, D.C. 20002

and

CHARLIE DONNELLY
144 12th Street, N.E.
Washington, D.C. 20002

and

DAVID SMALLEN
129 12th Street, N.E.
Washington, D.C. 20002

Petitioners,

v.

GOVERNMENT OF THE
DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001

Respondent.

Agency No. 17532

Appeal No: 07 AA 943

MOTION FOR STAY

Petitioners Joseph Jorgens, III, Ilene Blinick, Charlie Donnelly and David Smallen ("Petitioners"), by and through counsel, hereby file this Motion for Stay of the Board of Zoning Adjustment ("BZA"), Appeal number 17532 entered July 25, 2007, pending the appeal of this

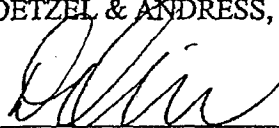
decision, which is before the District of Columbia Court of Appeals. The grounds for this motion are that if the building permits are issued to the Appletree Institute for Education Invocation, Inc., ("Appletree") by the Department of Consumer and Regulatory Affairs ("DCRA") as a result of the BZA ruling on appeal, the Petitioners will suffer immediate and irreparable harm. The appeal will be rendered effectively moot if the Petitioners prevail on appeal absent the BZA issuing the extraordinary remedy that Appletree tear down and demolish all work which they have done pursuant to such permits and replace all buildings and structures which they demolished pursuant to such permits.

As further grounds in support of this Motion, the Zoning Commission's Text Amendment 07-03, which will be promulgated imminently, will render the subject BZA ruling moot and will require Appletree to seek a special exception from the BZA for the additions to the building which they propose. A Memorandum of Points and Authorities is attached hereto and incorporated herein.

DATED: September 7, 2007

Respectfully Submitted,

ROETZEL & ANDRESS, LPA



Donald R. Dinan, Esquire
1300 Eye Street, N.W.
Suite 400 East
Washington, D.C. 20005
Telephone: 202.625.0600
Facsimile: 202.338.6340

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this September 7, 2007, a copy of the foregoing was mailed, first-class, postage prepaid to:

Curtis E. Gannon, Esq.
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

Mr. Russ Williams
Managing Director
AppleTree Institute for Education Innovation
400 7th Street, SE
Washington, DC 20003

Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, DC 20013

Nicholas Alberti
Single Member District Commissioner 6A04
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General Counsel
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Donald R. Dinan

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS
MOTION TO STAY

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If Appletree receives the requisite building permits from DCRA to make the proposed additions on the Property while the appeal is pending before the DC Court of Appeals, and goes forward and makes such proposed additions, this will have the effect of causing immediate and irreparable harm to the Petitioners, who are the neighbors living adjacent to, and in the immediate vicinity of, the Property. It will effectively render the appeal moot if Petitioners prevail absent the extraordinary remedy of the BZA ordering Appletree to demolish the addition and restore the building to its *status quo ante*.

A stay on the other hand, will not cause undue hardship to Appletree. The current school year has already begun. Therefore, *a priori*, Appletree could not commence its proposed Charter

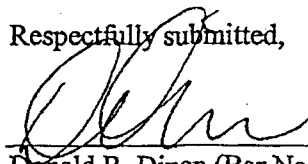
4786 v_01 \ 118498.0001

School at the Property for at least one year. Based on the plans given to the DCRA by Appletree, it is submitted that the construction period would exceed such time as would allow Appletree to open before September, 2009. It is likewise submitted that Appletree should be able to meet this date anyways, if it were to prevail on appeal. Thus, no prejudice attaches if this stay is granted.

Furthermore, the Zoning Commission in Z. C. Case Number 07-03 has amended 11 DCMR Section 401.1, on May 14, 2007, in a manner which would require a special exception for Appletree's proposed addition at the Property. This Text Amendment is expected to be promulgated imminently. A stay, therefore, would allow the public purpose of the Zoning Regulations of the District of Columbia, as already pronounced and ruled upon by the Zoning Commission, to be implemented. Denial of the stay will have the perverse effect of frustrating the public purpose and avoiding and evading the rulings of the Zoning Commission and the Zoning Regulations of the District of Columbia.

WHEREFORE, it is respectfully submitted the Petitioners' Motion for Stay Pending Appeal be granted. A draft Order is attached to this Motion.

Respectfully submitted,



Donald R. Dinan (Bar No. 234997)

Roetzel & Andress

1300 Eye Street, Suite 400 East

Washington, DC 20005

Telephone (202) 625-0600

Facsimile (202) 338-6340

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Agency No: 17532

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Respondent.

Upon consideration of Petitioners' Motion to Stay the Decision of the Board of Zoning Adjustment for the Pendency of the Appeal before the District of Columbia Court of Appeals and its Memorandum of Points and Authorities in Support Thereof, it is hereby this _____ day of _____, 2007;

ORDERED that the Petitioners' Motion to Stay is hereby **GRANTED**.

By: _____

Copies to:

Curtis E. Gannon, Esq.
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

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1300 I Street, N.W. Suite 400-East
Washington, DC 20005

D TAB 18

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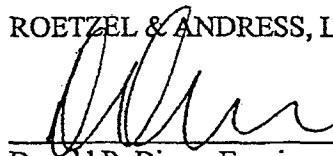
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Counsel for Petitioner

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ORDER

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Donald R. Dinan

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D TAB 19

(12)

From: Russ Williams [rwilliams@appletreeinstitute.org]
Sent: Tuesday, September 11, 2007 3:48 PM
to: linda.argo@dc.gov
Cc: neil.albert@dc.gov; Peter.Nickles@dc.gov; linda.singer@dc.gov
Subject: Re: Update (permit application 3758-A-6)

Ms. Argo,

I want to follow-up on my e-mail to you on Sunday about the reasons you claim AppleTree's building permit continues to be held up.

You mentioned the two stay motions that have been filed with the BZA and the DC Court of Appeals. Of course, as you know, in the absence of an actual stay, neither of those motions has any bearing on DCRA's own permit application process (as someone at the Office of Zoning confirmed for me today). Moreover, I am sure if you looked at those motions, you would see they provide no reason to believe that the BZA's decision is likely to be reversed on appeal.

As I noted in a previous message to you, DC Public Charter School Board activity also has no bearing on DC's Administrative process and has been previously addressed by both the BZA and the Chair of the Zoning Commission.

This leaves only the supposed "brownfield" condition that you indicated DCRA recently learned about. I have requested copies of this important information in both writing and in person, and I have heard nothing from your office to date. Given the potential danger to the neighborhood if this alleged condition is true, and the importance of properly notifying all neighbors and government agencies who would need to be alerted to such a condition, your office's unwillingness to share this information is inexplicable. I would request you make hard copies of this documentation available tomorrow (9/12/07) at the latest. It is important that, as the property owners, we be made aware of any issues so that we may take appropriate steps to address this issue.

It has now been several weeks since the BZA determined (both in its opinion and in its denial of the ANC's motion for reconsideration) that AppleTree is entitled to a building permit under the Zoning Regulations. Until you enable us to address the alleged "brownfield" issue, there is obviously no legitimate reason for further delay in the issuance of the permit.

Your urgent attention to this important matter is greatly appreciated.

Best,

Russ Williams

On Sep 9, 2007, at 10:49 AM, Russ Williams wrote:

Ms. Argo,

Thank you for your note. I am copying Deputy Mayor Neil Albert on my reply, as permit application 3758-A-6 enters its 19th month at DCRA despite the issuance of a BZA order supporting its issuance. As you know, a BZA appeal typically is the final step in DC's Administrative Process and any additional appeals take place within the courts. We are disappointed to have both a BZA order and, as of 8/31/07, all of the required DCRA approvals for a building permit only to then find out at 6:36 p.m. on Friday, Sept. 7th that new information has surfaced. The timing of this information, and the delays we have experienced, appear to be unrelated to the merits of our application. We are aware that a few politically well-connected Capitol Hill residents oppose our project, and it has become clear that the influence of this small group of individuals has impacted the administrative process.

3/18/2008

First, a person who disagrees with a BZA decision has a right to appeal that decision in a court of law. However, the DC Court of Appeals is not part of DC's administrative process and, while a motion for stay would be applicable if granted, the filing of a request on Friday Sept. 7th does not explain why DCRA did not issue the permit during the week that passed after the application received final regulatory approval on August 31st.

A request for stay filed with the BZA is a part of DC's Administrative process. However, in mid-August the BZA received a "request for reconsideration" of its initial decision on our appeal at the request of ANC 6a and, after a two hour hearing, the BZA unanimously denied the request for reconsideration.

Second, and most importantly, thank you for bringing the potential "brownfield" situation to our attention. We have not previously been made aware of this potential condition. I would request that you make a copy of the documentation you have received on this available to us on Monday September 10th no later than 1 p.m. I will personally stop by suite 9500 on Monday to pick up a copy of this documentation and would request that if you will be out of the office or in a meeting that you leave the information with Ms. Heather Vargas or in an envelope with the suite 9500 receptionist addressed to me and marked "confidential."

It is important that we understand and investigate this potential problem immediately. We certainly do not want anyone to be put into a dangerous situation and we may also need to notify the immediate neighbors ASAP depending upon the severity of this situation. I would also ask that you notify us, the DC Department of Health and Deputy Mayor Albert's office when you initially became aware of this information. We intend to work with the Mayor's office, the office of Economic Planning and Development and the Department of Health to ensure that this news, if true, is properly communicated to all neighborhood, local and federal sources as required by law.

It is also important to note that, prior to purchasing the property in July of 2005, we hired an independent and highly reputable environmental engineering firm, Hillis-Carnes Engineering Associates (the same firm that was engaged to provide environmental testing and inspection services for the new Washington Nationals Ballpark) to conduct a Level I environmental assessment of the property. Their report indicated no significant concerns with the property. Typically, if a Level I environmental assessment identifies any environmental issues or concerns with a property, a Level II environmental assessment is required.

Finally, please note that the issue of DC Public Charter School Board approval has previously been addressed by both the BZA and the Zoning Commission (ZC). At the ZC's May 14, 2007 meeting, the ZC Chairperson, Carol Mitten, said that "there are numerous occasions where there are multiple layers of licensing," and that the approval or lack of approval by the D.C. Charter School Board "isn't germane to either the Board's or the Commission's consideration" of AppleTree's appeal. Please see the Z.C. Transcript at 132-33 (May 14, 2007). Also, at its August 17 meeting, the BZA specifically rejected this as a ground for reconsideration, with both Chairperson Miller and Mr. Mann saying the same thing that Mitten had said.

I look forward to hearing from you.

Best,

Russ Williams
AppleTree Institute for Education Innovation
415 Michigan Ave., NE, 3rd Floor
Washington D.C. 20017

T: 202.488.3990

F: 202.488.3991

From: Linda.Argo@dc.gov

Subject: RE: Update

Date: September 7, 2007 6:36:25 PM EDT

To: rwilliams@appletreeinstitute.org

Mr. Williams:

With regard to permit application 3758-A-6, I hope to have more definitive information for you next week. As you may know, we received notification of two Motions for Stay filed today in the DC Court of Appeals and the BZA, respectively, related to your permit application. In addition, we've received information about a potential "brownfield" condition at the property and have asked the District Department of the Environment to confirm its August 24, 2007 environmental approval in light of this new information, to which they've agreed. Finally, we've requested clarification from the DC Public Charter School Board as to their approval of an additional campus site at the 12th Street NE address in light of conflicting information on this point. We need to assess these developments and their potential impact on DCRA's review of your application.

Best regards,

Linda Argo

Linda K. Argo
Acting Director
Department of Consumer and Regulatory Affairs
District of Columbia Government
941 North Capitol Street, NE, Suite 9500
Washington, DC 20002
(202) 442-8934 (phone)
(202) 442-9445 (fax)

D TAB 20

From: Russ Williams [rwilliams@appletreeinstitute.org]
Sent: Wednesday, September 12, 2007 1:03 PM
To: Linda (DCRA) Argo
Cc: Neil (EOM) Albert; Peter (EOM) Nickles; Linda (OAG) Singer
Subject: Re: Update (permit application 3758-A-6)

Follow Up Flag: Follow up
Flag Status: Red

Attachments: Untitled Attachment



Untitled Attachment

Ms. Argo,

Thank you for forwarding to me the August 30, 2007 letter from ANC Commissioner David Holmes. In that letter, Mr. Holmes speculates that AppleTree's property at 138 12th Street, NE should be treated as a "brownfield" because the soil may have been contaminated by a previous owner and because the site may contain underground storage tanks.

Mr. Holmes is apparently unaware that we examined the environmental issues at length before purchasing the property. I am attaching to this e-mail, and a second e-mail to immediately follow given the size of the attachments, two documents that should dispel any legitimate environmental concerns. The first is a report by ECS Mid-Atlantic concluding that there is no evidence of soil contamination. The second is a report by Hillis Carnes Engineering Associates on the overall environmental impact of the proposed renovation, which specifically concludes that there is no evidence of underground storage tanks. This second report is particularly significant because it was prepared by the same firm that the District has used for the environmental assessment of the new ballpark site.

If Mr. Holmes or the ANC were legitimately concerned about the environmental impact of the proposed renovation, they would have raised these issues more than 20 months ago as part of the permitting process. Had they done so, we would have provided these reports to dispel their concerns. The fact that they waited until after the BZA directed issuance of the building permit shows that this is merely a last-minute delaying tactic.

There is no reason to waste taxpayer money investigating baseless speculation that there may be environmental issues with this site. The building permit should issue so that work can begin. Any additional delays issuing this permit call into question the integrity of DC's Administrative Process.

Best,

Russ Williams

On Sep 11, 2007, at 4:22 PM, Argo, Linda (DCRA) wrote:

> Mr. Williams:

>

>

>

> Thank you for your email and your response to the concerns I had
> listed in my last email.

>

>

>

> The potential brownfield condition was brought to my attention last
> week in a letter from David Holmes of Advisory Neighborhood Commission
> 6A03. While the letter is dated August 30th, I did not see the letter
> until Wednesday, September 5th. When you requested this past Sunday
> to see the documentation regarding the environmental issue, I asked
> our FOIA officer to determine whether or not I could release the
> letter to you as you requested. She has since ruled that the letter
> is in the public domain and may be released, and I'm attaching the
> letter with this email.

>

>

>

> Because of the serious nature of the environmental issues raised in
> Mr. Holmes' letter and our concern that these issues had not been
> adequately addressed during the initial review process, I consulted
> with the District Department of the Environment (DDOE), and they've
> indicated that they will be requiring review of the application and
> plans from their Water Quality and Underground Storage Tank divisions.
> They may require the submission of an Environmental Impact Statement
> Form (EISF).

>

>

>

> Once all appropriate reviews are completed, DCRA will be in a position
> take final action on the permit application.

>

>

>

> Best regards,

>

>

>

> Linda

>

>

>

> Linda K. Argo

>

> Acting Director
>
> Department of Consumer and Regulatory Affairs
>
> District of Columbia Government
>
> 941 North Capitol Street, NE, Suite 9500
>
> Washington, DC 20002
>
> (202) 442-8934 (phone)
>
> (202) 442-9445 (fax)



ECS MID-ATLANTIC, LLC

Geotechnical • Construction Materials • Environmental • Facilities

November 9, 2005

Mr. Daniel J. DeBettencort
dBF Associate Architects
6818 Tennyson Drive
McLean, VA 22101

ECS Job No. 11747-A

Reference: Report of Final Subsurface Exploration and Geotechnical Engineering Analysis,
Appletree Charter School Project, 12th Street, NE, Washington, DC

Dear Mr. DeBettencort:

As authorized by your acceptance of our proposal No. 23537-GP, dated September 23, 2005, ECS Mid-Atlantic LLC (ECS) has completed the subsurface exploration and final geotechnical engineering analysis for the above referenced project in northeast Washington, DC. The enclosed report discuss the exploration procedures, presents the results of our subsurface exploration and laboratory testing program, and provides recommendations regarding site development, foundation systems and construction considerations.

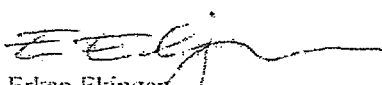
The project will consist of the renovation of an existing community building in the historic district of Washington, DC which will be converted to a charter school. As a part of the renovation process, a two-story, wood-framed structure will be constructed to the west of the existing building. In addition, the basement of the existing structure will also be extended approximately two feet deeper than the existing basement level.

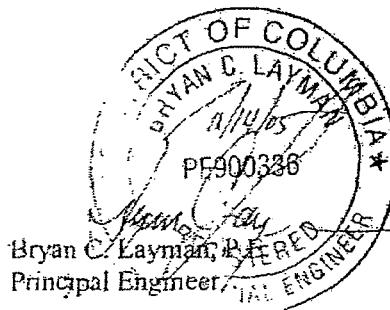
A total of three borings (B-1 to B-3) were performed for the subject site study. Two of these borings were drilled next to the existing building to evaluate the soil conditions in the vicinity of the building foundations (B-1 & B-2). The borings were drilled to depths in the order of 15 feet below the existing ground surface. Based upon the results of the soil borings performed as part of our subsurface exploration program, we find the site geotechnically suitable for the proposed building renovation.

We have enjoyed the opportunity to be of service to the dBF Associates on this project. If you have any questions concerning the information and recommendations included in this report, or if we can be of further assistance to you in the planning and/or execution of the site development, please do not hesitate to contact us.

Respectfully,

ECS MID-ATLANTIC, LLC


Erkan Ekingen
Assistant Project Engineer



[\\MSA\1 Ex\Geotechnical\Projects\11747\11799\01-11747e-Report (prep-11747).doc]

REPORT

PROJECT

Subsurface Exploration
and Geotechnical Engineering Analysis
Appletree Charter School
12th Street, NE
Washington, DC 20009

CLIENT

dBf Associates
6818 Tennyson Drive
McLean, VA 22101

PROJECT

#11747

DATE

November 9, 2005

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APPENDIX

PROJECT OVERVIEW

Introduction

This report presents the results of our subsurface exploration and final engineering analysis for the proposed renovations to the existing building at 138 12th Street, NE in Washington, DC. This report has been prepared for your use and for the use by other design professionals in the design of the project.

Project Description

The project will consist of the renovation of an existing community building in the historic district of Washington, DC which will be converted to a charter school. As a part of the renovation process, a two-story, wood-framed structure with a basement level (which will be combined with the existing one) will be constructed to the west of the existing building. Currently the footprint that is approximately 36 feet by 40 feet but will be extended another 55 feet towards the existing paved area to the rear of the building, increasing the dimensions to approximately 36 by 95 feet. In addition, the basement of the existing structure will also be extended approximately two feet deeper than the existing basement level.

Per our discussion with you we understand that in order to avoid the underpinning of the footings, the basement wall will be built in approximately two feet from the center-on party wall and exterior walls. Since the adjacent buildings have partial-basements, the adjacent footings will not be exposed to additional loads.

Purpose and Scope of Work

The purpose of this exploration was to investigate the soil and groundwater conditions at the site and to develop engineering recommendations to guide design and construction of the project. We accomplished these purposes by performing the following scope of services:

1. drilling borings to explore the subsurface soil and groundwater conditions.
2. performing laboratory tests on selected representative soil samples from the borings to evaluate pertinent engineering properties, and
3. analyzing the field and laboratory data to develop appropriate engineering recommendations, and
4. preparing this report of our findings and final recommendations.

