

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Northeast Neighbors for
Responsible Growth, Inc.
144 12th Street, NE
Washington, D.C. 20002

Ilene Blinick
140 12th Street, NE
Washington, D.C. 20002

Joseph Jorgens
130 12th Street, NE
Washington, D.C. 20002

Plaintiffs

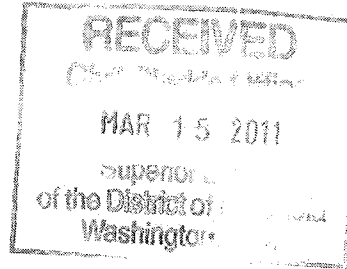
v.

AppleTree Institute for Education Innovation, Inc.
Registered Agent:
Corporation Service Company
1090 Vermont Avenue, NW
Washington, D.C. 20005

District of Columbia Department of
Consumer and Regulatory Affairs
c/o Nicholas A. Majett, Director
100 4th Street, SW
Washington, D.C. 20024

Nicholas A. Majett, Director
In his Official Capacity as Director of the
Department of Consumer and Regulatory Affairs
100 4th Street, SW
Washington, D.C. 20024

District of Columbia
Office of the Attorney General
c/o Irvin B. Nathan, Esq., acting Attorney General
441 4th Street, NW
Washington, D.C. 20001



Civil Action No. **0001942-11**

Vincent Gray, Mayor, in his Official Capacity)
c/o Office of the Attorney General)
441 4th Street, NW)
Washington, D.C. 20001)
Defendants)

COMPLAINT FOR A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Comes now the Plaintiffs, by and through undersigned counsel, hereby request this Court to enjoin the AppleTree Institute for Education Innovation (hereinafter "AppleTree") from demolition and construction at 138 12th Street, NE, Washington, D.C. 20002 (hereinafter "the Property"). In support thereof, and for a cause of action, Plaintiffs do hereby state as follows:

Jurisdiction

1. This Court maintains Jurisdiction pursuant to D.C. Code § 11-921 (2001 ed.) as all events relating to the substance of this action occurred in the District of Columbia and parties to this suit either maintain a principle residence herein or have engaged in sufficient business activity to be subject to the jurisdiction of this Court.

Parties

2. Plaintiff Northeast Neighbors for Responsible Growth, Inc. (hereinafter "Northeast") is a non-profit corporation established by residents in the Lincoln Park area of Capitol Hill. It is organized for the purpose of ensuring that the appropriate zoning laws and regulations are followed and enforced throughout the District of Columbia in the placement and construction of schools, and that orderly planning; pursuant to regulation promulgated by the Office of Planning govern such. It represents the interests of the neighbors of 138 12th Street, NE.

3. Plaintiff Ilene Blinick is an owner of improved real property located at 140 12th Street, NE, Washington, D.C. 20002, which is adjacent to the proposed demolition and construction at the Property which is the subject of this suit.
4. Plaintiff Joseph Jorgens is an owner of improved real property located at 130 12th Street, NE, Washington, D.C. 20002; which is neighboring the proposed demolition and construction at the Property which is the subject of this suit.
5. AppleTree is a foreign non-profit corporation established under the laws of the State of Massachusetts, doing business in the District of Columbia.
6. The District of Columbia Department of Consumer and Regulatory Affairs (hereinafter “DCRA”) is the entity with the District of Columbia government which issues and regulates, among other matters, any and all demolition and construction in the District of Columbia. It is the agency charged with the issuance of building permits in the District of Columbia.
7. Nicholas A. Majett is the Director of DCRA and is named herein in his official capacity.
8. The District of Columbia is a municipality wherein Vincent Gray, as Mayor, is the executive in charge.
9. Vincent Gray is the Mayor of the District of Columbia. He is named herein in his official capacity.

Background Facts

10. This dispute involves continued efforts by defendant AppleTree to construct a charter school on the Property without regard to the negative impact of this construction on adjacent homeowners, the historical character of the neighborhood, and members of the community at large that would be affected by the transit congestion caused thereby.

