

September 2, 2011

Mr. Richard S. Nero, Jr.
Acting Director, BERT & FOIA Officer
District of Columbia Office of Zoning
441 4th Street, N.W.
Suite 200-S
Washington, D.C. 20001

Re: Form 140 - Party Status Request - BZA Appeals Nos. 18239 & 18241

Dear Director Nero:

As indicated on the attached submission on Form 140, AppleTree Institute for Education Innovation, Inc. ("AppleTree") respectfully requests party status in the Board of Zoning Adjustment appeals of Advisory Neighborhood Commission 6A and Northeast Neighbors for Responsible Growth (collectively "Appellants"), Nos. 18239 & 18241. These appeals mark the fourth time that Appellants have opposed AppleTree's permit to improve a building located at 138 12th Street, N.E. (the "Property") in proceedings before this Board. AppleTree has been a party to all of the prior appeals, and both of the pending appeals name AppleTree as the owner of the affected property. In response to the questions set forth on Form 140, AppleTree submits the following information concerning its representation, witnesses, and criteria for party status.

AppleTree has a direct and immediate interest in the appeals: it owns the Property and permit that are at issue. AppleTree has endeavored to improve a building on the Property for use as a public charter preschool for more than half a decade. The preschool, which is scheduled to open this month, will provide free pre-literacy education to approximately 60 children ranging from three to four years of age. Most of these children are from underprivileged backgrounds, have been deprived of basic learning opportunities, and badly need help to prepare for success in their future schooling.

Appellants have waged a campaign to halt AppleTree's project for more than six years and have pressed their objections in three prior appeals to this Board. The twin appeals they now bring rehash the very same objections in an effort to defeat the very same preschool.

These appeals could have a significant impact on AppleTree and the public interest. Appellants seek to bar the doors to a needed preschool, depriving underserved children of vital educational opportunities, eliminating the jobs of AppleTree's teachers and staff, and

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thwarting the District of Columbia's multi-million dollar investment in the project through bonds and grants.

AppleTree will submit ten copies of a response brief and exhibits by no later than Wednesday, September 14, 2011. Although AppleTree continues to evaluate whether it will call witnesses to testify, it does not expect to call witnesses at this time. AppleTree will reexamine that issue in light of any additional materials Appellants submit to the Board before the hearing. AppleTree anticipates that it would cross-examine any witnesses called by Appellants.

AppleTree will appear at the Board hearing through legal counsel, including Mark Perry (D.C. Bar No. 438203), Gustav Eyler (D.C. Bar No. 997162), and myself (D.C. Bar No. 482040).

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'JJM', with a long, sweeping horizontal line extending to the right.

Jason J. Mendro

JJM/gwe
Attachment

FORM 140 - PARTY STATUS REQUEST

Before completing this form, please review the instructions on the reverse side.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.

NAME: Last AppleTree Instit. for Educ. Innovation, Inc. c/o Jack McCarthy		First Jack		Middle I. McCarthy	
ADDRESS: Street 415 Michigan Ave., N.E.		Apt. # (if any)		City Washington	State D.C.
Zip Code 20036		Phone No. (202) 488-3990		Fax No. (202) 488-3991	E-Mail jmccarthy@appletreeinstitute.org
I hereby request to appear and participate as a party.			Signature 		Date Sept. 1, 2011
Will you appear as a(n) ☐ Proponent ☒ Opponent		Will you appear through legal counsel? ☒ Yes ☐ No			
If yes, please enter the name and address of such legal counsel.					
NAME: Last Mendro		First Jason		Middle I. A.	
ADDRESS: Street 1050 Connecticut Ave., N.W.		Apt. # (if any)		City Washington	State D.C.
Zip Code 20036		Phone No. (202) 887-3726		Fax No. (202) 530-9626	E-Mail jmendro@gibsondunn.com

WITNESS INFORMATION

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the person's behalf;
2. A summary of the testimony of each witness (Zoning Commission only);
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts (Zoning Commission only); and
4. The total amount of time being requested to present your case (Zoning Commission only).

PARTY STATUS CRITERIA

On a separate piece of paper, please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)
3. What is the distance between the person's property and the property that is the subject of the appeal or application before the Commission/Board? (Preferably no farther than 200ft.)
4. What are the environmental, economic or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

Except for the applicant, appellant or the ANC, to participate as a party in a proceeding before the Commission/Board, any affected person shall file with the Zoning Commission or Board of Zoning Adjustment, this Form 140 not less than fourteen (14) days prior to the date set for the hearing.

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Person vs. Party in a Proceeding

Any person or representative of an organization may provide written and/or oral testimony at a public hearing. A person who desires to participate as a party in a proceeding, however, must make a request and must comply with the provisions on this form. A party has the right to cross-examine witnesses, submit proposed findings of fact and conclusions of law, receive a copy of the written decision of the Zoning Commission or Board of Zoning Adjustment, and exercise any other rights of parties as specified in the Zoning Regulations. Approval of party status is contingent upon the requester clearly demonstrating that his or her interest will be more significantly, distinctively, or uniquely affected by the proposed zoning action than that of other persons.

INSTRUCTIONS

Any request for party status for action provided in the District of Columbia Zoning Regulations (11 DCMR Zoning) that is not completed in accordance with the following Instructions shall not be accepted.

1. All applications shall be made pursuant to this form. If additional space is necessary, use separate sheets of 8½" x 11" paper to complete the form (drawings and plans may be no larger than 11" x 17").
2. Present this form and supporting documents to the Office of Zoning at 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, not less than fourteen (14) days prior to the date set for the hearing.



If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete Form 155 - Request for Reasonable Accommodation.

District of Columbia Office of Zoning
441 4th Street, N.W. Ste. 200 S, Washington, D.C. 20001
(202) 727 6311 * (202) 727 6072 fax * www.dcoz.dc.gov * dcoz@dc.gov