The recommendations contained in this report are based on a total of three borings (B-1 through B-3) and laboratory testing of selected soil samples. The physical boring locations were marked in the field by representatives of ECS using standard taping and pacing techniques.

Following drilling operations, laboratory tests were performed on selected soil samples to identify the soil and to assist in the determination of the properties onsite soils. The results of subsurface exploration, along with the boring location diagram, are included within the Appendix of this report.

EXPLORATION PROCEDURES

Subsurface Exploration Procedures

The soil borings were performed with a truck-mounted auger drill rig, which utilized continuous flight, hollow stem augers to advance the boreholes. Drilling fluid was not used in this process. Borings performed in the existing concrete paving areas were patched after drilling completion.

Representative soil samples were obtained by means of the split-barrel sampling procedure in accordance with ASTM Specification D-1586. In this procedure, a 2-inch O.D., split-barrel sampler is driven into the soil a distance of 18 inches by a 140-pound hammer falling 30 inches. The number of blows required to drive the sampler through a 12-inch interval is termed the Standard Penetration Test (SPT) value and is indicated for each sample on the boring logs. This value can be used as a qualitative indication of the in-place relative density of cohesionless soils. In a less reliable way, it also indicates the consistency of cohesive soils. This indication is qualitative, since many factors can significantly affect the standard penetration resistance value and prevent a direct correlation between drill crews, drill rigs, drilling procedures, and hammer-rod-sampler assemblies.

A field log of the soils encountered in the borings was maintained by the drill crew. After recovery, each sample was removed from the sampler and visually classified. Representative portions of each sample were then sealed and brought to our laboratory in Chantilly, Virginia for further visual examination and laboratory testing.

Laboratory Testing Program

Representative soil samples were selected and tested in our laboratory to check field classifications and to determine pertinent engineering properties. The laboratory testing program included visual classifications, moisture content tests, Atterberg Limits tests, and grain size analysis tests. All data obtained from the laboratory tests are included on the respective boring logs or on separate sheets in the Appendix.

Each soil sample was visually classified based on the texture and plasticity in accordance with the Unified Soil Classification System. The group symbols for each soil type are indicated in parentheses following the soil descriptions on the boring logs. A brief explanation of the Unified System is included with this report. The engineer grouped the various soil types into the major zones noted on the boring logs. The stratification lines designating the interfaces between earth materials on the boring logs and profiles are approximate; in situ transitions may be gradual, rather than distinct.

EXPLORATION RESULTS

Site Conditions

The site is occupied with an existing two-story brick building with a below grade level. The front of the building faces to 12th Street. The rear of the building was fenced, flat and covered with asphalt pavement during our site visit. Two other brick buildings are adjacent to the referred building.

Regional Geology

The site is situated within the Coastal Plain Physiographic Province of Washington, DC. The District of Columbia area is underlain by a bedrock floor of granite, granite gneiss, and other crystalline rocks. The Fall Line (where the Piedmont and Coastal Plain meet) is located approximately parallel to Rock Creek, northwest of the site. West of the Fall Line, the crystalline rocks of the Piedmont are at or near the surface. East of the Fall Line, the bedrock is overlain by generally unconsolidated and much younger sedimentary rocks of the Coastal Plain. These sedimentary rocks overlie the bedrock in a wedge-shaped mass that thickens rapidly eastward to nearly 500 feet in the vicinity of the Anacostia River.

The site is underlain by the Wicomico Formation, a Pleistocene deposit of gravel, sand, and silt. Locally, the Wicomico has basal deposits of carbonaceous clay which contain tree stumps and other woody debris, which are typically found at significant depths. The Wicomico rarely exceeds 30 feet in thickness and is underlain by the older, non-marine, Potomac Formation, the largest aquifer in the area. In the course of construction on and near the site in the past, large amounts of heterogeneous fill material have been brought in for building purposes (USDA, 1976), and the original geology and soil profile is generally obscured in this part of Washington.

Soil Conditions

Beneath a 3-inch-thick asphalt layer, the three borings encountered a Sandy CLAY (CL) material that extended to a depth of 8.5 feet below the site grade. Standard Penetration Test (SPT) N-values ranged between 5 and 14 blows per foot (bpf) in this layer, which corresponds to medium stiff to stiff relative consistencies. This layer was underlain by a medium dense Silty Fine SAND (SM) stratum with SPT N-values ranging from 11 to 21 bpf. We encountered a SAND (SW) layer with gravel fragments between 14 and 15 feet below site grades at which depth the borings were terminated. The relative consistencies within this layer ranges from dense to very dense with SPT N-values of 43 and 56 bpf.

In summary, all borings are consistent with the geology and revealed similar soil conditions on the project site at observed elevations.

Groundwater Observations

Observations for groundwater are made during sampling and upon completion of the drilling operations at each boring locations. In auger drilling operations, water is not introduced into the bore holes, and the groundwater position can often be determined by observing water flowing into or out of the bore holes. Furthermore, visual observation of the soil samples retrieved during the auger drilling exploration can often be used in evaluating the groundwater conditions.

Groundwater was not encountered in any of the borings performed. However, if encountered the groundwater on sites with a shallow dense, impermeable weathered rock zone is generally partially perched on the top of this zone, and only slowly drains from it with lateral flow. Specifically, rainfall that enters the site, either directly or from overland flow, begins to percolate through the low to moderately permeable surficial soils. Once the water percolation reaches the bedrock, which is virtually impermeable, it begins to flow at the interface of the rock and the soil and within the fractured surface of the bedrock. This groundwater flow continues downhill, with the water table occasionally surfacing to form as wet springs and intermittent streams. Only in the lowest lying areas and adjacent to existing swales is a shallow groundwater table in a near continuous condition. Otherwise, it is related to rainfall, although springs may exist in the lower lying areas for extended periods of time without recharge from rainfall.

The highest groundwater observations are normally encountered in late winter and early spring, and our current groundwater observations are expected to be lower than the seasonal maximum water table. Variations in the location of the long-term water table may occur as a result of changes in precipitation, evaporation, surface water runoff, and other factors not immediately apparent at the time of this exploration. Free water may also be encountered at the interface of fill materials and natural soils.

ANALYSIS AND RECOMMENDATIONS

Based on the results of the subsurface exploration and our understanding of the project information, the site is considered suitable for the proposed renovations provided that the recommendations of this report are followed. Details regarding support of the proposed renovations and ground slabs, below grade wall design and drainage, and earthwork operations relevant to the construction are provided in the subsequent text.

Subgrade Preparation and Earthwork Operations

Initial preparation of the site should consist of complete removal of existing slab and the asphalt pavement. Upon removal of the protective layer and excavation to the floor subgrade, the building slab areas should be observed by an experienced geotechnical engineer or their authorized representative. Any soft or unsuitable materials encountered during the inspection should be removed and replaced with an approved backfill material in accordance with the earthwork specifications presented in this report.

Fill or backfill placed within the limits of the floor slab, or in confined spaces such as along the below grade or basement walls, should consist of soils with a liquid limit less than 40, a plasticity index less than 20, and classified as SM or more granular. The materials should also be free of organic debris and foreign matter. Based on the results of our laboratory tests and visual classification of samples obtained in the test borings, the on-site sandy soils which are classified as SW generally considered suitable for this purpose. The materials placed as fill or backfill should be placed in loose lifts of 8 inches or less in thickness, moisture controlled to within about 2 percentage points of optimum moisture content and compacted to at least 95% of the maximum dry density determined in accordance with ASTM Specification D-698, Standard Proctor Method.

Building Foundations

The borings indicate natural soils suitable for support of the proposed structures using conventional spread footings. Based on the soil and groundwater conditions observed during the subsurface exploration, as well as the anticipated structural loads, the proposed building renovations may be supported on spread footing foundations. Spread footings should be designed for a net allowable soil bearing pressure of 3,000 psf. The net allowable soil bearing pressure refers to that pressure which may be transmitted to the foundation bearing soils in excess of the minimum surrounding overburden pressures. Those soils adequate to support this design bearing pressure may be identified as those soils having a minimum Standard Penetration Test N-value of 10 bpf or greater. Due to variations in the strength of the natural soils, some limited "stepping-down" of the footings should be expected. The soils at either of the proposed footing

elevations are moisture and disturbance sensitive, and are subject to softening by groundwater, if not properly dewatered.

The adjacent building footings the subgrade elevation of the upper footing should be below a line extended from the bottom of a lower footing up to a slope of 1H:1V. We have included a Zone of Influence Diagram in the Appendix of this report which depicts this condition.

Ground Supported Slabs

Prior to placement of the slab, the subgrade area should be observed by an experienced soil technician during the time of construction in order to identify any areas which may require undercutting. If necessary, fill or backfill placed below the slabs should be an approved inorganic material free of debris. The on-site sandy soils, which classified as SW or more granular, are considered suitable for this purpose, although moisture control during earthwork operations, including the use of discing or appropriate drying equipment, may be required. Some of the clayey soils, which classified as CL, may also be suitable for reuse; however, appropriate laboratory testing will be required to determine the plasticity of the clay constituents.

Materials placed for support of the floor slabs should be placed in accordance with the recommended earthwork specifications included in this report. Materials placed as fill or backfill below the floor slab should be placed in lifts not exceeding 8 inches in loose thickness, moisture conditioned to within ± 2 percentage points of the optimum moisture content, and compacted to a minimum of 95% of the maximum density obtained in accordance with ASTM Specification D-698, Standard Proctor Method.

Ground supported floor slabs should also be underlain by a minimum of 4 inches of granular material having a maximum aggregate size of 1.5 inches and no more than 2% soil fines passing the No. 200 sieve. This granular layer will facilitate the fine grading of the subgrade and help prevent the rise of water through the floor slab. Prior to placing the granular material, the floor subgrade soil should be properly compacted, proofrolled, and free of standing water, mud, and frozen soil. Before the placement of concrete, a vapor barrier may be placed on top of the granular material to provide additional moisture protection. Welded-wire mesh reinforcement should be placed in the upper half of the ground slab and attention should be given to the surface curing of the slab in order to minimize uneven drying of the slab and associated cracking.

Highly Plastic Soils

Although not encountered, highly plastic clays are known to exist within Coastal Plain geology. If encountered, it should be noted that these soils are especially prone to shrinking and swelling. For that reason, if the bottom of the plastic soils extends to depths less than 4 feet below the finished exterior grade, the footings should be lowered to bear on suitable non-expansive materials. For areas where the bottom of the highly plastic soils extends to depths greater than 4 feet below proposed exterior grades, these soils should be undercut to 4 feet below final finished

grade, and backfilled with controlled, compacted fill. Only well-graded fill should be used with this method as open-graded material can create a reservoir for water, increasing the possibility of swell below the slab. Alternatively, the footings can be "stepped down" to bear at 4 feet deep, bearing on the plastic soils. If the plastic soils are found to be less than 4 feet in thickness, the footings need to bear only below the plastic soils and the frost line. Lowering the footings will be necessary if walkout basements are to be incorporated into the building design. Floor slabs placed in areas where highly plastic soils are encountered should be underlain by at least 2 feet of compacted suitable fill as well where the exterior grades are less than 4 feet above the slab subgrade.

The fill should be placed in accordance with the recommendations given in the Subgrade Preparation and Earthwork Operations sections of this report. Generally, final exterior grades should provide drainage away from the building and roof downspouts should be carried in closed piping to a final outlet at least ten feet beyond the building perimeter. Additional recommendations regarding placement of footings in the plastic silt soils may be necessary based on final grading design and field observations during construction.

Underground Drainage

Based on the recorded water levels and moisture contents, we expect groundwater will be encountered during renovation operations. Accordingly, we recommend that the proposed below grade areas be provided with both a perimeter and underslab drainage system to prevent the buildup of hydrostatic pressure and seepage of groundwater into the below grade space. The drain system should consist of a perforated, closed joint drain tile located around the perimeter of the building, outside the building walls and slightly below the lowest floor slab elevation. Both the perimeter and underslab drain lines should be surrounded by a minimum of 6 inches of approved, free draining granular filter material, having a gradation compatible with the size of the openings of the drain lines and the soils to be retained.

Below Grade Wall Design

All below grade walls should be designed to withstand lateral earth pressures and surcharge loads from soil, adjacent building foundations, or streets. Where a below grade drainage system is utilized, we recommend that the below grade walls be designed for a linearly increasing lateral earth pressure of 60 psf per foot of wall depth. This lateral earth pressure assumes that the below grade walls are fully drained and does not include any surcharge loads. In either the undrained or drained case, any surcharge loads imposed within a 45 degree slope of the base of the wall should be considered in the below grade wall design.

Excavation Slopes and Support

The contractor should avoid stockpiling excavated materials or equipment immediately adjacent to the excavation walls. We recommend that stockpiled materials be kept back from the excavation a minimum distance equal to 1/2 the excavation depth to limit surcharging the excavation walls. If this is impractical due to space constraints, the excavation walls should be retained with bracing designed for the anticipated surcharge load. In addition, the earth retention system design should consider surcharge loads from cranes and other construction equipment during construction as well as buildings.

The spacing of the soldier piles and braces should be determined by a structural engineer. The design of the retention system is beyond this scope of work; however, we recommend that the maximum center-to-center spacing of soldier piles not exceed 8 feet. In addition, the wood lagging should have a minimum thickness of three inches. In most areas, tieback anchors appear feasible for bracing of the sheeting. Soldier piles should be driven a sufficient distance so that the earth retention system will not become undermined if it becomes necessary to step down perimeter footings up to 3 feet.

If tiebacks are used, we recommend that a performance test be conducted. The performance test is used to evaluate the tieback load carrying capacity, deflections during loading, and movements with respect to time. The load should be applied by means of a hydraulic center-hole jack in load increments equal to 25%, 50%, 75%, 100%, 120% and 133% of the design load. The tieback capacity should be considered adequate when a stable condition is obtained under a particular test load for a load duration of 15 minutes.

Construction Considerations

Exposure to the environment may weaken the soils at the footing bearing level if the foundation excavations remain open for too long a time, especially if the existing roof in the structure is removed for ventilation purposes. Therefore, foundation concrete should be placed the same day that the foundation bearing grade is exposed. If the bearing soils are softened by surface water intrusion or exposure, the softened soils must be removed from the foundation excavation bottom immediately prior to placement of concrete. We recommend that a 4-inch thick "mud-mat" of "lean" concrete be placed on the bearing soils before the placement of reinforcing steel.

In a dry and undisturbed state, the majority of the soil at the site will provide good subgrade support for fill placement and construction operations. However, these soils are considered moisture and disturbance sensitive. When wet, these soils will degrade quickly with disturbance from contractor operations. Therefore, good site drainage should be maintained during earthwork operations which will help maintain the integrity of the soil.

Closing

This report has been prepared in order to aid in the evaluation of this project. The scope is limited to the specific project and location described herein, and the project description represents our understanding of the significant aspects relevant to soil and foundation characteristics. In the event that changes in the development are planned, we should be informed so the changes can be reviewed and the conclusions of this report modified or approved in writing by the soil and foundation engineer. As a check, we recommend that we be authorized to review the project plans and specifications to confirm that our report recommendations have been interpreted in accordance with our intent. Without this review, we will not be responsible for misinterpretation of our data, our analysis, and/or our recommendations nor how these are incorporated into this final design.

D TAB 21

From: Russ Williams [rwilliams@appletreeinstitute.org]
nt: Wednesday, September 12, 2007 1:13 PM
Linda (DCRA) Argo
Cc: Neil Albert; Peter (EOM) Nickles; Linda (OAG) Singer
Subject: Re: Update (permit application 3758-A-6 -- Attachment 2 of 2)

Follow Up Flag: Follow up
Flag Status: Red

Attachments: report.pdf; ATT61226.txt



report.pdf (2 MB)



ATT61226.txt (2 KB)

Ms. Argo,

The second attachment, the Phase I Environmental Assessment conducted by Hills-Carnes Engineering Associates, referenced in e-mail I sent a few minutes ago (copy pasted below) is attached.

We look forward to hearing from you.

Best,

Russ Williams

HILLIS-CARNES

Phase I Environmental Site Assessment
138 12th Street, N.E.
Washington, D.C. 20002
Project No. 05377A

ENGINEERING ASSOCIATES, INC.

**Phase I Environmental Site Assessment
138 12th Street, N.E.
Washington, D.C. 20002
Project No. 05377A**

Prepared For:

**Appletree Institute for Educational Innovation
400 7th Street, S.E.
Washington, D.C.
Attn: Mr. Russ Williams**

Prepared By:

**Hillis-Carnes Engineering Associates, Inc.
12011 Guilford Road, Suite 106
Annapolis Junction, Maryland 20701**

June 23, 2005

HILLIS-CARNES

ENGINEERING ASSOCIATES, INC.

June 23, 2005

Mr. Russ Williams
Appletree Institute for Educational Innovation
400 7th Street, S.E.
Washington, D.C.

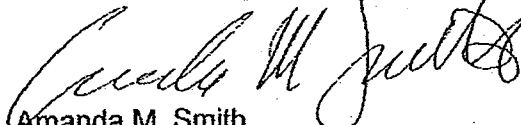
12011 Guilford Road, Suite 106
P.O. Box 241
Annapolis Junction, MD 20701
Balto. 410-880-4788
DC Metro 301-470-4239
Fax 410-880-4098

RE: Phase I Environmental Site Assessment
138 12th Street, N.E.
Washington, D.C. 20002
Project No. 05377A

Dear Mr. Williams:

Hillis-Carnes Engineering Associates, Inc. appreciates the opportunity to provide our services on this project. Herein is a report of our findings from our Phase I Environmental Site Assessment of the above referenced property. If you have any questions in regard to this report, please feel free to contact us at (410) 880-4788.

Sincerely,
Hillis-Carnes Engineering Associates, Inc.


Amanda M. Smith
Environmental Scientist

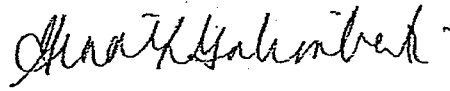

for Sherri D. Waldron, CEA, REM
Environmental Services Manager

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FIGURES

Figure 1 Site Vicinity Map

Figure 2 Site Layout Sketch

APPENDICES

Appendix A Site Photographs

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Appendix E City Directory Abstract

1.0 SUMMARY

Hillis-Carnes Engineering Associates, Inc. (Hillis-Carnes) was retained by Eagle Bank (Client) to perform a Phase I Environmental Site Assessment (ESA) for the property at 138 12th Street, N.E. in Washington, D.C., hereafter referred to as the Site. The assessment included a site reconnaissance, an area reconnaissance, a regulatory database review, a historic record search, and interviews. This Phase I ESA was conducted in general conformance with the "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process", hereafter referred to as the ASTM Standard Practice, as defined by the American Society for Testing and Materials (ASTM) in ASTM Designation E 1527-00.

