

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

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

MOTION FOR STAY

Petitioners Joseph Jorgens, III, Ilene Blinick, Charlie Donnelly and David Smullen ("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

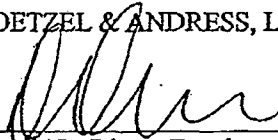
decision, which is before the District of Columbia Court of Appeals. The grounds for this motion are that if the building permits are issued to the Appletree Institute for Education Invocation, Inc., ("Appletree") by the Department of Consumer and Regulatory Affairs ("DCRA") as a result of the BZA ruling 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



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Counsel for Petitioner

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS
MOTION TO STAY

Petitioners seek this Motion to Stay the Board of Zoning Adjustment's ("BZA") ruling in this case pending the appeal to the District of Columbia Court of Appeals. The BZA's ruling, which reversed the decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs ("DCRA"), would allow the Appletree Institute for Education Innovation, Inc. ("Appletree") to receive the permits for a proposed addition to an existing building to accommodate a public charter school use. The subject property is located in a R-4 District at the premises known as 138 12th Street, N.E. in the District of Columbia, Square 9908, Lot 0820 ("Property"). In its decision, the BZA held that Appletree did not have to seek special exception approval for such proposed addition. The BZA held that, pursuant to 11 DCMR Section 401.1, a building located on a lot on May 12, 1958 that does not meet the lot area or width of lot requirements prescribed in Section 401.3 may be enlarged or replaced, provided it complies with all other provisions of the Zoning Regulations. The BZA further held that the Zoning Commission's new public school regulations, while amending several regulations in Chapter 4, including Section 401.3 in particular, left Section 401.1 intact. Thus, no special exception was needed.

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

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,



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ORDER

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:

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CERTIFICATE OF SERVICE

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

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