11. On or about February 9, 2006, AppleTree applied for a building permit for the purposes of constructing a rear addition onto the Property.
12. On or about February 13, 2006, an emergency rule was adopted which increased the minimum lot dimensions for public schools. This increase in the minimum dimension required to operate a public school exceeded that of the Property.
13. On April 28, 2006, as a result of the emergency rule, AppleTree's application for a permit was denied. This denial was due to the fact that the Property 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 requirement of 10 spaces for construction of a public school.
14. The denial of the application for a permit was appealed by AppleTree to Board of Zoning Adjustment (hereinafter "BZA") on the basis that non-conforming use was permitted as the building was in existence prior to 1958.
15. On July 25, 2007, the BZA determined that the subject property was exempt from the minimum lot dimensions of 11 D.C.M.R. §401.3 as the Property fell under an exemption listed under 11 D.C.M.R. §401.1. This Order became effective on August 6, 2007.
16. The approval of AppleTree's permit was affirmed on August 23, 2007

Relevant Facts

17. Plaintiffs Blinick and Jorgens and all of the members of Plaintiff Northeast reside in properties immediately adjacent to the Property, on lands which are located within the Capitol Hill Historic District, which is zoned R-4 (Residential).
18. AppleTree seeks to construct a charter school with the intention of enrolling approximately 54 three and four year-old children, and to employ a staff of approximately 24 persons.

19. The street on the one hundred block of 12th Street, NE is narrow and tree lined with no safe location for the picking up or dropping off of children.
20. The Property itself is contiguous and abutting to the residential housing, and is too small to accommodate its planned use by AppleTree.
21. Construction of the charter school in an otherwise completely residential neighborhood will have a devastating effect on the residential and historical character of the neighborhood. The increased noise, traffic and congestion will cause irreparable harm to the neighborhood and its residents.
22. The increased noise, traffic and congestion will not only affect the quality of life of the residents but will greatly depreciate the economic value of their homes, causing severe economic harm and threatening many with economic ruin should they go into a negative equity position on their property.
23. The area of the Property is approximately 4,230 square feet.
24. The width of the Property is 36 feet.
25. The Property, prior to its purchase by AppleTree, had been utilized as a gasoline station.
26. On September 14, 2007, 11 D.C.M.R. §401.3 was amended to provide for the following additional language:

[T]he lot area requirements of §401.3 must be met 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 that is on the building's lot.

See Exhibit A & B.

27. Although the July 25, 2007 determination of the BZA was appealed to the District of Columbia Court of Appeals by the adjacent landowners to the Property, the appeal was

subsequently dismissed, at their request, on the basis that the above-referenced amendatory provision rendered the dispute moot.

28. A further result of the amendatory provision was that the permit approval was purportedly placed on hold by DCRA to be reviewed.
29. The basis for the hold by DCRA was for the completion of an environmental study and so that a determination could be made as to the applicability of the amendatory provision.
30. However, despite the placement of this hold, “a DCRA employee exceeded his authority by removing the ‘hold’ on the application,” and a permit was issued on October 26, 2007. See Exhibit C.
31. As a result, a Notice of Revocation was issued by DCRA on November 15, 2007. See Exhibit C.
32. Additionally, the issuance of the permit in October of 2007 was appealed by the Advisory Neighborhood Commission 6(A) (hereinafter “ANC”) to the BZA on December 24, 2007, on the basis that a valid permit could no longer be issued as a result of the amending language to the municipal regulations.
33. The BZA entered a second determination on December 18, 2008, that, pursuant to 11 D.C.M.R. §3202.4, the construction could be carried to completion as the permit must be processed in accordance with regulations in effect on the date of the Board’s Order so long as a permit was valid on the date of issuance, which the BZA averred was the date the prior BZA Order became effective, August 6, 2007. See Exhibit D
34. On April 28, 2008, DCRA withdrew its Notice of Revocation and confirmed the validity of the permit, *nunc pro tunc* to August 6, 2007.