The Site is located west of 12th Street, N.E. and south of the intersection of 12th Street, N.E. and Constitution Avenue, N.E. in Washington, D.C. The Site is developed with one structure that consists of two-stories and a sub-grade basement. The remaining portions of the Site not occupied by the structure included a paved parking lot that is located in the western portion of the Site and areas of landscaping. Currently, the on-site building is utilized by the current site owner, the Knights of St. John and the Ladies Auxiliary.

On the date of Hillis-Carnes' site visit, the following observations were made: no evidence of current or former hazardous waste generation or storage was observed; no evidence of current or former large-scale dumping or landfilling activities was observed; no evidence of equipment potentially containing PCBs was observed; no evidence of current or former bulk chemical storage was observed; and no evidence of current or former underground storage tanks (USTs) or aboveground storage tanks was observed. In addition, the Site was not included on any of the federal and state databases reviewed for this assessment.

Based on the findings of this assessment, no Recognized Environmental Conditions (RECs), as defined in Section 2.1 of this report, were identified in association with the Site.

It must be noted that at the time of the completion of this assessment, information requested from the District of Columbia Department of Health and the District of Columbia Office of the Fire Marshall had not been received. Upon receipt of the responses from these agencies, Hillis-Carnes will notify the Client via an addendum letter if information regarding the Site is available. It must be noted that Hillis-Carnes' conclusions are based solely on the information obtained to date and could change upon receipt and review of the outstanding information.

2.0 INTRODUCTION

Hillis-Carnes was retained to perform a Phase I ESA of the property at 138 12th Street, N.E. in Washington, D.C. The work was completed in accordance with Hillis-Carnes Proposal No. 050214, dated June 16, 2005, as authorized by the Client on the same date.

2.1 Purpose

The purpose of the Phase I ESA was to identify Recognized Environmental Conditions ("RECs") and Historical Recognized Environmental Conditions ("HRECs") as defined by the American Society for Testing and Materials (ASTM) in ASTM Designation E 1527-00: "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process", hereafter referred to as the ASTM Standard Practice.

RECs are defined in the ASTM Standard Practice as the presence or likely presence of any hazardous substances or petroleum products at the Site under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substance or petroleum products into structures on the Site or into the ground, groundwater, or surface water of the Site. RECs do not include "de minimis" conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

HRECs are defined in the ASTM Standard Practice as a condition which in the past would have been considered a REC, but which may or may not be considered a REC currently. HRECs generally are conditions that have in the past been remediated to the satisfaction of the responsible regulatory agency. The final decision on whether a HREC is a current REC can be influenced by the current impact of the HREC to the Site, if any.

2.2 Detailed Scope-of-work

Hillis-Carnes' Phase I ESA was conducted in general conformance with the guidelines of the ASTM Standard Practice. The scope-of-work for this Phase I ESA is described as follows.

2.2.1 Site Reconnaissance/Site Visit

- Hillis-Carnes conducted a site reconnaissance to determine the general setting of the Site such as the current use of the Site, indications of past uses of the

Site, topographic conditions, the presence of on-site structures, and the presence of on-site roads and other improvements.

- Hillis-Carnes conducted a site visit to inspect for the presence or absence of the following: hazardous substances and petroleum products and/or containers; unidentified containers; evidence of underground storage tanks; aboveground storage tanks; odors; pools of liquid; potential sources of polychlorinated biphenyls; stains or corrosion on floors, walls or ceilings; floor drains; sumps; pits; ponds; lagoons; stained soil or pavement; stained or stressed vegetation; wells; waste water discharges; uncharacteristic mounds or depressions; and illegal dumping.
- During the site visit, Hillis-Carnes determined the method of heating and cooling the on-site structures, the potable water supply, and the methods of sewage and solid waste disposal, as applicable.

2.2.2 Area Reconnaissance

- Hillis-Carnes inspected the properties adjoining the Site from "curbside" or the boundaries of the Site to determine the apparent current uses of those properties and to identify any indications of past uses of those properties. Hillis-Carnes also identified the general uses of the areas (e.g., residential, commercial, industrial) beyond the properties adjoining the Site. The purpose of the area reconnaissance of adjoining and surrounding properties was to identify any current or indications of past uses of these properties that could impact environmental conditions at the Site.

2.2.3 Records Review

- To determine the proximity of the Site to known and potential contaminant sources, commercially-available environmental databases were reviewed. The databases reviewed and minimum search distances utilized for this assessment were in accordance with the ASTM Standard Practice.
- City, County and/or State authorities were contacted to determine if there are publicly-available records of on-site or local spills of hazardous materials, underground storage tank releases, reports of illegal dumping, or other environmental incidents which may have not been listed on the federal or state databases described previously. These city/county agencies included one or more of the following: local and/or state Environmental Department(s); local Fire Department; local Zoning/Planning Office(s); local Permitting/Use and Occupancy Office(s); and the local electric utility company.

- Published geologic, hydrogeologic, and topographic data were reviewed to determine general subsurface characteristics, estimated local/regional groundwater flow direction, and potential pathways for contaminant migration.

2.2.4 Historical Records Review

Historical records were reviewed to develop a history of the previous uses of the Site, adjoining properties, and the surrounding area in order to identify the likelihood of past uses having led to RECs in connection with the Site. The following historical records were reviewed, as available.

- Historical aerial photographs and topographic maps
- Sanborn fire insurance maps
- Historical city directories
- Chain-of-title provided by the Client
- Prior environmental reports provided by the Client

2.2.5 Interviews

Hillis-Carnes conducted interviews in an attempt to obtain information regarding previous and current site uses and conditions and to obtain information indicating RECs in connection with the Site. As applicable, the following individuals were interviewed:

- Current Site Owner(s) (generally, the fee owner of record of the Site)
- Former Site Owner(s)
- Key Site Manager(s) (i.e., individual(s) with good knowledge of the uses and physical characteristics of the Site)
- Site Occupant(s), including, but not limited to, the Major Site Occupant(s) for multi-tenant Sites
- Former Site Occupant(s)
- User (the party seeking the performance of the Phase I ESA, including a potential purchaser/tenant of the Site, the owner of the Site, a lender, or a property manager/key site manager; generally, Hillis-Carnes' Client for the project)

2.2.6 Evaluation and Report Preparation

This report is a compilation of data obtained during the assessment of the Site. The report was prepared in accordance with the outline recommended in the ASTM Standard Practice. If information requested from third parties was not available at the time of the completion of this report, it will be submitted to the Client as a report addendum.

2.3 Significant Assumptions

Environmental assessments are limited in the sense that conclusions are developed from personal interviews and information obtained from limited research and secondary sources. Except as identified in this report, Hillis-Carnes has made no independent investigations as to the accuracy or completeness of the information derived from the secondary sources and personal interviews and has assumed that such information was accurate and complete. There is a reasonable effort made by Hillis-Carnes to compensate for inaccurate information by using actual knowledge of site operations and observed conditions. No discrepancies have been recognized at this time.

2.4 Limitations and Exceptions

Professional services have been performed, findings obtained, and conclusions prepared in accordance with standard industry practices in the fields of environmental science and engineering. This report does not warrant against future operations or conditions, nor does it warrant against operations or conditions present of a type or at a location not investigated for this assessment.

Conclusions regarding the potential environmental impact of off-site facilities are based on readily available information from the review of regulatory databases, distances from the Site, geologic conditions, and/or the estimated groundwater flow direction based on surficial topography. A file review of each off-site facility and a determination of actual groundwater conditions or flow direction were beyond the scope of work for this project.

Subsurface conditions could differ from the conditions implied by the surficial/visual observations, and can only be evaluated through additional means of investigation that were not authorized for this assessment. Therefore, no representations concerning groundwater or soil quality can be made, as no analysis of such samples was performed for the project.

Certain environmental conditions or issues that may be associated with a property are outside the scope of the ASTM Standard Practice; therefore, an evaluation of such conditions or issues was not included in the scope-of-work. These conditions or issues, defined by ASTM as "non-scope considerations", include, but are not limited to, the following: property/building condition assessment (e.g., an evaluation of mechanical, electrical, plumbing and roofing systems); lead-in-drinking water; lead-based paint; asbestos; wetlands; radon; regulatory compliance; cultural and historic resources; industrial hygiene; health and safety; methane gas issues; ecological resources; endangered species; indoor air quality; mold assessments; and high voltage powerlines. Therefore, Hillis-Carnes does not typically render an opinion or provide professional advice regarding the potential, suspect or actual presence/absence of such materials without appropriate inspection and testing. In addition, the scope-of-work

included an inspection of current on-site conditions and operations, but did not include an evaluation of compliance with environmental regulations or an evaluation of geotechnical/structural issues. Also, it is recognized in the ASTM Standard Practice that an evaluation of business environmental risk associated with the Site may necessitate additional investigation beyond that conducted for the Phase I ESA. (e.g., "non-scope considerations", soil and/or groundwater sampling and analysis, etc.).

Reasonable efforts have been made to identify the presence/evidence of aboveground and underground storage tanks and associated equipment, chemical storage containers, or other items of environmental concern. "Reasonable efforts" are limited to visual observation of largely unobstructed areas, review of recorded database information held in public record, and review of available information gathered from interviews and documents as described in this report. Such methods do not preclude the actual presence of aboveground and underground storage tanks and associated equipment, chemical storage containers, or other items of environmental concern that could have been obscured from view due to paving, construction or debris pile storage, dumping, overgrown vegetation, snow cover, standing/ponded water, parked, stored, or junked automobiles, or incorrect information (or lack thereof) from sources.

Hillis-Carnes has obtained and reviewed certain reasonably ascertainable information in conjunction with the Phase I ESA. The ASTM Standard Practice defines reasonably ascertainable information as that which is a) publicly available; b) obtainable within reasonable time and cost constraints; and c) practically reviewable. Information that does not fall under this definition (e.g., information that is filed by a governmental agency in a chronological manner rather than by street address) may not have been obtained or reviewed by Hillis-Carnes.

Hillis-Carnes was unable to inspect the roof of the structure, due to inaccessibility.

Per the ASTM Standard Practice, any deviations from the ASTM Standard Practice must be specified. A deviation can include an exception or addition to or a deletion from the requirements of the ASTM Standard Practice. The following deviation from the ASTM Standard Practice applies to this Phase I ESA: in accordance with the contractual agreement between Hillis-Carnes and the Client, permits dated 1955 to the present were not obtained or reviewed for this assessment.

2.5 Special Terms and Conditions/Reliance

This report has been prepared and is intended for the sole use of our Client. The scope of services performed in execution of this assessment is not necessarily appropriate to satisfy the needs of other users, and use of this report or the findings and conclusions contained herein is at the risk of said user. Reliance by any expressly named third party on the findings and conclusions presented in this

report is subject to the specific scope-of-work and contractual terms and conditions as written and agreed to in the contract that authorized this work.

3.0 SITE DESCRIPTION

Eartha M. Ballard, Hillis-Carnes Environmental Scientist, conducted the site visit and area reconnaissance on June 21, 2005. The site visit included the following: a) inspection of the perimeter of the Site; b) inspection of the exterior perimeter of the on-site structure; c) inspection of the common areas within the interior of the on-site structure; and d) inspection of the remaining portions of the Site. Hillis-Carnes was unable to inspect the roof of the structure, due to inaccessibility (refer to Limitations, Section 2.4). A cursory evaluation of surrounding property uses was performed from the Site's boundaries or public access ways (i.e., sidewalks, roads, etc). Site photographs are included in Appendix A.

3.1 Site Location

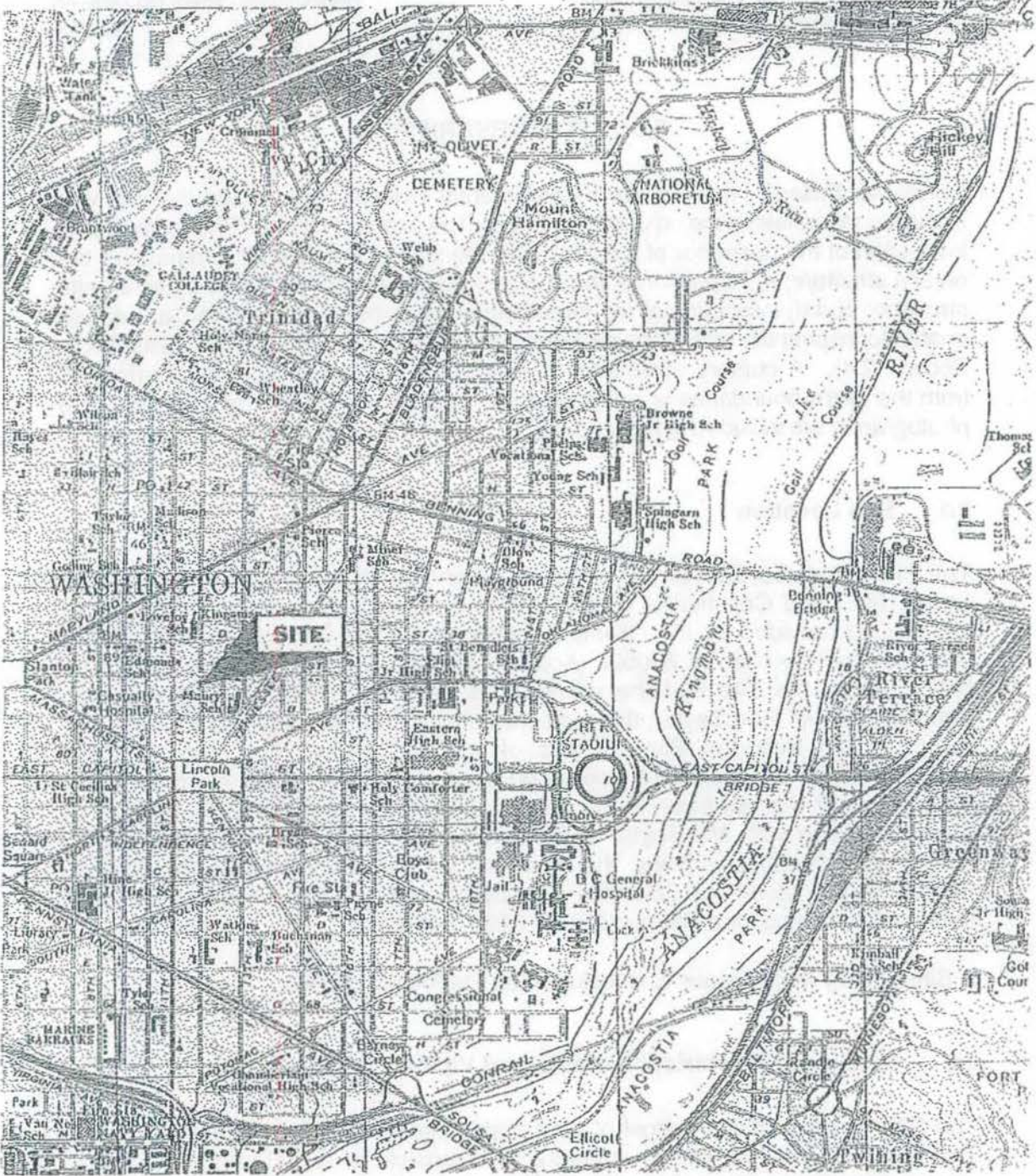
The Site is located west of 12th Street, N.E. and south of the intersection of 12th Street, N.E. and Constitution Avenue, N.E. in Washington, D.C. According to information provided by the Client, the address for the Site is 138 12th Street, N.E. and the zip code is 20002. According to the Sanborn Maps reviewed by Hillis-Carnes, the Site had the previous the address of 136 12th Street, N.E. According to Mr. Ron Taylor, the representative for the occupant and the current owner of the Site, the Site address of 136 12th Street, N.E. was formerly associated with an apartment located on the second floor of the current on-site structure and this address is no longer utilized for the Site. A Record of Communication with Mr. Taylor is included in Appendix B. According to the District of Columbia website, the Site has a residential zoning designation. Review of the District of Columbia Taxpayer Service Center website indicated that the Site is also identified as Square 0988, Lot 0820.

A Site Vicinity Map, Figure 1, is included on the following page.

3.2 General Characteristics of Site and Vicinity

The Site consists of one parcel of land approximately 4,230 square feet in size. The Site is developed with a structure that consists of two-stories and a sub-grade basement. The remaining portions of the Site not occupied by the structure included a paved parking lot that is located in the western portion of the Site and areas of landscaping.

The Site is situated in a residential area of Washington, D.C. Specific information regarding the current uses of the surrounding properties is included in Section 3.5.



SOURCE: UNITED STATES GEOLOGICAL SURVEY 7.5 MINUTE SERIES WASHINGTON EAST, DC-MD
TOPOGRAPHIC QUADRANGLE DATED 1965 (PHOTOREVISED 1979)

HILLIS-CARNES
ENGINEERING ASSOCIATES, INC.

12911 GULF ROAD
PHONE: (410) 280-4722

Annapolis Junction, MD
FAX: (410) 660-4096

Figure 1
SITE VICINITY MAP

1474 Columbia Road
Washington, D.C.

Hillis-Carnes Project No. 05377A

SCALE: 1:24,000

3.3 Current and Proposed Future Uses of Site

The on-site structure is utilized by the current site owner, the Knights of St. John and the Ladies Auxiliary. Hillis-Carnes understands that future plans for the Site include renovation and conversion of the Site into a charter school.

3.4 Descriptions of On-Site Structures, Roads, and Other Improvements

The Site is developed with one structure constructed sometime between 1904 and 1916. The wood frame structure is built on a concrete slab and has roof covered with terra cotta shingles. The exterior of the structure is finished with brick. The interior of the structure is finished with, but not limited to, the following materials: ceramic tiles, wood paneling, carpet, and painted drywall. The interior of the on-site structure is heated by natural gas and is cooled by both ground-mounted air-conditioning units and window mounted air-conditioning units.

The Site is apparently serviced by public and private utilities. Washington Gas provides natural gas to the Site and Potomac Electric Power Company (PEPCO) provides electricity to the Site. The Site is provided public water and sewer services by the District of Columbia Water and Sewer Authority.

3.5 Uses of Adjacent and Surrounding Properties

The Site is located within a residential area of Washington, D.C. The Site is bordered to north by residences. Additional residences and Constitution Avenue, N.E. occupy the area further north of the Site. These properties are topographically crossgradient and upgradient of the Site.

The Site is bordered to the east by 12 Street, N.E., with residences located across the road. An alley and residences occupy the area further east of the Site. These properties are topographically downgradient of the Site.

The Site is bordered to the west by an alley, with residences located across the alley. The area further west of the Site is occupied by additional residences. These properties are topographically upgradient of the Site.

The Site is bordered to the south by a residence. Additional residences and an alley occupy the area further south of the Site. These properties are topographically crossgradient and downgradient of the Site.

Certain properties located in the vicinity of the Site were included on the regulatory databases reviewed for this assessment (Section 5.1). The past uses of adjacent and surrounding properties are described in Section 5.4.

4.0 INFORMATION PROVIDED BY CLIENT

4.1 Reason for Performing Phase I ESA

The Client has retained Hillis-Carnes to conduct this Phase I ESA in connection with the potential acquisition of the Site.

