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APPEAL OF:)
)
Advisory Neighborhood Commission 6A from the)
Administrative Decision of DCRA on)
Building Plan Review Status 3758 A 2006 on)
Approval of Zoning and Environmental Disciplines)

Advisory Neighborhood Commission 6A (ANC6A) hereby requests that the Board of Zoning Adjustment (the Board) GRANT the Appeal from the Administrative Decision of the Department of Consumer and Regulatory Affairs Building and Land Regulation Administration approval of the Zoning and Environmental Disciplines at 138 12th St NE and in support of its appeal states the following:

The Department of Consumer and Regulatory Affairs (DCRA) erred in its decision to grant Zoning and Environment Disciplines contained in the Building Plan Review Status Tracking Number 3758 A 2006. The property, which is the subject of this appeal, is located at 138 12th St NE. The property is in an R-4 District. The proposed purpose of the property is as a public charter school. The appeal is requested for two reasons: (1) DCRA has failed to adequately review or evaluate the environmental impact as required by D.C. Law 8-86 "District of Columbia Environmental Policy Act of 1989" and the rules promulgated by DCRA for projects of this magnitude and scope; and (2) the property does not meet the lot size or lot width requirements stipulated by Title 11 DCMR §401.3 as recently amended by Z.C. Order No. 06-06.

- 1) DCRA has failed to adequately review or evaluate the environmental impact as required by D.C. Law 8-86 “District of Columbia Environmental Policy Act of 1989” and the rules promulgated by DCRA for projects of this magnitude and scope.

DCRA has failed to require AppleTree Institute for Education Innovation (AT), the owner, to complete an EISF and as a consequence, failed to complete an adequate review of the environmental impacts of this project as required by D.C. Law 8-86.

CASE NO. 17769
EXHIBIT NO. 2

Board of Zoning Adjustment
District of Columbia
CASE NO. 177609
EXHIBIT NO. 22

The current owner plans to convert the current building at 138 12th St NE into a charter school that can accommodate 72 students plus staff. Their plans include the complete demolition and reconstruction of the interior of the current structure, the excavation of a basement over which a 3,240 square foot three-story addition to the current structure will be built and the construction of a children's play area in the rear. The entire rear of the property is currently paved asphalt, which would be removed during the excavation of a basement and construction of a play area.

Pursuant to the Environmental Policy Act Regulations (Title 20 DCMR, Ch. 72), no agency is permitted to issue a license, permit, certificate or authorization until the environmental impact review is complete. D.C. Law 8-86 "District of Columbia Environmental Policy Act of 1989" requires that an Environmental Impact Statement be prepared whenever a proposed 'major' action is likely to have substantial negative impact on the environment. A 'major' action is defined by D.C. Law 8-86 as a project that costs over 1 million dollars based on 1989 dollars adjusted annually according to the Consumer Price Index. One million dollars in 1989 in dollars is currently equivalent to 1.64 million dollars. Rules promulgated by DCRA require that applicants complete an Environmental Impact Screening Form (EISF) whenever the total cost of the project exceeds 1.5 million dollars, or the project will dispose of hazardous substances as defined in 20 DCMR §7200 or will produce emissions of air pollutants.

Based on the plans submitted with the application, a realistic estimate of the total cost to demolish and rebuild the interior and to construct a large addition suitable for use as a public charter school will be in excess of 2 million dollars. This figure is supported by the applicant who, in a public statement posted on the web site of the AppleTree Institute for Education Innovation (<http://www.appletreeinstitute.org/aboutUs/mediaRoom/12thStreetNEFAQs.cfm>), provides the following assessment of the cost:

Q. How much will the project cost?

AppleTree Institute purchased the building from the Knights of Saint John and Ladies Auxiliary for \$1,500,000. Total renovation and soft costs are \$2,300,000.¹

The AppleTree Institute for Education Innovation reported the total cost of the project as 1.25 million dollars on its building permit application. This figure dramatically understates the true cost of this project. Had DCRA adequately evaluated the total project cost, as reflected by the project plans, it would have recognized the discrepancy between a realistic estimate of the total cost and the estimate reported by the applicant. Instead, DCRA erroneously relied on the total cost figure reported by the applicant, which circumvented the need for an Environmental Impact Screen Form. The EISF is designed to help the District government agencies determine whether or not a project would likely result in adverse environmental impacts during its construction phase.