4.2 Title Records/Ownership Information

According to the Client, the current owner of the Site is the Knights of St. John and the Ladies Auxiliary. According to Mr. Ron Taylor, the representative for the Knights of St. John and Ladies Auxiliary (the current occupant and owner of the Site), the Site was purchased from the Archdiocese of Washington in 1968. A Record of Communication with Mr. Taylor is included in Appendix B.

Limited information regarding additional historical owners of the Site was obtained from Hillis-Carnes' review of permits on file at the National Archives in Washington, D.C. (refer to Section 5.2).

Information regarding additional historical owners of the Site could not be obtained from either the Client or any other person interviewed for or involved in this assessment, as identified in this report. Since historical use information was obtained through sources referenced in this assessment a review of land records was not conducted.

No indications of industrial, manufacturing, bulk chemical storage, or bulk transportation activities were evident from the names of the current or previous owners identified during the review of permits and interviews.

4.3 Environmental Liens

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 grants the Environmental Protection Agency (EPA) the authority to file liens against real property in order to recover remedial action expenditures or when the property owner receives notification of potential liability. The EPA compiles a list of filed notices of Federal Superfund Liens. The Federal Superfund Liens list was last updated October 15, 1991. Environmental Data Resources, Inc. (EDR) provided Hillis-Carnes with a Federal and State Environmental Database Radius Map Report (Appendix C), that includes a search of the Federal Superfund Liens list. According to EDR's report, the Site is not included on the Federal Superfund Liens list.

In addition, the Client did not provide Hillis-Carnes with any indication of environmental liens against the Site (Refer to the Document Request Form in Appendix B). Further, no agency representative or individual involved with the ESA provided Hillis-Carnes with any indication of environmental liens against the Site.

4.4 Occupant/Property Manager Information

Hillis-Carnes interviewed Mr. Ron Taylor, the representative for current occupant and owner of the Site, regarding the Site. According to Mr. Taylor, the Site has been utilized by the Knights of St. John and Ladies Auxiliary as a meeting hall since the Site was purchased.

4.5 Specialized Knowledge Related to RECs

Neither the Client nor any agency representative or individual with specialized knowledge or experience relative to the Site provided Hillis-Carnes with information related to RECs in connection with the Site.

4.6 Other

Prior to the site visit, Hillis-Carnes provided Mr. Russ Williams, a representative of the Client/user, with a copy of a Document Request Form. The form contains a listing of documents identified by the ASTM Standard Practice, which Hillis-Carnes must request from the user, the owner, and the key site manager, as applicable. The form completed by Mr. Williams is included in Appendix B. According to the form, Mr. Williams did not have any copies of the documents requested.

In accordance with the ASTM Standard Practice, Mr. Williams was asked certain questions specific to legal/governmental proceedings involving the Site. Specifically, Mr. Williams was asked if he knows of: (1) any pending, threatened, or past litigation or administrative proceedings relevant to hazardous substances or petroleum products in, on, or from the Site; and (2) any notices from any governmental entity regarding any possible violation of environmental laws or possible liability relating to hazardous substances or petroleum products. Mr. Williams did not have any knowledge of the types of litigation, administrative proceedings, or notices, as listed previously, in association with the Site. A Record of Communication with Mr. Williams is included in Appendix B.

5.0 RECORDS REVIEW

5.1 Standard Environmental Record Sources - Federal and District

A review of environmental databases was conducted to determine the Site's proximity to known and potential federally- and state-recognized contaminant sources. Environmental Data Resources, Inc. (EDR) provided the Federal and District Environmental Database Radius Map Report to Hillis-Carnes (Appendix C).

The findings from Hillis-Carnes' review of the federal and District environmental databases specified in the ASTM Standard Practice are included in the appropriate subsections of this section. The search distances utilized for the review of these databases are in compliance with the ASTM Standard Practice.

In addition to the federal and state environmental databases specified in the ASTM Standard Practice, EDR provided "supplemental" federal and state databases. A description of each of these supplemental databases provided by EDR is included in EDR's report. For the purpose of this assessment, Hillis-Carnes' review of EDR's findings with regard to these supplemental databases consisted of a determination as to whether or not the Site or any adjacent property is included on any of the supplemental databases. If the Site or any adjacent property was included on any of the supplemental federal or state environmental databases provided by EDR, this information is presented in the subsection entitled "Supplemental Databases". Properties beyond those adjacent to the Site are not described in this subsection; however, this information can be found in EDR's Federal and District Environmental Database Radius Map Report (Appendix C).

The databases provided by EDR, originally obtained from federal and District regulatory agencies, are updated by EDR and the corresponding regulatory agencies on a periodic basis. The dates for the updates by both EDR and the regulatory agencies are included in EDR's report.

In addition, Hillis-Carnes reviewed an Orphan Summary provided by EDR. This summary includes those database-listed properties that cannot be mapped within 250 feet of their true location due to incomplete or missing addresses. The findings from Hillis-Carnes' review of the Environmental Database Radius Map Report and the Orphan Summary, as previously described, are presented in the following subsections.

National Priority List (1.0-mile search distance)

The National Priority List (NPL), compiled by the Environmental Protection Agency (EPA), is a list of properties contaminated by hazardous substances and ranked

for priority clean-up under the Superfund Program. A score generated from the EPA's hazard ranking system determines the NPL status of a property. Neither the Site nor any properties within the 1.0-mile search distance were included on the NPL.

Comprehensive Environmental Response, Compensation, and Liability Information System List (0.5-mile search distance)

The Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) is a list of known or potential uncontrolled or abandoned hazardous waste sites that have been reported to the EPA by states, municipalities, private persons or private companies. The CERCLIS list contains properties that are either proposed for inclusion or included on the NPL, and properties that are in the screening and assessment phase for possible inclusion on the NPL. However, inclusion on the CERCLIS list does not necessarily indicate that the listed property is a hazardous waste site, as some properties are erroneously included on the CERCLIS list. Neither the Site nor any properties within the 0.5-mile search distance were included on the CERCLIS list.

Comprehensive Environmental Response, Compensation, and Liability Information System - No Further Remedial Action Planned List (0.25-mile search distance)

CERCLIS properties designated with a No Further Remedial Action Planned (NFRAP) status have been removed from the CERCLIS list. NFRAP sites may be properties where no contamination has been found, contamination was removed quickly without the property being listed on the NPL, or the contamination was not significant enough to require Federal Superfund action or NPL consideration. Neither the Site nor any properties within the 0.25-mile search distance were included on the CERCLIS-NFRAP list.

Corrective Action Report (1.0-mile search distance)

The Corrective Action Report (CORRACTS) is a list of hazardous waste handlers with Resource Conservation and Recovery Act (RCRA) corrective action activity. This list identifies nationally-defined corrective action events that have occurred for every handler requiring such corrective action. Neither the Site nor any properties within the 1.0-mile search distance were included on the CORRACTS list.

Resource Conservation and Recovery Act Information System - Treatment, Storage and Disposal Facility List (0.5-mile search distance)

The Resource Conservation and Recovery Act Information System (RCRIS) is a list of hazardous waste treatment, storage and disposal facilities (TSDFs). Neither the Site nor any properties within the 0.5-mile search distance were included on the RCRIS TSDF list.

Resource Conservation and Recovery Act Information System - Large Quantity Generators and Small Quantity Generators List (0.25-mile search distance)

The RCRIS Large Quantity Generators (LQG) and Small Quantity Generators (SQG) list identifies large and small quantity generators of hazardous waste as defined by RCRA. The Site was not included on the RCRIS LQG and SQG list; however, one small quantity generator of hazardous waste was identified within the 0.25-mile search distance.

Eliot JHS at 18th Street, N.E. and Constitution Avenue, N.E. is located over 1,200 feet from and topographically crossgradient of the Site. According to EDR's report, there are no reported violations for this off-site facility. Based on distance and since no violations were listed for this facility, this generator of hazardous waste is not considered a REC to the Site at this time.

Emergency Response Notification System List (Site only)

The Emergency Response Notification System (ERNS) is a list that provides information regarding reported releases of oil and hazardous substances. The Site was not included on the ERNS list.

Registered Underground Storage Tank List (0.25-mile search distance)

The District of Columbia Department of Health's Registered Underground Storage Tank (UST) list includes those USTs that have been registered with the Health Department. The Site was not included on the Registered UST list; however, eight properties within the 0.25-mile search distance were included on the Registered UST list.

- Of these eight properties, five were located at least 650 feet from the Site. In addition, these five properties were not included on the District of Columbia Department of Health's Leaking Underground Storage Tank (LUST) list that identifies properties that have had reported UST releases. Based on distance and since these five properties are not included on the District of Columbia Department of Health's LUST list, they are not considered to be a REC to the Site at this time.
- One of the remaining three facilities, located over 900 feet from the Site, is included on the District of Columbia Department of Health's Leaking Underground Storage Tank (LUST). Additional information and Hillis-Carnes' conclusions regarding this off-site facility are included in the sub-section for LUST sites.

- Maury Elementary School at 1250 Constitution Avenue, N.W. is located over 450 feet from and topographically crossgradient of the Site. According to EDR's report, there is one 10,000-gallon UST "temporarily out (of use)" at this off-site facility.

The Michael Giuffruda/Gail Martin property at 118 12th Street, N.E. is located approximately 350 feet from and topographically crossgradient of the Site. According to EDR's report, there is one 1,000-gallon UST "permanently out (of use)" at this off-site facility.

Based on distance, if a significant release from the USTs at these off-site properties were to occur, the environmental conditions of the Site could potentially be impacted. However, these facilities are not included on the on the District of Columbia Department of Health's Leaking Underground Storage Tank (LUST) database that identifies properties that have had reported UST releases. Additionally, the Site is connected to the municipal water supply system; therefore, if groundwater beneath the Site were to be impacted by a significant release from these off-site tanks, exposure risk from ingestion by tenants/occupants at the Site would not be a concern. Based on the factors described in this paragraph, the UST at these off-site properties are not considered a REC to the Site at this time.

Leaking Underground Storage Tank List (0.5-mile search distance)

The District of Columbia Health Department's Leaking UST list is an inventory of properties with reported leaking underground storage tanks (LUSTs). The Site was not included on the Leaking UST list; however, three cases associated with three properties within the 0.5-mile search distance were included on the LUST list.

The three cases are associated with properties that are located at least 900 feet from the Site. The case statuses for the three LUST cases are identified as "closed." Based on distance, the District of Columbia's apparent involvement with the three LUST cases, and the "closed" case status, these three LUST cases are not considered to be a REC to the Site.

Voluntary Cleanup Program Applicants/Participants (0.5-mile search distance)

The District of Columbia Department of Health's Voluntary Cleanup Program (VCP) is a program which streamlines the environmental cleanup process for properties (usually industrial or commercial) that are contaminated, or perceived to be contaminated, by hazardous substances. Neither the Site nor any properties within the 0.5-mile search distance were included on the VCP.

Supplemental Databases (search distances specified in EDR's report)

As previously described, in addition to the federal and state environmental databases specified in the ASTM Standard Practice, EDR provided supplemental federal and state databases. For the purpose of this assessment, Hillis-Carnes' review of EDR's findings with regard to these supplemental databases consisted of a determination as to whether or not the Site or any adjacent property is included on any of the supplemental databases. Based on Hillis-Carnes' review of EDR's report, neither the Site nor any of the properties adjacent to the Site (as described in Section 3.5) were included on any of the supplemental databases provided by EDR. As previously described, properties beyond those adjacent to the Site are not described in this subsection; however, this information can be found in EDR's Federal and State Environmental Database Radius Map Report (Appendix C).

5.2 Standard Environmental Record Sources – District Agencies

The District of Columbia Department of Health and the District of Columbia Office of the Fire Marshall were contacted in writing to determine if there are records of on-site or local spills, leaking underground storage tanks, reports of illegal dumping, or other environmental incidents. A copy of each of the information request letters is included in Appendix B. At the time of the completion of this assessment, information requested from these agencies had not been received. Upon receipt of the responses from these agencies, Hillis-Carnes will notify the Client via an addendum letter if information regarding the Site is available. It must be noted that Hillis-Carnes' conclusions are based solely on the information obtained to date and could change upon receipt and review of the outstanding information.

The ASTM Standard Practice indicates that local Building Permit Offices can be a source of local records. Based on Hillis-Carnes' experience conducting Phase I ESAs in the District of Columbia, a substantial amount of time is usually required to obtain and review building permits dated 1955 to the present for properties located in the District of Columbia. Factors that increase the amount of time it takes to obtain and review these building permits include, but are not limited to, the following: at least three different District agencies/offices maintain records related to permits dated 1955 to the present (i.e., the District of Columbia Department of Records Management, the District of Columbia Federal Records Office and the District of Columbia Archives Office); several of these offices require a scheduled appointment to review permits; several of these offices will not mail or fax permit information; the permit request and retrieval process differs at each of these agencies/offices; and the permit request and retrieval processes required by these agencies/offices change frequently.

Based on the difficulties in dealing with these different District agencies/offices, and per the contract for this assessment, as authorized by the Client, permits dated 1955 to the present were not reviewed for this assessment.

With regard to permits dated prior to 1955, the National Archives maintains permits dated 1877 through 1954. Therefore, for this assessment, Hillis-Carnes visited the National Archives in Washington, D.C. to determine if permits were on file for the Site. According to the records at the National Archives, several permits are associated with the two Site addresses of 136 and 138 12th Street, N.E. Based on the type of some of the permits (e.g., plumbing permits and a fencing permit), Hillis-Carnes did not review all of the permits on file; however, Hillis-Carnes did review one repair permit and one building pertaining to the Site. No environmental issues were revealed during Hillis-Carnes' review of permits on file at the National Archives. A summary of the two permits is included in the following paragraphs.

One building permit for 136-138 12th Street, N.E. was reviewed. The permit was dated 1916 and was associated with the construction of a private garage. The owners of the Site at this time were L.P. Steuart and G.T. Steuart. The permit was for the construction of seven metal garages to be located at the rear of the buildings at 136-138 12th Street, N.W.

One repair permit for 136-138 12th Street, N.E. was reviewed. The permit was dated 1919 and was associated with changes made to the on-site structure. The owner of the Site at this time was L.P. Steuart Brothers. The permit was for the construction of an exterior stairway to the basement. According to the permit, the Site was being utilized as an office building.

No additional information regarding the Site was available at the National Archives.

5.3 Physical Setting Sources

A United States Geological Survey (USGS) 7.5 Minute Series Washington West, DC-MD-VA Quadrangle (topographic map) dated 1965 (photorevised 1983) was reviewed. Contour intervals on the map illustrate that the elevation of the Site is approximately 90 feet above mean sea level. Contour intervals in the site vicinity indicate that general slope and apparent surface water drainage in the vicinity of the Site are southeasterly. The closest surface body of water is Kingman Lake, located over one mile east of the Site.

No structures were illustrated on the Site on the map. However, the Site and vicinity were shaded pink, indicating the urban nature of the area. Additionally, no surface water bodies, uncharacteristic depressions, or mounds were illustrated on the Site.

The Site is located in the Coastal Plain physiographic province, east of the fall line that separates this province from the Eastern Piedmont physiographic province. According to the Geologic Map of Maryland produced by the Maryland Geological Survey (1968), the Site is underlain by Lowland Deposits. The Lowland Deposits are described as "medium-to coarse-grained sand and gravel;

1959, 1977, 1985, 1989, 1990, 1991, 1992, and 1994 for the Site and surrounding properties. Copies of the portions of the maps that include the Site are included in Appendix D. It should be noted that due to poor print quality of certain of these maps, illustrations/text on the maps are not always discernible. In addition, abbreviations/symbols on certain of these maps are not always identified in the standard Sanborn fire insurance map legend.

1904

On the map dated 1904, the Site was illustrated as undeveloped land. The Site was bordered to the north by an undeveloped lot. The area further north of the Site was illustrated with residences and B Street, N.E. (currently Constitution Avenue, N.E.). The Site was bordered to the east by 11th Street, N.E., with "S.J. Vaughan coal and wood" located across the street. The area further east of the Site was illustrated as undeveloped land. The Site was bordered to the south by an undeveloped lot. The area further south of the Site was illustrated with undeveloped land and scattered residences. The Site was bordered to the west by an alley, with residences located across the alley. The area further west of the Site was illustrated with 11th Street, N.E.; however, the area west of the road was not illustrated on the map.

1928

On the map dated 1928, the Site was illustrated with three structures. The current on-site structure was illustrated in the eastern portion of the Site and was labeled as an office. A relatively small structure was located in the western portion of the Site and was labeled as a garage. The third structure was located in the south central portion of the Site and was labeled as "auto stalls." The Site was bordered to the north by residences. The area further north of the Site was illustrated with residences and B Street, N.E. (currently Constitution Avenue, N.E.). The Site was bordered to the east by a structure occupied by "Stewart Motor Co.". The area further east of the Site was illustrated with an alley and residences. The Site was bordered to the south by a residence. The area further south of the Site was illustrated with additional residences. The Site was bordered to the west by an alley, with residences located across the alley. The area further west of the Site was illustrated with 11th Street, N.E.; however, the area west of the road was not illustrated on the map.

1959, 1977, 1985, 1989, 1990, 1991, 1992, and 1994

On the maps dated 1959, 1977, 1985, 1989, 1990, 1991, 1992, and 1994, the Site was illustrated with three structures. The structure located in the western portion of the Site was labeled as a garage and the structure located in the south-central portion of the Site was labeled as a warehouse. On the map dated 1959, the current on-site structure was illustrated in the eastern portion of the Site and was labeled as a store. On the maps dated 1977, 1985, 1989, 1990, 1991, 1992, and 1994, the current on-site structure was labeled as a "public or institutional" building. The Site is bordered to the north by a residence. The area further north

of the Site was illustrated with residences and Constitution Avenue, N.E. On the maps dated 1959 and 1977, the Site was bordered to the east by 12th Street, N.E., with an office building and a warehouse located across the road. On the maps dated 1985, 1989, 1990, 1991, 1992, and 1994, the Site was bordered to the east by 12th Street, N.E., with an apartment building located across the road. The area further east of the Site was illustrated with an alley and residences. The Site was bordered to the south by a residence. On the maps dated 1959 and 1977, the area further south of the Site was illustrated with residences, an auto repair shop, and painting supply store, with both of the commercial properties located along an alley (currently Walter Hoop Court). On the maps dated 1985, 1989, 1990, 1991, 1992, and 1994, the area further south of Site was illustrated with residences and associated automobile garages. The Site was bordered to the west by an alley, with residences located across the alley. The area further west of the Site was illustrated with 11th Street, N.E.; however, the area west of the road was not illustrated on the map.

5.4.3 City Directories

City directories have been published for cities and towns across the United States since the 1700s. Originally a listing of residents, the city directory developed into a tool for locating businesses as well as individuals in urban or suburban areas. While city directory coverage for major cities is comprehensive, it may not include information for rural areas or smaller towns. City directories were requested from EDR for the Site (both the current and a former address) and adjoining properties as part of this assessment. A copy of the City Directory Abstract is included in Appendix E. Business directories including city, cross-reference and telephone directories were reviewed, if available, at approximate five-year intervals for the years spanning 1922 through 2000 (not necessarily inclusive).

136 12th Street, N.E. (Former On-site Address)

Review of the City Directory Abstract indicates that the Site address of 136 12th Street, N.E. was listed as "Steuart L.P & Brothers Coal" for 1922, 1926, 1931, and 1936. Mr. Paul E. Webb was also listed at this Site address in 1936. According to the City Directory Abstract, the Site address of 136 12th Street, N.E. was listed as "Steuart L.P. Bros Fuel Oil" in 1943, 1948, and 1954. In 1960, the Site address of 136 12th Street, N.E. was listed as vacant. After 1960, this Site address is not listed within the City Directory Abstract.

138 12th Street, N.E. (Current On-site Address)

Review of the City Directory Abstract indicates that the Site address of 138 12th Street, N.E. was not listed for 1922, 1926, 1931, 1936, 1940, or 1943. However, according to other historical sources utilized for this assessment (i.e., Sanborn maps and a permit review), the Site has been developed with a structure since at least 1916. According to the City Directory Abstract, individuals were listed at the

Site address of 138 12th Street, N.E. for the years of 1948, 1954, and 1960. In 1964 this Site address of 138 12th Street, N.E. was listed as the "St. Martin De Porres Hospices Sanitarium." According to the City Directory Abstract, the Site address of 138 12th Street, N.E. was not listed for the years of 1969, 1973, 1983, and 1993. In 2000, the occupant of the Site was listed as the "Knights of St. John."

Site Vicinity

Generally, the properties along 12th Street, N.E. were listed as residences; however, prior to the 1980s scattered commercial properties (small businesses, e.g., a battery store, auto shops, warehouse, restaurants, a moving company, religious facilities, a welding company, tourist agencies, etc.) were listed along the road throughout the years. The properties along East Capital Street, N.E., North Carolina Avenue, N.E., 13th Street, N.E., Kentucky Avenue, S.E., Massachusetts Avenue, N.E., and Tennessee Avenue, N.E. were generally listed as residences. The properties along 11th Street, N.E. generally included residences; however, it also included some commercial properties were listed over the years (small businesses, e.g., grocery stores, cleaners, markets, novelty stores, a movie theater, a funeral home, etc.).

In addition to the City Directory Abstract, EDR provided a search of the Historical Gas Station and Dry Cleaner database in the regulatory database report. This database is EDR's listing of properties identified in certain national business directories (dated 1922 to 1964) with key words such as gas station, automobile repair, dry cleaners, laundry, etc. According to EDR's search, 23 properties were identified as being potential dry cleaners, eight facilities as being either self-service facilities or hand-washing facilities, and ten facilities as potential automobile repair facilities. These 41 properties were located within one-quarter mile of the Site. However, none were identified as properties adjacent to the Site, or properties of concern based on a review of regulatory databases.

5.4.4 Interviews

Hillis-Carnes interviewed Mr. Ron Taylor, the representative for the current occupant and owner of the Site, for general information regarding of the Site (Section 3.1 and 4.2).

5.4.5 Historical Topographic Maps

A historical topographic map, USGS 15.0 Minute Series Washington, DC-MD-VA Quadrangle (early 1900s), was reviewed at the Maryland Geological Survey. The Site was illustrated as undeveloped land. Additionally, roads and scattered structures, that appeared to be residential in nature, were illustrated within the site vicinity.

Four 7.5-Minute Series Washington East, DC-MD topographic quadrangle maps were reviewed for this assessment. Three of the maps were generated in 1945, 1956 and 1965; the subsequent map was photorevised in 1979. No structures were illustrated on the Site on the 1945 map. However, the Site and vicinity were shaded pink, indicating the urban nature of the area. Additionally, Maury Elementary School was illustrated further northeast of the Site. The subsequent Washington East topographic maps do not illustrate any changes in the Site or the vicinity. The Site and vicinity were shaded pink, indicating the urban nature of the area.

5.4.6 Historical Ownership

Limited information regarding the current and historical ownership of the Site is included in Section 4.2 of this report.

5.4.7 Prior Environmental Reports

No prior environmental reports were provided to Hillis-Carnes during this assessment.

5.4.8 Other Historical Sources

No historical sources other than those described in this report were obtained for this assessment.

5.4.9 Summary of Information Obtained from Historical Sources

Based on Hillis-Carnes' review of the historical records sources described previously, the Site was apparently undeveloped in 1904. Since 1904, several buildings and businesses have occupied the Site, as determined through a review of the sources referenced in this report. These buildings and business are described in chronological order in the following paragraphs.

Based on a review of Sanborns and historic permits, sometime between 1904 and 1916, the current on-site building was constructed, and two relatively small structures were constructed on the western and south-central portion of the Site sometime prior to 1928.

Hillis-Carnes' review of a permit at the National Archives (Section 5.2) indicated that the main building on the Site (i.e., also the current on-site building) was being utilized as an office building by Steuart L.P and Brothers in 1919. In 1922 and 1926, the Site was listed on the City Directory Abstract as Steuart L.P. and Brothers Coal.

On the Sanborn map dated 1928, the Site was illustrated with the current on-site structure, which was labeled as an office building, a garage, and a relatively small structure labeled as "auto stalls." According to the Sanborn map dated 1928, the "Stewart Motor Company" operated a facility directly across 12th Street, N.E., adjacent to the Site. Potentially, the Site was formerly associated with this off-site property and the current on-site structure operated as an office building for businesses conducted by the Steuart family.

The Site continued to be listed in the City Directory Abstract from 1931 until 1936 as Steuart L.P. and Brothers Coal. According to the City Directory Abstract, the Site was listed as Steuart L.P. Brothers Fuel Oil from 1943 and 1954. On the 1959 Sanborn map, the current on-site structure was labeled as a store. The structure located in the western portion of the Site was labeled as a garage and the structure located in the south-central portion of the Site was labeled as a warehouse.

After 1960, the City Directory Abstract no longer listed Steuart L.P. Brothers Fuel Oil as an occupant of the Site. According to Hillis-Carnes' review of Sanborn maps, the Site was utilized after 1960 as a "public/institutional" building. Currently, the structure is utilized by the current site owner, the Knights of St. John and the Ladies Auxiliary, as a meeting hall.

As previously indicated, two potential on-site historic businesses/operations of concern were identified during the review of the referenced historical sources. These businesses/operations were listed as Steuart L.P. and Brothers Coal and Steuart L.P. Brothers Fuel Oil. However, the Sanborn maps reviewed for this assessment did not specifically identify coal storage bins/stockpiles or tanks for fuel oil storage on the Site. Further, due to the relatively small size of the Site (i.e., approximately 4,200 square feet), it is unlikely that bulk storage of coal or fuel oil occurred at the Site. Additionally, the Site was not identified on any of the databases reviewed for this assessment. Based on these factors, the historic business/operations conducted on the Site do not appear to be a REC to the Site. However, if a higher level of confidence regarding environmental conditions at the Site is required by the Client, additional investigation (i.e., subsurface investigation) would be necessary.

The review of previously referenced historical sources did not reveal evidence of industrial or manufacturing activities, large-scale dumping, or landfilling activities at the Site.

Based on the review of the historical sources described previously, the vicinity of the Site was developed by 1928. Generally, the structures within the site vicinity included residences; however, some commercial and educational properties are also located within the vicinity of the Site.

The review of previously referenced historical sources did not reveal evidence of industrial or manufacturing activities, bulk chemical storage/usage, large-scale dumping, landfilling activities, or other environmental concerns at the properties in the vicinity of the Site that would likely result in a REC to the Site.

6.0 SITE RECONNAISSANCE/SITE VISIT

6.1 Methodology and Limiting Conditions

Eartha M. Ballard, Hillis-Carnes' Environmental Scientist, conducted the site visit on June 21, 2005. Mr. Stan Bissey, the real estate broker for the current owner of the Site, escorted Hillis-Carnes during the site visit.

The site visit included the following: a) inspection of the perimeter of the Site; b) inspection of the exterior perimeter of the on-site structure; c) inspection of the common areas within the interior of the on-site structure; and d) inspection of the remaining portions of the Site. Hillis-Carnes was unable to inspect the roof of the structure, due to inaccessibility (refer to Limitations, Section 2.4). A cursory evaluation of surrounding property uses was performed from the Site's boundaries or public access ways (i.e., sidewalks, roads, etc). Site photographs are included in Appendix A.

A Site Layout Sketch is provided and labeled as Figure 2 on the following page. The Site Layout Sketch is not to scale and serves only as a reference for the major features of the Site.

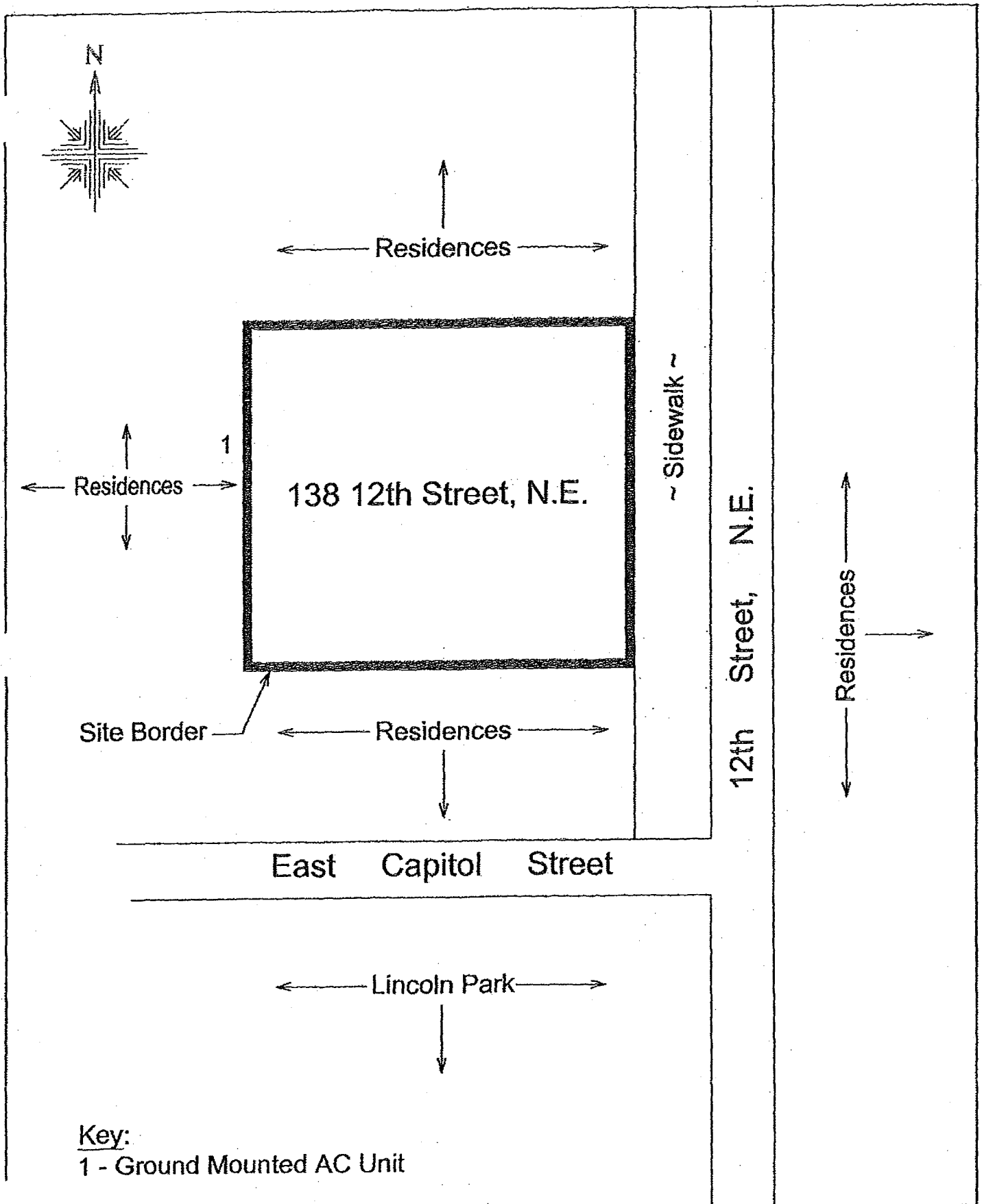
Limiting conditions and other qualifications pertinent to this Phase I ESA are presented in Sections 2.3 and 2.4 of this report.

6.2 General Site Setting

The Site consists of one parcel of land approximately 4,230 square feet in size. The Site is developed with a structure that consists of two-stories and a sub-grade basement. The remaining portions of the Site not occupied by the structure included a paved parking lot located in the western portion of the Site and areas of landscaping.

Hillis-Carnes inspected the interior of the structure and observed tables, chairs, appliances, two waste bins, a piano, a refrigerator, paper products, a vending machine and a bathroom on the first floor. Hillis-Carnes observed various furniture, file cabinets, a vacuum, candles, glassware, a kitchen area, a dining area, and a bathroom on the second floor. Hillis-Carnes observed a water heater, furnace, wood panels, chairs, tables, other various furniture, two waste bins, several file cabinets, and approximately four bags of trash within the basement level.

Hillis-Carnes inspected the remaining portions of the Site not occupied by the structure and observed a paved parking area.



During the site visit, Hillis-Carnes did not observe surficial evidence of the following: pits; ponds; lagoons; stained soil; stained pavement (with the exception of staining typically observed in parking lots); stressed vegetation; solid waste (with the exception of municipal solid waste); waste water discharges; water supply wells; and septic systems.

Slope and apparent surface water drainage on the Site and in the vicinity of the Site are to the southeast. Stormwater runoff on the Site is directed into municipal storm drains located along the roads.

6.3 Chemical Storage Containers

During the site visit, Hillis-Carnes did not observe any chemical storage containers on the Site.

6.4 Storage Tanks

Hillis-Carnes inspected the Site for evidence of underground storage tanks (USTs), such as vent pipes, fill caps, fuel pumps, or concrete islands and for evidence of aboveground storage tanks (ASTs), such as vent pipes, fill caps, concrete foundations, containment walls, pedestals, or steel support structures. In addition, Hillis-Carnes conducted interviews and reviewed regulatory databases for information regarding the presence of on-site ASTs or USTs.

6.4.1 Underground Storage Tanks

No surficial evidence of current or former USTs was observed on the Site. Further, the Site was not identified on the district's Registered UST database. In addition, Mr. Ron Taylor, the representative for the current owners of the Site, was not aware of any current or former USTs located on the Site.

6.4.2 Aboveground Storage Tanks

No evidence of current or former ASTs was observed on the Site during the site visit and Mr. Taylor was not aware of any current or former ASTs located on the Site.

6.5 Indications of PCBs

Polychlorinated biphenyls (PCBs) are toxic coolants or lubricating oils used in some electrical transformers, electrical panels, or other similar equipment.

No electrical or hydraulic equipment known to contain or likely to contain PCBs was identified during the site visit or discovered through other sources utilized for this assessment.

6.6 Indications of Waste Generation, Storage and Disposal

On the date of Hillis-Carnes' site visit, no current or former dumping was observed on the Site. In addition, Hillis-Carnes' review of the regulatory databases (Section 5.1) and inspection of the Site did not reveal evidence of hazardous waste or landfilling activities at the Site.

7.0 INTERVIEWS

7.1 Interview with Client/User

Information obtained during this assessment via an interview with Mr. Russ Williams, the representative for the Client, has been previously presented in Sections 3.4, 4.1, 4.2, 4.3, 4.4, and 4.6 of this report. A Record of Communication with Mr. Williams is included in Appendix B.

7.2 Interview with Key Site Manager/Occupants

Information obtained during this assessment via an interview with Mr. Ron Taylor, the representative for current occupant and owner of the Site, has been previously presented in Sections 3.4, 4.2, 4.4, 6.3, 6.4, 6.5 and 6.6 of this report. A Record of Communication with Mr. Taylor is included in Appendix B.

In accordance with the ASTM Standard Practice, Mr. Taylor was asked certain questions specific to legal/governmental proceedings involving the Site. Specifically, Mr. Taylor was asked if he knows of: (1) any pending, threatened, or past litigation or administrative proceedings relevant to hazardous substances or petroleum products in, on, or from the Site; and (2) any notices from any governmental entity regarding any possible violation of environmental laws or possible liability relating to hazardous substances or petroleum products. Mr. Taylor did not have any knowledge of the types of litigation, administrative proceedings, or notices, as listed previously, in association with the Site. A Record of Communication with Mr. Taylor is included in Appendix B.

Hillis-Carnes discussed the contents of the Document Request Form with Mr. Taylor during the previously referenced interview. Mr. Taylor stated that he does not have any documents regarding the Site to forward to Hillis-Carnes for this assessment.

7.3 Interview with Current and Previous Owners

Information obtained during this assessment via an interview with Mr. Ron Taylor has been previously referenced in Section 7.2 of this report. A Record of Communication with Mr. Taylor is included in Appendix B.

7.4 Interviews with Government Officials

As previously reported in Section 5.2, the District of Columbia Department of Health and the District of Columbia Office of the Fire Marshall require that

requests for information be made in writing; therefore, interviews with representatives of these offices were not conducted and written requests for information were submitted.

As previously reported, Hillis-Carnes visited the National Archives to review records; however, an interview with a representative of this office was not conducted.

8.0 FINDINGS AND OPINIONS

In accordance with the ASTM Standard Practice, known or suspect environmental conditions identified during the Phase I ESA, including RECs, HRECs and de minimis conditions, as defined previously in this report, are to be summarized in this section. In addition, this section includes Hillis-Carnes' opinions of the potential for impact to the Site as a result of the presence of these known or suspect environmental conditions.

- Two potential on-site historic businesses/operations of concern were identified during the review of the referenced historical sources. These businesses/operations were listed as Steuart L.P. and Brothers Coal and Steuart L.P. Brothers Fuel Oil. However, the Sanborn maps reviewed for this assessment did not specifically identify coal storage bins/stockpiles or tanks for fuel oil storage on the Site. Further, due to the relatively small size of the Site (i.e., approximately 4,200 square feet), it is unlikely that bulk storage of coal or fuel oil occurred at the Site. Additionally, the Site was not identified on any of the databases reviewed for this assessment. Based on these factors, it is Hillis-Carnes' opinion that the historic business/operations conducted on the Site do not appear to be a REC to the Site. However, if a higher level of confidence regarding environmental conditions at the Site is required by the Client, additional investigation (i.e., subsurface investigation) would be necessary.
- Maury Elementary School at 1250 Constitution Avenue, N.W. is located over 450 feet from and topographically crossgradient of the Site. According to EDR's report, there is one 10,000-gallon UST "temporarily out (of use)" at this off-site facility.

The Michael Giuffruda/Gail Martin property at 118 12th Street, N.E. is located approximately 350 feet from and topographically crossgradient of the Site. According to EDR's report, there is one 1,000-gallon UST "permanently out (of use)" at this off-site facility.

Based on distance, if a significant release from the USTs at these off-site properties were to occur, the environmental conditions of the Site could potentially be impacted. However, these facilities are not included on the on the District of Columbia Department of Health's Leaking Underground Storage Tank (LUST) database that identifies properties that have had reported UST releases. Additionally, the Site is connected to the municipal water supply system; therefore, if groundwater beneath the Site were to be impacted by a significant release from these off-site tanks, exposure risk from ingestion by tenants/occupants at the Site would not be a concern.