¹ See Attachment 1- Statements from the AppleTree Institute for Education Innovation web site

The project will require the disposal of hazardous materials. The removal of asphalt will expose underlying hazardous material and the planned excavation will expose neighbors to toxic dust, if not performed properly. The building was built for the offices of Steuart Petroleum, in approximately 1915 and uses for that purpose until sometime in the mid-1960s. While Steuart Petroleum occupied the property, they fueled vehicles from the site and maintained a substantial workshop for repair and maintenance of company vehicles in the rear yard. The workshop would have inevitable produced spillages of petroleum distillates. The workshop was razed in approximately 1969. The entire rear yard (more than 2,500 sq. ft. in area) was then paved for parking which encapsulated whatever environmental hazards may be present. This occurred prior to the enactment of current environmental laws.

- 2) The property does not meet the lot size or lot width requirements stipulated by Title 11 DCMR §401.3 as recently amended by Z.C. Order No. 06-06

The property is located in an R-4 District. The proposed use by the current owners is as a public charter school. The property is 4,230 sq. ft. in area with a width of 36 ft. Its prior use was as a 'private club'.

The permit issued by DCRA on October 26, 2007 does not comply with the Zoning Regulations, specifically the lot dimension requirements, in effect on that date - 'Any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued', 11 DCMR §3202.4.

Title 11 DCMR §401.3 as recently amended by Z.C. Order No. 06-06 (Charter Schools Test Amendments) stipulates that a property to be used as a 'public school' have a minimum lot size of 9,000 sq. ft. and a minimum lot width of 120 ft. Furthermore, Title 11 DCMR §401.1 as recently amended by Z.C. Order No. 07-03 (Minimum Lot Dimensions in the Residential Districts) stipulates that, even though the lot and building existed prior to 1958, it must meet the minimum lot area and minimum lot width requirements of §401.3 if the building is being converted to a use that requires more lot area and lot width than is on the building's lot. The lot area and lot width required for the conversion of use to a 'public charter school' is larger than that available on the lot at 138 12th St. NE.

The DCRA could not approve the Environmental Discipline prior to September 14, 2007 the effective date of Z.C. 07-03² because sufficient information to approve that discipline was not available until after that date. DCRA states in the November 15, 2007 'Notice of Revocation Building Permit No. 89587' that "...even though DDOE returned the plans to DCRA on October 25, 2007, it is DCRA's [sic] understanding that DDOE had, and still has not, completed its investigation with respect to the toxic waste issue". Furthermore, as we argue in 1), above, DCRA still has not compiled sufficient information with which to adequately evaluate the requirements of the Environmental Discipline.

² See Attachment 2 - Notice of Revocation Building Permit No. 89587

The Board's July 25, 2007 order addressing its decision on the Appeal No.17532 of the AppleTree Institute for Education Innovation does not authorize the issuance of building permits as of the date of that order. That order found that the DCRA erred in its issuance of building permits. The application for building permits could not be processed on effective date of the Board's order because the application was not sufficiently complete as required by the Zoning Regulations – "All application for building permits authorized by orders of the BZA may be processed in accordance with the Zoning Regulation in effect on the date those orders are promulgated: Provided, that all application for building permits shall be accompanied by the plans and other information required by §3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation" 11 DCMR §3202.6.

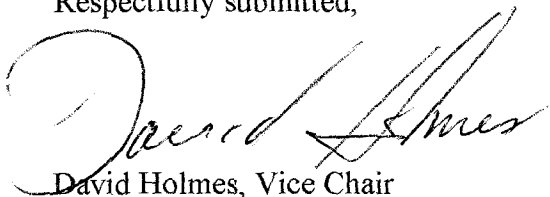
It is for these reasons that the construction authorized by the building permits issued on October 26, 2007 must comply with the Zoning Regulations governing lot area and lot width requirements in effect on that date. As we have shown, it does not comply with those regulations.

REQUEST FOR RELIEF

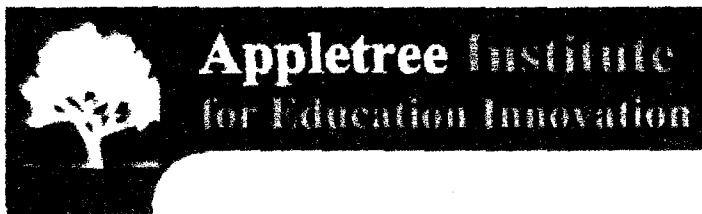
The appellant requests that the Board ORDER the Department of Consumer and Regulatory Affairs to:

1. Revoke the Zoning and Environmental Disciplines and any approved building and construction permits for the Permit No. 89587
2. Deny the pending zoning and certificate of occupancy requests based on the fact that the property under consideration does not be the minimum lot dimension requirements (lot area and lot width) of Title 11 DCMR §401.3.