Based on the factors described in this paragraph, it is Hillis-Carnes' opinion that the UST at these off-site properties are not considered a REC to the Site at this time.

- Additional properties located in the vicinity of the Site were identified within the specified search distances on the regulatory databases reviewed for this assessment. Based on factors described in the text of this report, it is Hillis-Carnes' opinion that these properties are not considered to be RECs to the Site.

9.0 CONCLUSIONS

Hillis-Carnes Engineering Associates, Inc. has performed a Phase I Environmental Site Assessment in general conformance with the scope and limitations of ASTM Standard Practice E 1527-00 of the property at 138 12th Street, N.E. in Washington, D.C. ("Site"). Any deviations from the ASTM Standard Practice are described in Section 2.4.

This assessment has revealed no Recognized Environmental Conditions, as defined in the ASTM Standard Practice and Section 2.1 of this report, in connection with the Site.

It must be noted that at the time of the completion of this assessment, information requested from the District of Columbia Department of Health and the District of Columbia Office of the Fire Marshall had not been received. Upon receipt of the responses from these agencies, Hillis-Carnes will notify the Client via an addendum letter if information regarding the Site is available. It must be noted that Hillis-Carnes' conclusions are based solely on the information obtained to date and could change upon receipt and review of the outstanding information.

10.0 REFERENCES

28th International Geological Congress, Hydrogeology of the Washington, D.C. Area, 1989;

Alexandria Drafting Company, Alexandria, Virginia, Street Map Book of Washington, D.C, Maryland, dated 1999;

Environmental Data Resources, Inc. (440 Wheelers Farm Road, Milford, Connecticut 06460), City Directory Abstract No. 1184646-4, may 5, 2004;

Environmental Data Resources, Inc. (440 Wheelers Farm Road, Milford, Connecticut 06460), Radius Map Report No. 1184646.2s, May 4, 2004;

Environmental Data Resources, Inc. (440 Wheelers Farm Road, Milford, Connecticut 06460), Sanborn Map Report No. 1184646.3s, May 5, 2004;

Maryland Geological Survey, Geologic Map of Maryland, 1968;

United States Geological Survey, 15.0-Minute Series, East Washington, Topographic Quadrangle, produced early 1900s;

United States Geological Survey, 7.5-Minute Series, Washington East, DC-MD Topographic Quadrangle, produced 1956;

United States Geological Survey, 7.5-Minute Series, Washington East, DC-MD Topographic Quadrangle, produced 1965, photorevised 1971; and

United States Geological Survey, 7.5-Minute Series, Washington East, DC-MD Topographic Quadrangle, produced 1965, photorevised 1979.

11.0 PROFESSIONAL CREDENTIALS

Resumes for Ms. Sherri D. Waldron, Hillis-Carnes Environmental Services Manager, and Ms. Amanda M. Smith, Hillis-Carnes Environmental Scientist, are included on the following pages.

Sherri D. Waldron, C.E.A., R.E.M.
Environmental Services Manager

EDUCATION

B.S. Chemistry, 1986, Cameron University

Graduate courses in Environmental Science, including Soil Science, Groundwater Hydrology and Modeling, and Groundwater Pollution Control and Quality Protection, University of Oklahoma

**PROFESSIONAL CERTIFICATIONS/
REGISTRATIONS**

- Certified Environmental Auditor #5491
- EPA AHERA Building Inspector MD #049075
- Hazard Communication Training
- 1910.120 OSHA 40-Hour Hazardous Waste Operations Training (HAZWOPER)
- 8-Hour Annual Recertifications for HAZWOPER
- Registered Environmental Manager #7807

PROFESSIONAL AFFILIATIONS

- American Chemical Society
- National Groundwater Association
- National Registry of Environmental Professionals
- Building Congress Association of Baltimore, MD
- Society of American Military Engineers

SPECIAL PROJECT EXPERIENCE

Phase I Environmental Site Assessments
Baltimore-Washington Metropolitan Area:
Senior Project Manager for thousands of environmental site assessments for lending institutions, real estate developers, law firms, insurance and investment companies, industrial corporations, and telecommunication corporations.

Soil and Groundwater Investigations,
Baltimore-Washington Metropolitan Area:
Senior Project Manager for hundreds of contamination assessments for petroleum hydrocarbon and chlorinated solvent releases, including soil borings, groundwater monitoring well installations, test pits, soil vapor surveys, and geophysical surveys.

SPECIAL PROJECT EXPERIENCE, CONTINUED

Underground Storage Tank Closures, Baltimore-Washington Metropolitan Area: Senior Project Manager for underground storage tank closures including subcontractor selections, tank and excavation inspections, data evaluation, closure report preparation, and negotiation with regulatory agencies. Projects have involved vaulted and buried petroleum, solvent, and pesticide/herbicide tanks.

National Account Management: Environmental Services Account Manager of environmental site assessments for multi-site portfolios for nationwide corporations including real estate developers, telecommunication corporations, lending institutions, and insurance and investment companies.

Polychlorinated Biphenyl (PCB) Contamination Assessment and Remediation: Evaluation and remediation of PCB releases to concrete flooring in multi-state transformer vaults for nationwide developer. Projects consisted of initial wipe and core sampling, remediation consisting of concrete surface cleaning, scarification, and bulk removal, and clean-up verification using statistical grid sampling.

Radon Gas Evaluation and Mitigation: Senior Project Manager for multi-property radon gas mitigation project involving initial radon testing, diagnostic testing, application of radon mitigation techniques, and post-mitigation verification testing.

Methane Gas Determination/Delineation: Project Supervisor for methane gas determination/delineation at residential subdivision, involving both indoor air quality testing and exterior soil gas surveys. Responsibilities included the following: development and implementation of sampling protocol for indoor air testing utilizing LEL meters as well as collecting air samples for laboratory analysis; development of sampling strategy for exterior soil gas surveys; technical management of soil gas surveys (using direct push sampling procedures) to identify and delineate areas of methane gas; data evaluation; and development of methane mitigation plan.

Methane Mitigation Project: Project Supervisor for methane mitigation project, involving large-scale excavation of buried organic materials as well as construction rubble at residential subdivision. Responsibilities included the following: developing and scheduling the excavation plan; oversight of the preparation of the project health and safety plan; supervision of the collection of soil samples for various analytical testing and scientific research; interfacing with county and state environmental regulatory authorities; and periodic monitoring of methane gas concentrations within nearby residential properties during the excavation activities.

Amanda M. Smith
Environmental Scientist

EDUCATION

B.A. Geography & Environmental
Systems 2003
University of Maryland, Baltimore
County (UMBC)
Baltimore, Maryland

Courses: Environmental Science,
Field Research Methods,
Environmental Regulatory Policy,
Natural Hazards, Natural
Resources, Geography of Soils.

SELECT PROJECT EXPERIENCE

Phase I Environmental Site Assessments: Field Scientist for environmental site assessments in the Baltimore-Washington metropolitan area. Conducts Phase I Environmental Site Assessments consisting of site inspections, land records reviews, aerial photograph analyses, topographic and geologic reviews, and technical report preparation.

Phase I Environmental Site Assessments: Environmental Analyst writing over 75 Environmental Phase I Site Assessment Reports on multi-family residential properties and hotels located throughout the United States. According to client needs, reports were written to ASTM, Fannie Mae, or Freddie Mac standards. Additionally, Operations and Maintenance Programs were written to address issues with Asbestos.

Additional Experience:

- The sampling, identification, and mapping of various soil classifications located within Baltimore County. Additional research included the spatial analysis of the locations of soil classifications through the use of GPS units and ArcGIS.
- Conducted the Physical Habitat Index (PHI) section for a stream survey along various segments of the Gwynns Falls Watershed. The PHI included various metrics that attempt to gauge the habitat quality of a stream.
- Geographic Information Systems (ArcGIS) and Cartography

APPENDICES

Appendix A Site Photographs

Appendix B Records of Communication

Appendix C Federal and State Environmental Database Radius Map Report

Appendix D Sanborn Map Search Report

Appendix E City Directory Abstract

D TAB 22

**Advisory Neighborhood Commission 6A
Miner Elementary School
September 13, 2007
Minutes**

The meeting was called to order at 7:02 pm.

Present: Commissioners Alberti, Fengler, Holmes, Marshall, Nixon, and Schultheiss.

Absent: Commissioners Beatty, Mack

1. Approval of agenda

MOTION: add item to new business to authorize an ANC6AZ Commissioner represent ANC6A at the October 1st HPRB meeting (Holmes).

The agenda was approved as amended without objection.

2. Minutes

The minutes for the July meeting were approved without objection.

3. Community Presentation - Linda Argo, Acting Director of DCRA

Comments by the Acting Director:

Acting director Argo stated that she has been employed at DCRA for approximately 2 years. She previously worked for the DC office of technology for the 6 years prior to working at DCRA. Her confirmation hearing is scheduled for the week of September 17th. Her primary goal is to change the culture of DCRA to excel at customer service (licensing and permits) in addition to providing quality regulatory services.

Additional Goals:

- a. Change the culture from compliance focused to customer focused
- b. Customers, including the ANCs, should get information and assistance in a seamless and non frustrating manner
- c. Provide timely action on customer needs

Answers to ANC 6A questions:

1. Specific Property Issues:

- i. 138 12th Street, NE; Appletree Institute Permit Status

The zoning Commission will be publishing in the DC Register on September 12th an order which closes the zoning loophole which allows siting of a charter school by right within a neighborhood which will vacate t has passed a zoning amendment which places limitations on locating schools in neighborhoods.

There are on-going challenges to the existing BZA order allowing the siting of the charter school at 138 12th Street.

Question as to whether the public charter school board authorized the location of a charter school at 138 12th Street. Director Argo has asked the board if they authorized this location and whether locating new schools requires an amendment to the charter. Director Argo has yet to receive an answer from the board. DCRA currently employs a self-certification process for which it is not clear if DCRA has triggers to allow an ANC, other agencies, or citizens group to challenge the validity of the permit request if a permit hinges on the approval of another agency.

Environmental concerns at property require further review by DC Department of the Environment to determine potential brownfield status of the property. The building permit plans are currently under review by this agency and permits have not been issued to renovate the property for a charter school.

Commissioner Fengler asked Director Argo to clarify if the building permit would be required to comply with city regulations on the date of the permit application or on with the city regulations as written on the date of the permit issuance. She stated that her understanding of the law is that the building permit would need to be in compliance with city regulations authorized as of the date of the permit issuance.

Commissioner Fengler stated that the self-certification process has shortcomings when the developer can claim approval from one government agency (i.e. public space) to gain approval from another agency (i.e. DCRA for building permit) to obtain necessary permits. He asked for a mechanism within the DCRA permitting process to allow a group such as the ANC to notify DCRA of potential conflicts or errors with permit applications to protect neighborhoods in situations where DCRA is relying on a self-certification process.

Director Argo stated that the agency is moving towards a permission based application process for smaller and straightforward projects, where it is expected that the property owner will submit plans that meet the required regulations and gain the necessary approvals from other agencies (self-certification). This will be complemented by an improved enforcement and inspection regime that will punish violators more consistently and harshly than is the current practice.

Commissioners Nixon and Alberti provided the expressed concerns that the ANC will have the ability to challenge the validity of self certified community based residential facility applications.

Commissioner Fengler stated that the existing zoning regulations are not easy for the average citizen to understand as they require knowledge of BZA orders and Zoning Commission orders of interpretation which are not part of the building code. If a mechanism is not created to allow citizens or ANCs to report to DCRA potential problems with a permit, it is likely that neighborhoods will continue to be frustrated with problems related to improper building of 3 unit condos, siting of charter schools, certification of restaurants, siting of community residential facilities, etc.

- ii. 701 10th Street, NE; Curb Cut

The acting zoning administrator has placed a property hold on this property until the public space agency resolves the curb cut issue. A certificate of occupancy (C of O) will not be issued until the issue of the parking/curb cut is resolved.

iii. 926 Maryland Avenue, NE; Bed and Breakfast Operation

DCRA investigated the property and determined that the owner is not in compliance with regulations, four-thousand dollars in fines were issued and the owner is required to come into compliance to have a C of O or be faced with further enforcement actions.

iv. 1429 Ames Place, NE; Illegal deck

Commissioner Alberti questioned how DCRA inspectors did not notice the illegal deck during regular inspections of permitted interior work. Stop work orders were not issued until neighbors reported the illegal deck. Will DCRA issue a C of O while the deck is not legal? Director Argo stated that single-family homes are not issued a C of O.

v. 1308 and 1310 Corbin Place, NE; Illegal deck

Commissioner Alberti questioned the legality of the deck at 1310 which is basically a garage with a deck on top which covers the entire rear yard resulting structure being built on 100 percent of the lot. He asked that the inspectors at least be versed in other disciplines to recognize illegal construction and work within DCRA to improve enforcement.

Nick Majette of DCRA stated that inspectors do not have a right to search homes for other building violations. Director Argo stated that Mr. Majette is responsible for overseeing the vacant property, abatement, and enforcement groups within DCRA.

Director Argo stated that an illegal addition at 6919 6th Street, NW was removed by a contractor hired by DCRA as part of an enforcement action.

vi. 722 8th Street, NE; Illegal building demolition

DCRA will work with the owner to come into compliance but will be issued fines for the illegal demolition and be required to obtain a demolition permit. Until the owner is issued a raze permit, it will be considered a vacant property.

2. Illegal Additions

Covered during previous discussion.

3. Number of Inspectors

Commissioner Fengler stated that without quality inspectors and adequate inspectors the vision for a self-certification process backed up with improved enforcement and inspection will not be successful. He asked if the number of inspectors employed by DCRA was comparable to other large city inspection groups.

Director Argo stated that she does not agree that there are not enough inspectors to perform the work and that the staff size is comparable to other similarly sized cities inspection forces. There are additional inspectors being added to the vacant property group. All inspectors are going to be cross trained in the international building code to be able to identify violations that are not within their inspection discipline which will address the concerns stated earlier in the discussion.

Commissioner Holmes stated frustrations with weekend violations and a shortage of staff to perform inspections for illegal construction performed on the weekends.

Mr. Majette stated that suspected weekend violations should be reported to the duty officer at 727-6161.

Commissioner Alberti expressed frustration that the Stop Work phone operators don't provide the information to the caller that there is a weekend duty officer who can help.

The issue of group homes was again raised by Commissioner Nixon. Director Argo stated that it is currently a matter of right to allow occupancy of a building with 6 or fewer residents. The federal government is currently suing the DC Government over the fair housing act.

4. Web-based Service Request Center

DCRA is not currently part of the Online Service Request Center. DCRA is developing a web based enterprise comprehensive property management system which will be linked to the service request center and be accessible to citizens. It is expected that this system will be available in July 2008. Citizens will be able to search building permits, inspection status, C of O, vacant property status.

5. Vacant Property

DCRA is developing a searchable database that will allow tracking of vacant property. It will detail property status, permit status, exemption status, inspection dates, property details, photos, and fines.

DCRA has completed an extensive inventory of the H Street corridor between 2nd and 15th streets for Council Member Wells. Fines were issued to individual owners along the corridor during the inspection.

6. On-line building permits

Previously discussed

7. Community Comments

Patti Shea asked Director Argo what is being done to protect owners of new condominiums and condo conversions from faulty construction once the developer has finished and left. Director Argo stated that DCRA is working with Council to improve the condo warranty legislation and regulations. This issue will soon become the

responsibility of the DC Department of Housing and Community Development with staff being transferred to this agency from DCRA.

4. Community Presentation - Dr. Charles Vincent, Options Public Charter School

Dr. Vincent stated that the student cap was raised from 240 students to 280 students to provide a 9th grade program. Eighty-percent of the existing school student population is currently classified as requiring special education services. There have been issues with regards to student behavior in past years. Dr. Vincent stated that it is a duty of the new principal to ensure that students are monitored while arriving and departing from the school each day. He handed out a schedule that detailed the locations where specified teachers are assigned to monitor the students in the morning and evening.

Dr. Vincent asked community members to call him at 202.270.4448 to report concerns with the building or students.

5. Community Comments

There is potential for a liquor store at the corner of 13th and East Capitol to become a flower shop.

On September 25th Chancellor Rhee will give a presentation at the Capitol Hill Restoration Society meeting.

6. Officer Reports

Treasurer

Mr. Alberti delivered the Treasurer's Report. The following disbursements were approved: \$52.48 to NLPNA for a grant to the Kingsman Basketball League; \$40 to Andrea Ferster for legal services; \$135 to Roberta Weiner for recording June '07 minutes; \$330.72 to FedEx Kindo's for a grant to Urban Family Development (UFD); \$151.97 to Greenwood Heinenamm Publishing for a grant to UFD; \$315.08 to Barnes & Noble for a grant to UFD; \$296.28 to Pearson Education for a grant to UFD; \$266.91 to FedEx Kinko's for June '07 statement; and \$245.42 to FedEx Kinko's for July '07 statement.

Motion: Commissioner Alberti moved to approve the Treasurer's Report. It was seconded by Commissioner Fengler, and approved without objection.

Motion: Mr. Alberti moved that \$600 be approved for copying for ANC materials, and that up to \$60 be approved for copying for each Committee's materials and each SMD's materials for the next month. The motion was accepted without objection.

7. SMD Reports

Ms. Nixon reported there would be a focus group meeting to discuss Rosedale Recreation Center on September 19th.

8. Committee Reports

Alcoholic Beverage and Licensing

Motion: Mr. Fenlger moved/Mr. Holmes seconded a motion to recommend the Commission not protest Anais Bar & Lounge (1363 H Street NE) license and to seek a standard voluntary agreement. It was accepted without objection.

Motion: Mr. Fenlger moved/Mr. Holmes seconded a motion to Approve a stipulated license for Atlas CMP license. It was accepted without objection.

Economic Development and Zoning

Mr. Fengler noted the resignation of Harry Stevenson from the committee.

Motion: Mr. Fengler moved/Mr. Alberti seconded a motion to recommend that the Commission withdraw its BZA appeal for 1016 H Street (Tropicana). It was accepted without objection.

Motion: Mr. Fengler moved/Mr. Schultheiss seconded a motion to recommend the Commission write a letter to the owner of 1309-1311 H St. NE asking that the building be preserved and renovated and point out various zoning and tax incentives that would make preserving the building more cost effective. It was accepted without objection.

The Committee's report was accepted without objection. All future meetings of the Committee will be held at the Sherwood Recreation Center.

Community Outreach

Motion: Mr. Fenlger moved/Mr. Alberti seconded a motion to recommend that the Commission send letters of appreciation to organizations providing meeting space and/or website support. It was accepted without objection.

Mr. Fengler thanked the committee for their research into the audio/video capture of the Commission meetings.

The Committee's report was accepted without objection.

Public Safety

Mr. Fengler noted the resignation of Laura Brown from the committee.

The Committee's report was accepted without objection.

Transportation

Motion: Mr. Fenlger moved/Mr. Schultheiss seconded a motion to recommend that the Commission send a letter to Director Moneme asking for action on the following three public space violations:

- i. Illegal driveways - Unpermitted cuts and excessive width. The prime example mentioned was 701 10th Street NE.
- ii. Illegal parking in public space - Prime examples include 1401 Maryland Ave. NE and Horace & Dickies.
- iii. Utility companies failing to properly restore roads and sidewalks after performing utility repair work

The motion was accepted without objection.

Motion: Mr. Fenlger moved/Mr. Schultheiss seconded a motion to recommend that the Commission send a letter to DDOT requesting enforcement of illegal parking within marked car sharing parking spaces. It was accepted without objection.

The Committee's report was accepted without objection

9. New Business

Maury Elementary School Fence

Motion: Mr. Holmes moved/Mr. Alberti seconded a motion to recommend that the Commission testify before Congress to request a return of control over the Public Charter School Board (PCSB) and of the appointment of Board members to the District of Columbia. It was accepted without objection.

Motion: Mr. Holmes moved/Mr. Schultheiss seconded a motion to recommend that the Commission send a letter to the Public Charter School Board asking that the Board abide by the current regulations of the District of Columbia in siting new and expansion charter schools. It was accepted without objection.

Motion: Mr. Holmes moved/Mr. Alberti seconded a motion to recommend the Commission oppose the nomination of Curtis Etherly to the Zoning Commission.

Discussion:

Mr. Marshall stated that Mr. Etherly disclosed his longstanding affiliation with the charter school. He stated the ANC did not object to his continuing participation on the Commission. Has Mr. Etherly been given an opportunity to speak on his behalf to explain his views on zoning and to respond to the ANCs concerns?

Mr. Holmes stated that Mr. Etherly admitted that the format of the hearing did not allow for the ANC to object to his participation on the Commission, that Mr. Etherly did not disclose his affiliation as a board member of the organization that lobbied against the position of the ANC at the Zoning Commission.

Mr. Fengler stated that as Vice Chair, Mr. Etherly violated public meeting notice rules. He stated that he did not agree with Mr. Etherly's position on condo conversions and restaurant classification. Further Mr. Etherly has shown through his actions that he disregards community input.

Mr. Alberti asked Mr. Etherly on a call-in radio show how he decided on the condo conversion ruling. He said that Mr. Etherly stated that the law was very clear. Mr. Alberti stated that the laws are vague and not clear. It caused Mr. Alberti to have doubt about Mr. Etherly's ability to interpret zoning laws.

Mr. Marshall stated the change in the meeting date was due to a funeral, and asked Mr. Fengler what fast food issue caused him concern. Mr. Fengler responded that it was the rulings and decisions by Mr. Etherly in response to ANC concerns regarding fast food classification of Birdland, Cluck-U Chicken, Rib Tip, and Blimpies. Mr. Marshall stated that Mr. Etherly was not involved with the Cluck-U decision.

Mr. Fengler agreed that the funeral was a legitimate reason to postpone the hearing, but they should have provided 10 days minimum notice instead of one day notice. This was in violation of their own rules for hearing notice with regard to a hearing. Mr. Etherly called for a meeting to skirt the rules on an issue of importance to the ANC. Further, his written opinions on McMansions and McDonalds show a lack of understanding of zoning.

Mr. Holmes stated that Mr. Etherly's failure to disclose his role as a board member of an advocacy group indicated a bias in his decision-making.

Mr. Marshall stated that the Commission should have invited Mr. Etherly to be present at the meeting or the Commission should have sent him a letter to respond to the ANC's concerns.

The motion passed by a vote of 4 - 1-1 with Marshall objecting and Schultheiss abstaining.

Motion: Mr. Holmes moved/Mr. Alberti seconded a motion to authorize David Holmes or any officer of the ANC to present to the City Council a comprehensive package of the motions previously adopted urging changes and reforms to benefit the ANCs, and to work with other ANCs and Councilmembers towards adoption of the package. It was accepted without objection.

Motion: Ms. Nixon moved a motion to recommend location for 1D Metropolitan Police Station. Mr. Fengler asked for clarification on the timeliness of the request since one of the locations is in ANC6C. The motion was tabled for one month and will move to unfinished business.

Motion: Mr. Schultheiss moved/Mr. Fengler seconded a motion to recommend that the Commission send a letter to DPW requesting enforcement of the posters, signs, and placards regulations within ANC6A.

Motion: Mr. Fengler moved/Mr. Holmes seconded a motion to recommend that the Commission authorize David Holmes, Drew Ronneberg, or any other officer of the Commission to represent ANC6A on the four zoning cases before HPRB on October 1st, 2007.

Motion: Mr. Holmes moved/Mr. Alberti seconded a motion to recommend the ANC 6A request that the City Council adopt the following provisions:

1. to ensure that no funds shall be expended for office equipment provided for the use of Commissioners away from the Commission office. Exceptions may be sought through a ruling by the ANC Office, based upon publicly announced criteria;
2. to require 30-day notice to the local ANC (or any ANC located within 200 feet of the proposed site) of any consideration by the Public Charter School Board of a possible location of a new charter school or the expansion of an existing charter school;
3. to adequately fund the ANCs, preferably at the level adopted in the original authorizing legislation; and
4. to amend Section 16 (f) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975 (DC Law 1-21; D C Official Code 1-309.13 (f) so that the second sentence reads as follows: "No expenditure of any amount shall be made without the specific authorization of the Commission; provided, however, that a Commission may provide reimbursements for purchases made with credit cards."

The motion was accepted without objection.

The meeting was adjourned at 9:04 pm.

D TAB 23

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 06-33

Z.C. Case No. 06-33

(Text Amendments – 11 DCMR)

(Parking for Historic Resources)

July 9, 2007

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), having held a public hearing and referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of the adoption of amendments to Chapter 21 of the Zoning Regulations (Title 11 DCMR). The proposed amendments clarify parking requirements for historic landmarks and buildings found to be contributing to an historic district (“historic resources”). The Commission took final action to adopt the amendments at a public meeting held on July 9, 2007.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

Although the current regulations clearly exempt historic resources from having to provide additional on-site parking due to a change of use for which more parking is required, it is unclear whether this exemption also applies when more parking is required as a result of the physical expansion of the structure. The text amendments are necessary to remove this ambiguity.

Description of Text Amendments

This rulemaking was initiated by the Office of Planning (“OP”). The text amendments set clear standards for when parking requirements apply to additions to historic resources and when they do not. The amendments only require additional parking when an increase in gross floor area would require the provision of four or more parking spaces. Even when that is the case, the amendments provide for special exception relief.

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Relationship to the Comprehensive Plan

The amendments are not inconsistent with the goals of the District Elements of the Comprehensive Plan for the National Capital and are consistent with §§ HP-2.4.1 through 2.4.5, which advocate appropriate adaptation and rehabilitation of historic structures through compatible development. The text amendments promote these goals of historically-sensitive rehabilitation by providing clear relief from aspects of the parking regulations.

Public Hearing and Proposed Action

The Commission held a public hearing on November 27, 2006 and took proposed action on April 9, 2007 to approve the advertised text, except for some minor changes in language and numbering suggested by the Office of the Attorney General ("OAG"). A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 11, 2007, at 54 DCR 4508, for a 30-day notice and comment period. Two comment letters were received, one from the law firm of Pillsbury, Winthrop, Shaw, Pittman and the other from the law firm of Holland & Knight.

Both comment letters suggested that the proposed changes are not necessary and should not be adopted. Both went on to provide alternative language for the Commission to consider if the text amendments were pursued. Both strongly recommended allowing mechanical parking structures to meet parking requirements for historic resources. They suggested expanding the conditions under which parking requirements are waived to include lack of access to curb cuts and vertical-only additions. They also recommended raising the minimum threshold number of parking spaces to greater than four.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated May 31, 2007, found that the proposed text amendments would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

OAG has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 9, 2007, including one non-substantive change made to the wording of new § 2120.3. The change was made at the suggestion of OAG to improve the clarity of the provision. In response to the two comments received, the Commission continues to believe that the current regulations are not sufficiently clear and that the proposed text provides needed protection of historic resources and sufficient relief for extenuating circumstances. The Commission notes that OP intends to examine the use of mechanized parking structures and, if appropriate, will address the subject in a future text amendment.

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Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 21 of the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underline, and deleted wording is shown in ~~strike through~~ lettering, except for Part D, which is all new text and therefore not annotated:

A. Amend § 2100.4 as follows:

- 2100.4 ~~Except as provided in § 2100.5,~~ **for historic resources as defined in § 2120.2,** when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use that existed immediately prior to the vacancy, parking spaces shall be provided for that additional requirement in the amount necessary to conform to § 2101.

B. Delete § 2100.5.

C. Amend § 2100.6 as follows:

- 2100.6 **Except as provided in § 2120.3,** ~~When~~ the intensity of a building or structure existing before May 12, 1958, is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement specified in § 2101, parking spaces shall be provided for the addition, subject to §§ 2100.7 through 2100.9.

D. Add a new § 2120, "Parking for Historic Buildings," as follows:

- 2120.1 This section sets forth the circumstances under which existing and new uses in historic resources and additions thereto are exempt from providing parking and shall not apply to new unattached structures constructed on the same lot as a historic resource.
- 2120.2 For the purposes of this section, a historic resource is a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located.
- 2120.3 A historic resource and any additions thereto are exempt from the requirement of § 2100.4 to provide additional parking as a result of a change of use and

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from the requirement of § 2100.6 to provide additional parking as a result of an increase of intensity of use, except that parking shall be required for any addition where:

- (a) The gross floor area of the historic resource is being increased by 50% or more, and
- (b) The parking requirement attributable to the increase in gross floor area is at least four (4) spaces.

2120.4 Any parking provided for a historic resource in excess of that which existed at the time the historic resource was listed in the District of Columbia Inventory of Historic Sites or the historic district was created shall be exempt from § 2115, and §§ 2117.5 and 2117.6.

2120.5 Parking spaces provided for a historic resource shall be a minimum of eight feet (8 ft.) in width and sixteen feet (16 ft.) in length exclusive of access drives, aisles, ramps, columns, and office and work areas. All required parking spaces shall be clearly striped and lined. Durable all-weather materials shall be used. Striping shall be maintained for as long as the parking spaces requiring the striping are in existence.

2120.6 The Board of Zoning Adjustment may grant relief from all or part of the parking requirements of this section if the owner of the property demonstrates that, as a result of the nature or location of the historic resource, providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. The Board shall grant only the amount of relief needed to alleviate the difficulty proved. The applicant shall also demonstrate compliance with the general special exception standard set forth in § 3104 and shall address each of the following criteria as part of its presentation to the Board:

- (a) Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;
- (b) Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood;
- (c) Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete; and

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- (d) Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation.

2120.7 Prior to taking final action on an application, the Board shall refer the application to the D.C. Department of Transportation for review and report.

Vote of the Zoning Commission taken at its public meeting on April 9, 2007, to **APPROVE** the proposed rulemaking: **5-0-0** (Carol Mitten, John G. Parsons, Anthony J. Hood, Michael G. Turnbull, and Gregory Jefferies to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 9, 2007, by a vote of **3-0-2** (Carol Mitten, Anthony J. Hood, and John G. Parsons to adopt; Michael G. Turnbull and Gregory Jefferies, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on ~~SEP 14 2007~~.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

ORDER NO. 06-33

Z.C. Case No. 06-33

(Text Amendments – 11 DCMR)

(Parking for Historic Resources)

July 9, 2007

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

D TAB 24

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 07-03

Z.C. Case No. 07-03

(Text Amendments – 11 DCMR)

(Minimum lot dimensions in the R (Residential Districts))

July 9, 2007

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing and referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of an amendment to § 401.1 of the Zoning Regulations (Title 11 DCMR). The amendment clarifies that a building on a lot with less lot area or width than became permitted as of May 12, 1958 may not be expanded or replaced to house a new use, if that use requires more lot area or width than exists on the lot.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007, at 54 DCR 5331, for a 30-day notice and comment period.

The Commission took final action to adopt the amendment at a public meeting held on July 9, 2007.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

On May 12, 1958, the Zoning Commission adopted the current version of the Zoning Regulations. Among the new provisions were regulations establishing minimum lot area and width requirements in residence zones. The Commission also adopted what is now § 401.3, which permits the construction of new buildings and the enlargement of existing buildings on lots that did not conform with these new requirements, as long as all other provisions of the Zoning Regulations were met. The Board of Zoning Adjustment recently held that § 401.3 not only permits the expansion and replacements of buildings on lots that did not comply with a specific lot or area requirement adopted in 1958, but also permits such construction to disregard all lot and area requirement, whenever adopted. The BZA’s interpretation thus recognizes a wholesale exemption from lot control for the nonconforming lots, while conforming lots must

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continue to abide by such limitations. The amendment adopted in this order is intended to remove the ambiguity that led to this result.

Description of Text Amendment

This rulemaking was initiated by the Office of Planning. The text amendment limits the exemption from complying with the lot area and width requirements of § 401.3 to just the nonconforming aspect of the lot that made it substandard in 1958. Thus, although a building existing as of May 1, 1958 may still be expanded or replaced by a new building, even though its lot is smaller or narrower than required as of that date, the new text provides that this may not occur if there will also be a change to a use that requires more lot area or width than the lot currently possesses.

Relationship to the Comprehensive Plan

The amendment is not inconsistent with the goals of the District Elements of the Comprehensive Plan. No Comprehensive Plan sections deal specifically with residential lot size, but the change is consistent with the general themes of the Plan including the protection of residential character and the encouragement of compatible land uses. This text amendment would promote these goals of by confirming the existing lot size requirements for all types of structures and uses.

Public Hearing and Proposed Action

The Commission held a public hearing on April 5, 2007 and took proposed action on May 14, 2007 to approve the advertised text. A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 25, 2007 at 54 DCR 5331, for a 30-day notice and comment period.

At the time of it took final action, the Commission noted a letter received from the AppleTree Institute for Education Innovation requesting an exemption from the rule. Just days before the Zoning Commission took emergency action to establish new lot area and width requirements for charter schools, AppleTree filed an application for a building permit to expand a building to house that use. The application was denied because the lot did not meet the new requirements. AppleTree successfully appealed to the Board of Zoning Adjustment, arguing that the new requirements did not apply because its building was on a substandard lot and therefore could be expanded pursuant to the lot area exception granted under § 401.3. As this rulemaking makes clear, it was not the Commission's intent to apply the new lot area requirement only to schools on conforming lots. And though the issuance of this order might negate AppleTree's successful appeal, it does not preclude it from establishing the use. Rather, a charter school that cannot meet the lot or other area requirements in residence zones may seek a special exception. The BZA, through its public hearing process, is in a far better position to decide the affect of permitting AppleTree to establish a charter school on this lot than the Commission.

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AppleTree submitted a second letter during the comment period contending that it should not "penalize" because the Zoning Administrator denied the building permit. The Commission decision to permit special exemption relief for properties with noncompliant lots was made to penalize such lot owners, but rather to offer a means to obtain a building permit without having to meet the stricter standards of a variance. Since the special exception option existed for AppleTree since the day the Commission took emergency action, so that any injury to AppleTree resulting from the need to now begin such proceedings is entirely self-inflicted.

The proposed rulemaking was also referred to NCPC pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated May 31, 2007, found that the proposed text amendment would not adversely affect the federal interests or be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General determined that this rulemaking meets its standards of legal sufficiency; however it recommended adding a reference to the replacement of an existing building since the § 401.1 exemption includes both the expansion *and* replacement of a building on a substandard lot.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 9, 2007. No substantive changes were made to the advertised prepared text, except for the additional language suggested by the Office of the Attorney General. The Commission found that the proposed text amendment was in conformance with the original intent of § 401.1 and the lot size requirements of the regulations.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 21 of the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underlined lettering:

1. Amend § 401.1 to read as follows:

401.1 Except as provided in chapters 20 through 25 of this title **and in the second sentence of this subsection**, in the case of a building located, on May 12, 1958, on a lot with a lot area or lot width, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title. **Notwithstanding the above, the lot area requirements of § 401.3 must be met**

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 07-03

Z.C. CASE NO. 07-03

PAGE 4

when the building is being converted to a use or replaced by a building intended to house a use that would require more lot area or lot width than is on the building's lot.

Vote of the Zoning Commission taken at its public meeting on May 14, 2007 to **APPROVE** the proposed rulemaking: **5-0-0** (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jefferies, and Michael G. Turnbull to approve).

This order was **ADOPTED** by the Zoning Commission at its public meeting on July 9, 2005 by a vote of **5-0-0** (Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood, Gregory N. Jefferies, and John G. Parsons to approve).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on SEP 14 2007.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 07-03

Z.C. Case No. 07-03

(Text Amendments – 11 DCMR)

(Minimum lot dimensions in the R (Residential Districts))

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

D TAB 25

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

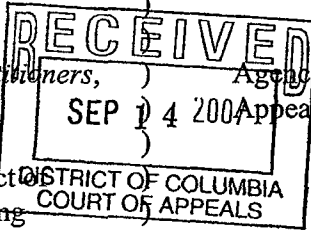
Joseph Jorgens, III, et al.,)

v.)

Government of the District of)
Columbia, Board of Zoning)
Adjustment,)

Petitioners,)

Respondent.)



Agency Case No. 17532

Appeal No. 07 AA 943

NOTICE OF INTENTION TO INTERVENE

AppleTree Institute for Education Innovation, Inc. ("AppleTree") is the appellant who prevailed in the July 25, 2007 decision of the Board of Zoning Adjustment that Petitioners have asked this Court to review in the above-captioned matter. Accordingly, AppleTree was a "party to the agency proceeding," and, pursuant to Rule 15(d) of this Court's rules, it hereby provides timely notice of its intention to intervene on the side of the Respondent.

Respectfully Submitted,

Dated: September 14, 2007

Mark A. Perry / MPM

Mark A. Perry, D.C./Bar No. 438203

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MPerry@gibsondunn.com

*Attorneys for Intervenor AppleTree Institute for
Education Innovation, Inc.*

CERTIFICATE OF SERVICE

I certify that on September 14, 2007, copies of the foregoing Notice of Intention to Intervene were sent by first-class U.S. Mail to the following individuals:

Donald R. Dinan, Esq.
Roetzel & Andress, LPA
1300 Eye Street, N.W.
Suite 400 East
Washington, D.C. 20005

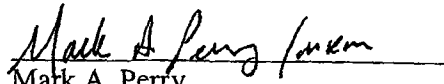
Todd Kim, Esq.
Solicitor General
Office of the Attorney General
Suite 600 South
441 Fourth Street, N.W.
Washington, D.C. 20001

George R. Keys, Jr., Esq.
Jordan & Keys, LLP
1400 16th Street, N.W., Suite 520
Washington, D.C. 20036

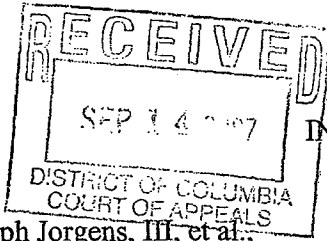
Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 20013

Single Member District Commissioner 6A04
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 20013

Tommy Wells, City Councilmember, Ward Six
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D TAB 26



IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

Joseph Jorgens, III, et al.,

Petitioners,

v.