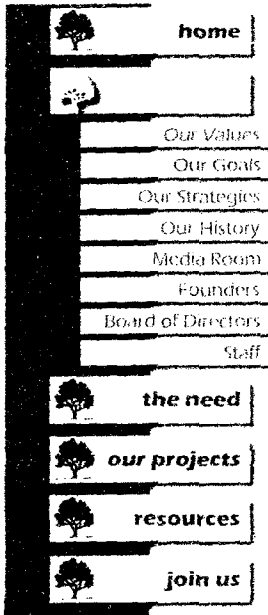
Respectfully submitted,



David Holmes, Vice Chair
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, DC 20013



ATTACHMENT 1



Frequently Asked Questions About AppleTree's Zoning Issue

Q. Why does AppleTree want a charter school to be in a residential neighborhood?
 Neighborhoods are where the children are.

Under the DC Zoning Ordinances, DC public charter schools have the same right as DC public schools to develop property throughout the city as a "matter of right." It is still a long and difficult process to develop a property, but doing so as a matter of right makes the process slightly less difficult. Given the many disadvantages that charters face in obtaining suitable facilities, this distinction makes a significant difference.

Many families want to have good, small schools that are close to their home, within walking distance. Historically, most schools were located in neighborhoods. Many of the older DCPS elementary schools were developed as neighborhood schools. (Now many of the oldest have been redeveloped into residences.) Larger schools, with large campuses, located away from neighborhoods are a recent phenomenon—since the 1960's.

Q. Why do we need a preschool charter program anyway? Is it daycare?
 Unfortunately, many young children in Washington, DC grow up with daily access to language, vocabulary or literature and they come school far behind their more advantaged peers.

By the 4th grade, most fall far behind, which is why 9 out of 10 4th grade students in DC public schools cannot read at a proficient level, as measured by the National Assessment of Educational Progress, also known as the Nation's Report Card.

High quality preschool, like AppleTree Early Learning Public Charter School, makes a huge difference in the trajectory of learning for these children. Quality programs develop young children's vocabulary (which is essential for later reading comprehension) and basic reading skills (identifying the letters of

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High quality preschool, like AppleTree Early Learning Public Charter School, makes a huge difference in the trajectory of learning for these children. Quality programs develop young children’s vocabulary (which is essential for later reading comprehension) and basic reading skills (identifying the letters of the alphabet, the sounds they represent, and understanding the way print is organized). They also develop their social and emotional skills so that they are ready to learn.

Preschool is not daycare. Preschool involves intentional, explicit, ongoing instruction and interactions between skilled instructors implementing a comprehensive, research-based instructional program that builds language and literacy skills.

Q. Won’t a preschool bring a lot of noise, traffic and people that will disrupt the neighborhood?
AppleTree plans two classrooms for 3 year-old children, and one classroom for 4 year-old children at 138 12th Street. Each classroom has eighteen children, meaning that 54 children will learn at this site. Our ratio of teachers to students is 1:6, meaning that nine full-time instructional staff will be working in the classrooms. Most of the teachers will commute using Metro, as they do at our preschool in Southwest.

Many of the children will come from the Lincoln Park neighborhood, so it is likely that they will

walk to school. Dropping off children and picking up children does bring extra traffic for a short time each day. It is also a time when most people are off to work for the day. There are a number of ways that preschools can minimize this disruption. For example, by having staff members meet the children at their cars and walk them into school, parents can say “good-bye” and reduce the drop-off to less than a minute.

Preschool children aren’t terribly noisy, and the high ratio of staff to students at AppleTree Early Learning Public Charter School ensures that much of the day they are engaged in meaningful interaction aimed at developing their language and literacy skills.

While we expect to use Lincoln Park, which will involve walking children to and from the Park, it will hardly be disruptive.

Q. How big is the school that AppleTree wants to build at 138 12th Street?

Our school will be about 8,800 square feet, and will occupy about 60% of the lot. Our building was constructed for commercial purposes in 1904, and it occupies a double lot. Our renovation plans call for us to add onto the rear of the building to bring the wall back to the same level as the two homes that abut our property, so our lot coverage will be the same as other buildings, and significantly less than some of the residences in the neighborhood. We will also add a third floor that will not be visible from the street (this has been validated by tests conducted by the Historic Preservation Review Board prior to their approval of our project.)

Q. How much will the project cost?

AppleTree Institute purchased the building from the Knights of Saint John and Ladies Auxiliary for \$1,500,000. Total renovation and soft costs are \$2,300,000.

Q. Who is likely to attend?

Children in the Lincoln Park neighborhood and from the neighborhoods east to RFK, west to the Capitol, north to H Street and south to Pennsylvania Avenue. Demand for public, high quality preschool programs is strong among all demographic groups. Many Capitol Hill families are on the waiting list of our other school in Southwest.

Q. Why can’t AppleTree just put preschools in church basements or in the kinds of space where daycares are located?

A quality early learning program, like any other educational program, should be in space that supports and fits the program. Unfortunately, since most early childhood programs lack a strong base of financial support, they “fit” their program into the least expensive available space, much as we did in Southwest at Riverside Baptist Church. We made \$60,000 worth of improvements to that space in the summer of 2005. The opportunity for our preschool at 138 12th Street, NE is to have running water in the classrooms, bathrooms off the classrooms, a rainy day play area, meeting space for staff and parents, administrative space for our principal and secretary, and storage space for records, supplies and materials.

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Attachment 1

Q. What is the issue regarding the emergency set down of amendments to the zoning ordinances on February 13, 2006?

There is a substantive issue as well as a process issue. The substantive issue is that the Office of Planning made recommendations that essentially eliminate small schools of any kind (under 9,000 square feet) from DC neighborhoods in the future. This means daycares, charter schools, or independent schools. The Office of Planning recommendations take away rights that public charter schools have enjoyed for ten years, with no evidence that there is a community reason for this “taking.”

There is documentation in the form of email communication and a recent news article of the Voice of the Hill that these changes were initiated by a small group of neighbors to block AppleTree Institute from developing the property we purchased. The amendments were set down on an emergency basis to provide Zoning Administrator Bill Crews with a reason to deny construction permits he, otherwise, would have to issue under the law.

The —process issue is that the manner in which these rules were rushed through violated the DC Administrative Procedures Act and was simply bad process. Despite assurances to the contrary, Office of Planning neglected to consult the affected parties, the DC Public Charter School Board, the DC Office of Charter School Financing, the DC Office of Early Care and Education or the DC Master Facilities Plan.

AppleTree Institute had purchased the property under the old rules that permit the development of this property as “a matter of right” for use as a public charter preschool. Our plans had already received approval from the Historic Preservation Review Board, and we had filed for construction permits—before the Zoning Commission met. The only reasons cited by Zoning Administrator Crews for denying our permits were the new amendments to the zoning ordinances set down after we had applied.

This simply isn’t permitted under the DC Administrative Procedures Act or under the law.

Q. Shouldn’t the neighborhood and the ANC’s have more input into projects of this kind?

The existing processes provide neighborhoods and ANC’s several opportunities to provide input to projects as they are developed. In the case of our project, and other projects that require revisions, project developers often offer to meet with groups of neighbors to work through issues. The problem with our project is not the amount of input, but a disagreement with neighbors and ANC Commissioners over the proposed “use.”

Q. What input has the neighborhood and ANC had in the project?

1. AppleTree presented our plans to the ANC 6A Economic Development Committee, which was a public meeting. We received a great deal of feedback at that meeting, and made significant revisions to our plans as a result.

2. We then presented our revised plans to the full meeting of ANC 6, and received a great deal of

feedback at that meeting, at which we invited ANC Commissioners and neighbors to work with us to address the concerns and objections they had.

3. We met with the Capitol Hill Restoration Society three times to receive their input with regard to the architectural plans for the renovation and made revisions to our plan as a result of their inputs.

4. We presented our plans to the Historic Preservation Review Board, which requested further revisions, which we made before receiving their approval to apply for construction permits.

5. We offered six times to meet with neighbors about our plans and met with ANC Commissioners Cody Rice, Nick Alberti and Capitol Hill Restoration Society's Nancy Metzger to review our final plans that were approved by the Historic Preservation Review Board.

Q. Is AppleTree Institute a for-profit, Boston-based corporation?

No. AppleTree Institute for Education Innovation is a Washington, DC-based 501(c)(3) not-for-profit organization that was originally incorporated in Massachusetts. It is common for corporations to be incorporated in Delaware, or jurisdictions other than where they operate. In fact, many Washington, DC-based organizations are incorporated in jurisdictions other than Washington, DC.

Q. Why not just locate the school somewhere else, such as in a DCPS school?

AppleTree would like to expand the enrollment of our early language and literacy preschool charter program to serve children throughout the city. We are implementing a variety of strategies to build classrooms in partnership with community development corporations, DC public schools and private elementary schools.

It takes time for policies, such as co-location with a DC public school, to develop. For example, AppleTree is working with EdBuild, a not-for-profit organization working with DCPS to manage co-location projects with under-enrolled DC Public Schools. The timeline is long and the decision-making process complex. There are opportunity costs that are both financial and human. We are working with a blend of strategies that is intended to provide us with a predictable process of expansion so that we can reach our programmatic and financial goals. That's why developing the property we bought remains an important part of our plans, regardless of whether classrooms open in September of 2006, 2007 or 2008.