Government of the District of
Columbia, Board of Zoning
Adjustment,

Respondent.

)
)
)
)
)
)
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)

Agency Case No. 17532
Appeal No. 07 AA 943

**INTERVENOR APPLETREE'S MEMORANDUM IN OPPOSITION TO
PETITIONERS' MOTION FOR STAY**

AppleTree Institute for Education Innovation, Inc. ("AppleTree") is the appellant who prevailed in the decision of the Board of Zoning Adjustment ("BZA") that Petitioners have asked this Court to review. Along with this Memorandum in Opposition to Petitioners' Motion for Stay, AppleTree is filing a notice of its intention to intervene in this Court, which is timely under Rule 15(d).

This Court should deny Petitioners' Motion for Stay, because they have not even addressed the criteria that are relevant to a decision whether to grant a stay pending review.

As an initial matter, Petitioners have not complied with Rule 18(a)(2), because they have shown neither that it was "impracticable" to seek a stay first from the BZA, nor that the BZA has denied such a motion.

More importantly, Petitioners have failed to meet their burden of showing they are "likely to succeed on the merits" of their appeal — something they "must show" in order "[t]o prevail on a motion for stay." *Barry v. Washington Post Co.*, 529 A.2d 319, 320–21 (D.C. 1987). Even if the other three factors of the requisite analysis "strongly favor[ed]" a stay, Petitioners would still need to make at least a "a substantial showing of likelihood of success." *Id.* (quotation marks omitted). But Petitioners do not address the likelihood of their success on the merits.

Indeed, Petitioners — who were not parties to the proceeding before the BZA — have not even identified what the merits of their appeal will be. They briefly summarize the BZA’s reasoning about the applicability of section 401.1 of the Zoning Regulations (Petr. Mem. at 2), but they do not allege that there is anything wrong with that reasoning.¹ That failure is sufficient to deny their motion for stay.

Petitioners cursorily address one of the other factors in the stay analysis, claiming that they would “suffer immediate and irreparable harm” without a stay (Petr. Motion at 2), but the only harm they allege is the potential that their appeal “will be rendered effectively moot” unless AppleTree is later ordered to undo any construction done while the appeal is pending (*id.*). That concern is premature, since the Department of Consumer and Regulatory Affairs has not yet issued a building permit to AppleTree. Even if that were not true, however, the potential mootness of a yet-to-be-articulated legal challenge cannot suffice to show “irreparable injury.” See *Thornton v. Norwest Bank of Minnesota*, 860 A.2d 838, 842 (D.C. 2004) (holding that a conclusory allegation of a “premature, wrongful, and illegal” eviction did not show irreparable injury).

¹ It might be inferred that Petitioners believe section 401.1 was implicitly altered during a 2006 rulemaking of the Zoning Commission. If that is their objection, however, it is exceedingly unlikely that they would prevail on the merits. As this Court has explained, the “BZA is charged with interpreting the zoning regulations,’ and the courts ‘must defer to the BZA’s interpretation of those regulations, related to matters within its expertise, unless that interpretation is plainly wrong or inconsistent with the regulations or with the statute under which the BZA acts.’” *Dist. of Columbia v. L.G. Indus.*, 758 A.2d 950, 956 (D.C. 2000) (quoting *Concerned Citizens of Brentwood v. D.C. Bd. of Zoning Adjustment*, 634 A.2d 1234, 1242 (D.C. 1993)). Moreover, as the BZA explained in the challenged order (at page 7), even the Chair of the Zoning Commission (who dissented from the BZA’s decision on the question of parking) believed that that section 401.1 could not be read in the way that Petitioners seem to prefer.

Petitioners also claim that AppleTree would not be prejudiced by a stay because they “submit[]” that AppleTree’s proposed “construction period would exceed such time as would allow Apple[T]ree to open before September, 2009.” (Petr. Mem. at 3.) That submission is based on rank and erroneous speculation. In fact, as explained in the Declaration of Daniel J. deBettencourt attached to this Memorandum as Exhibit A, AppleTree’s planned construction is expected to take only 184 days. Thus, a stay would almost certainly require AppleTree — which purchased the building more than two years ago — to wait yet another year before it could open a school there.

Finally, Petitioners argue that the public interest favors a stay because the Zoning Commission has recently amended section 401.1 of the Zoning Regulations and a stay would “allow the public purpose of the Zoning Regulations ... , as already pronounced and ruled upon by the Zoning Commission.” (Petr. Mem. at 3.) But the rulemaking Petitioners invoke (Zoning Commission Case No. 07-03) has not yet been published in the *D.C. Register*, and thus has not taken effect. *See* 11 D.C. Mun. Reg. § 3028.9. Moreover, Petitioners do not explain why, once the rulemaking does become effective, it would be in the public interest for the new rule to apply retroactively to a building-permit application that was filed at least 18 months before the Zoning Regulations were amended, and which the BZA adjudicated at least several weeks before the new rule went into effect. In reality, in the District of Columbia, where demand for additional charter school classrooms is perennially high, the public interest strongly favors the opening of a public charter school sooner rather than later.

For the foregoing reasons, Petitioners' Motion for Stay should be denied.

Respectfully Submitted,

Dated: September 14, 2007


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*Attorneys for Intervenor AppleTree Institute for
Education Innovation, Inc.*

EXHIBIT A

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

Joseph Jorgens, III, et al.,	)	
	)	
<i>Petitioners,</i>	)	Agency Case No. 17532
v.	)	Appeal No. 07 AA 943
	)	
Government of the District of	)	
Columbia, Board of Zoning	)	
Adjustment,	)	
<i>Respondent.</i>	)	

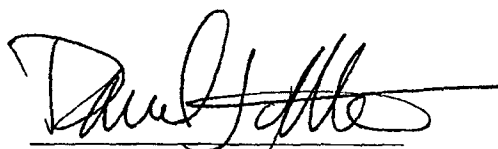
**DECLARATION OF DANIEL J. deBETTENCOURT
IN SUPPORT OF INTERVENOR APPLETREE'S OPPOSITION TO
PETITIONERS' MOTION FOR STAY**

Daniel J. deBettencourt hereby states:

1. I am a licensed architect, and I prepared the proposed renovation plans that were the subject of the building-permit application addressed by the Board of Zoning Adjustment in this matter. This declaration is based upon my personal knowledge and experience.
2. When the original application for a building permit was filed in February 2006, the applicant had already engaged a construction contractor — the Turner Special Projects Division of Turner Construction — and had established a budget and schedule for construction.
3. The established schedule contemplated a total construction period of 184 days, including contingency for winter weather related delays.
4. Based on my twenty five years of experience, including involvement with scores of projects of similar scope throughout the region, I believe that schedule is reasonable for the proposed project.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 13, 2007


Daniel J. deBettencourt, AIA

CERTIFICATE OF SERVICE

I certify that on September 14, 2007, copies of the foregoing opposition to Petitioners' Motion for Stay were sent by first-class U.S. Mail to the following individuals:

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Roetzel & Andress, LPA
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Washington, D.C. 20005

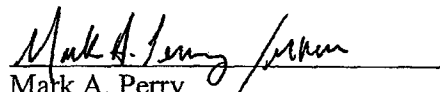
Todd Kim, Esq.
Solicitor General
Office of the Attorney General
Suite 600 South
441 Fourth Street, N.W.
Washington, D.C. 20001

George R. Keys, Jr., Esq.
Jordan & Keys, LLP
1400 16th Street, N.W., Suite 520
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Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, D.C. 20013

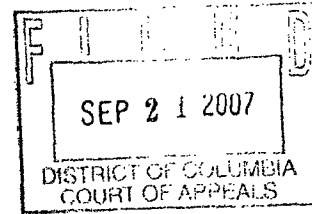
Single Member District Commissioner 6A04
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Washington, D.C. 20013

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MPerry@gibsondunn.com

D TAB 27

**District of Columbia
Court of Appeals**



No. 07-AA-943

JOSEPH JORGENS, III, *et al.*,

Petitioners,

v.

BZA17532

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT,

Respondent,

and

APPLETREE INSTITUTE
FOR EDUCATION INNOVATION,

Intervenor.

BEFORE: Glickman and Thompson, Associate Judges, and Newman, Senior Judge.

O R D E R

On consideration of petitioners' emergency motion for stay, intervenor's opposition thereto, and it appearing that the record on appeal has been filed, it is

ORDERED that petitioners' motion for stay is denied. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). It is

FURTHER ORDERED that petitioners' brief and the appendix including the documents required by D.C. App. R. 30 (a)(1), shall be filed within 40 days from the date of this order, and the briefs of respondent and intervenor shall be filed within 30 days thereafter. *See* D.C. App. R. 31.

PER CURIAM

Copies to:

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1300 Eye Street, NW, Suite 400 East
Washington, DC 20005

Mark A. Perry, Esquire
1050 Connecticut Avenue, NW, Suite 900
Washington, DC 20036

Todd S. Kim
Solicitor General- D.C.

lw

D TAB 28

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 23, 2007

+ + + + +

The Special Public Meeting
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Ruthanne G. Miller,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC D. LOUD Board Member
SHANE DETTMAN Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

GREGORY N. JEFFRIES Vice Chairman
CURTIS L. ETHERLY, JR. Commissioner
MICHAEL G. TURNBULL Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLY BAILEY Sr. Zoning Specialist
JOHN NYARKU Zoning Specialist

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

JANICE SKIPPER, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on October 23, 2007.

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<u>4. MOTION FOR STAY TO APPEAL</u> <u>NO. 17532 OF APPLETREE INSTITUTE</u> <u>FOR EDUCATION INNOVATION, INC.</u>	98
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WASHINGTON, D.C. 20005-3701

1 taken from 12:29 p.m. to 12:42 p.m.]

2 CHAIRPERSON MILLER: Okay. We're
3 back on the record. We have two more cases to
4 do, quickly, in our decision meeting.

5 MR. MOY: Thank you, Madam Chair.
6 With that, the next action of the board is to
7 act on the Motion for Stay to Appeal No. 17532
8 of AppleTree Institute for Education
9 Innovation, Inc.

10 This motion is to the original
11 appeal, which was pursuant to 11 DCMR 3100 and
12 3101 from the administrative decision of the
13 Zoning Administrator, DCRA, to require BZA
14 special exception approval for a proposed
15 addition to an existing building to
16 accommodate a public charter school use.

17 The appellant alleged that the
18 Zoning Administrator erroneously relied upon
19 the Zoning Commission's February 13, 2006
20 emergency rulemaking to require additional on-
21 site parking spaces.

22 The subject property is located in

1 the R-4 District at premises 138 12th Street,
2 N.E., Square 998, Lot 820.

3 Very briefly, this was originally
4 scheduled for October 2nd, 2007. Noting the
5 lack of a quorum and a concurring majority
6 vote on the members of the board, pursuant to
7 section 3125.1, the board rescheduled its
8 decision to October 23rd. So with that, the
9 staff will just say that the board is to act
10 on the merits for the request for a stay.

11 CHAIRPERSON MILLER: Thank you,
12 Mr. Moy.

13 Mr. Etherly.

14 COMMISSIONER ETHERLY: Thank you,
15 Madam Chair. I'd like to take this
16 opportunity to perhaps remind, although I'm
17 fairly certain that my colleagues will have no
18 need to be reminded, this is a case that has
19 had a long and, in some instances, tortuous
20 history with this board, especially in recent
21 months.

22 I wanted to remind my colleagues

1 of this board's action on a Motion for
2 Reconsideration on the part of ANC 6A as it
3 pertained to this board's decision, and with
4 regard to a couple of specific grounds, chief
5 amongst which for our concerns today were
6 concerns regarding disclosure issues and/or
7 bias or recusal issues by virtue of my
8 participation on the case.

9 This board I think in very clear
10 and excruciating detail, but necessarily so,
11 found in the alternative with regard to that
12 motion. I nevertheless, for purposes of this
13 motion for stay before us today, wanted to
14 nevertheless raise that issue again, highlight
15 to my board members that there does exist this
16 past history, if you will.

17 I will note for the record,
18 although I am sitting in this case in my
19 capacity as a participating Board of Zoning
20 Adjustment member, subsequent questions about
21 the particular alleged conflict of interest
22 matter did come before my attention pursuant

1 to my Zoning Commission confirmation process.

2 So I wanted to again highlight
3 this for my board members. I continue to
4 stand by this board's decision of some weeks
5 back with regards to the finding that there
6 were absolutely no grounds for a recusal.
7 there were no grounds with respect to bias as
8 illustrated by the ANC in that particular
9 matter, and I think those same facts continue
10 to apply today.

11 For the sake of the record, I will
12 disclose that I was a former charter school
13 chairperson with respect to Washington Math,
14 Science and Technology Public Charter High
15 School. At one point in its earlier
16 existence, Washington Math Science was
17 affiliated with AppleTree Institute.

18 It is no longer the case, and has
19 not been affiliated with that institution for
20 many years. But I want to make that
21 disclosure.

22 As my colleagues will recall, one

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WASHINGTON, D.C. 20005-3701

1 of the concerned alleged by ANC 6A with
2 respect to its Motion for Reconsideration also
3 involved the advocacy, if you will, of an
4 organization which I serve on as a board
5 member, an organization which participated
6 with regard to some advocacy efforts around
7 the Zoning Commission's deliberations on this
8 matter.

9 Those advocacy efforts were
10 unknown to me, I was not involved in those
11 advocacy efforts, in any way, shape or form,
12 nor was my name or any other reflection of my
13 personage, if you will, employed in those
14 advocacy efforts.

15 Nevertheless, I wanted to
16 highlight that background for the benefit of
17 my colleagues. I believe, continue to believe
18 that I can sit impartially on any and all
19 matters as they relate to AppleTree Institute
20 and this particular matter, in particular, but
21 wanted to highlight it again for my
22 colleagues, because I think at this particular

1 point it's perhaps just most important to be
2 sure that all of this is front and center, in
3 front of this board as we continue with
4 further action on this case, and clear in
5 front of the public, so should there be any
6 concerns that my colleagues may have, as we're
7 sitting in a decision meeting at this point,
8 if there are any concerns or questions that my
9 colleagues may have, I would be more than
10 happy to make myself available to answer any
11 questions at this point before proceeding on
12 the substance of the matter before us today.

13 Thank you, Madam Chair.

14 CHAIRPERSON MILLER: Thank you,
15 Mr. Etherly. I have absolutely no questions
16 for you.

17 MEMBER LOUD: Neither do I, Mr.
18 Etherly.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. So I think we can proceed to address the
21 motion for stay pretty expeditiously. I would
22 note that it is filed by individuals who are

1 not individually before the board in the
2 proceedings below, but they were a part of a
3 larger party that was the Northeast Neighbors
4 for Responsible Growth, and therefore I think
5 that can consider this Motion for Stay unless
6 anyone has any other concerns.

7 Okay. I would also -- it's a stay
8 of our Order 17532, and I would like to note
9 that it's a stay pending appeal before the
10 Court of Appeals, and this party has also
11 filed the same stay before the Court of
12 Appeals, and the Court of Appeals has already
13 denied the motion for a stay on the basis of
14 Barry v. Washington Post Company and I would
15 suggest that we do the same.

16 I don't know if anyone wanted to
17 make comments. In general, the grounds for a
18 stay are a substantial likelihood that the
19 appellant will succeed on the appeal, whether
20 the denial of the stay would result in
21 irreparable injury to the appellant, whether
22 granting a stay would prejudice other parties

1 and where lies the public interest.

2 And the only prong of that test
3 which the motion addressed was irreparable
4 injury and the movant is saying that it would
5 be irreparable injury because our order would
6 allow the issuance of permits which would then
7 lead to construction and then it would be an
8 extraordinary remedy for AppleTree to have to
9 tear down the work if the Court of Appeals
10 ruled the other way.

11 So I don't believe that that's
12 ever been, that scenario has been found to be
13 irreparable in the context of a stay.

14 So that's the only thing I want to
15 say specifically about the facts alleged here.
16 I'm ready to deny it. Others?

17 [No response]

18 CHAIRPERSON MILLER: Okay. I
19 think it's fairly sufficient, if not very
20 sufficient, that the court has already ruled
21 before us on this and found that a stay should
22 not be granted. So we would agree with the

1 court in that matter and defer to the court.

2 All those in favor -- wait a
3 second. I didn't move it yet. I would move
4 to deny the appeal to stay Order 17532,
5 pending appeal to the Court of Appeals. Do I
6 have a second?

7 MEMBER LOUD: Second.

8 CHAIRPERSON MILLER: Further
9 deliberation?

10 [No response]

11 CHAIRPERSON MILLER: All those in
12 favor say aye.

13 [Chorus of ayes]

14 CHAIRPERSON MILLER: All opposed?
15 All those abstaining?

16 MR. MOY: The staff will record
17 the vote as three to zero to two. This is on
18 the motion of the Chair, Ms. Miller, to deny
19 the Motion for Stay, seconded by Mr. Loud.
20 Also in support of the motion, Mr. Etherly.
21 We have no Zoning or other board member
22 participating.

D TAB 30

Department of Consumer and Regulatory Affairs
Permit Center

941 North Capitol St. NE Room 2100

Washington DC 20002

Tel: (202) 442-4589

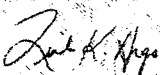
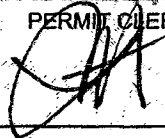
B

Building Permit

THIS PERMIT IS VALID ONLY FOR THE PREMISES
OF THE PROJECT ADDRESS

PERMIT NO. 89587

DATE: 10/26/2007

ADDRESS OF PROJECT: 138 12TH ST NE		SSL: SQ: 0988 WARD: 6 ZONE R4	SK: LOT: 820
DESCRIPTION OF WORK: INTERIOR RENOVATION EXISTING 2 STORY BLDG. DEMO, 3 STORY ADDITION WITH BASEMENT WITH BZA#17632 - JULY 25, 2007.			
PERMIT TYPE: ADDITION/ALTERATION/REPAIR	PLANS (Y/N): Y	EXISTING USE: ASSEMBLY USES, OTHERS	PROPOSED USE: Education
PERMISSION IS HEREBY GRANTED TO OWNER: apple tree institute		PERMIT FEE: \$6,104.00	
AGENT NAME: MIKE WILSON 301-731-4767			
CONDITIONS / RESTRICTIONS: ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT BUILDING CODES; ALL CONSTRUCTION DONE ACCORDING TO THE CURRENT ZONING REGULATIONS; SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED; AS PER HERB APPROVAL & PER STAMPED PLANS.			
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639:			
Acting DIRECTOR:  Linda K. Argo	PERMIT CLERK: 		EXPIRATION DATE: 10/25/2008

CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all the work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one (1) year of the date appearing on this permit or this permit is automatically void. If work is not started, any application for partial refund must be made within six months of the date appearing on this permit.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.

NOTIFY THE BUILDING INSPECTOR THE DAY THE WORK STARTS. PHONE (202) 442-9557 at 941 NORTH CAPITOL ST NE WASHINGTON DC 20002

Separate permits are required for all Plumbing, Refrigeration, Gas Fitting, and Electrical Work.