35. On October 21, 2008, prior to the final date of the second BZA Order, and over one year after the effective date of the BZA Order of August 6, 2007, AppleTree obtained a year long extension of the October 27, 2007 permit to October 21, 2008, with a new expiration date of October 21, 2009. *See* Exhibit E.
36. On September 21, 2009, nine months after entry of the second BZA Order, AppleTree again obtained another year long extension of the permit, with an expiration date of September 21, 2010. *See* Exhibit F.
37. On September 17, 2010, AppleTree yet again obtained a year long extension of the permit, with an expiration date of September 21, 2011. *See* Exhibit G.
38. On December 3, 2010, over two months after the third one year long extension, DCRA again revoked the permit on the basis that it permit could only be extended eighteen months from date of the original permit, October 26, 2007. *See* Exhibit H.
39. Thereafter, on February 24, 2011, over two months after the second Notice of Revocation, DCRA withdrew the second Notice of Revocation, confirming that the September 17, 2010 extension of the permit is valid, *nunc pro tunc*. *See* Exhibit I.
40. The Municipal Regulations of the District of Columbia make clear that no building or structure may be constructed, extended, structurally altered, or enlarged unless the builder is in compliance with Titles 11 and 12. Namely, a lawfully issued building permit is required, and the permit issued must be valid at the time of construction.
41. With respect to permits based upon orders of the BZA, pursuant to 11 D.C.M.R. §3130, any construction based upon an approval by the BZA shall be started “within six (6) months after the date of issuance of the permit. . . [and] [i]f the work is not started within such period, the permit shall expire and shall not be renewed.”

42. In the six (6) months following the December 18, 2008 Order of the BZA, no work was initiated on the Property.
43. Upon information and belief, prior to the six (6) month expiration of the permit after the second December 18, 2008 Order, no written request was (1) filed by AppleTree, and if one was so filed, it was not (2) served upon the parties to the application such that the Plaintiffs could have time to respond.
44. Upon information and belief, no written Order was issued by the BZA granting an extension of time to AppleTree to engage in construction upon the Property.
45. Upon information and belief, In the six (6) months following the second December 18, 2008 Order of the BZA, no written request was served upon all parties to the application
46. Notwithstanding the above provisions relating to permits based upon Orders of the BZA, pursuant to 12 D.C.M.R. §105.5, “[a]ny permit issued shall become invalid if the authorized work is not begun within one year after the permit is issued, or if the authorized work is suspended or abandoned for a period of one year after the permit is issued.”
47. Work on the Property was not begun within one year of issuance of the October 27, 2007 permit. In fact, work on the Property was not begun within one year of entry of the second December 2008 Order of the BZA.
48. When work is not initiated on the property within one year, according to 12 D.C.M.R. §105.5.1, “[a] permit extension is required.” Further, any requested extension must be made in writing, and only upon a showing of good cause may the code official “grant extensions of time not to exceed six (6) months per extension. Not more than three (3) extensions of time will be granted to any permit.” Additionally, as set forth under 12

D.C.M.R. §105.5.2, a permit may not be “extendable if permitted to expire, unless extension is approved in writing by the code official.”

49. DCRA acted in contravention of this regulation when it issued three separate extensions, all of which were for one year.
50. In the event a permit lapses, as stated under 11 D.C.M.R. §3202.7, “[a] building permit issued in accordance with §§ 3202.4 through 3202.6 shall not be renewable . . . unless it is reprocessed in accordance with all provisions of this title,” i.e. the permit may only be renewed if there is compliance with all Municipal Regulations as of the date of renewal.
51. Furthermore, pursuant to 11 D.C.M.R. §3202.4, construction authorized by a permit can be completed pursuant to the provisions in effect on the date of issuance, subject to the condition that “(a) The permit holder **shall begin construction work within two (2) years of the date on which the permit is issued**; and (b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.”
52. As a result of both of the above-cited regulations, any construction which AppleTree now seeks to engage on the Property must be in compliance with Title 11 in its present form, including the amendatory provision of 11 D.C.M.R. §401.3.
53. As the Property does not meet the minimum lot qualifications, and cannot be exempted as a result of the amendatory provision of 11 D.C.M.R. §401.3, any permit that has since expired may not be renewed.
54. Upon information and belief, it is only within the past several days that AppleTree has begun construction on the Property despite the expiration of its permit and its non-conformance with the zoning regulations.

55. Prior to engaging in this work, AppleTree did not provide any notice to the adjacent landowners of the pending construction, as was required by 12 D.C.M.R. §3307.

Count 1 – Declaratory Judgment
AppleTree’s Permit Expired Under 11 D.C.M.R. §3130

56. Plaintiffs incorporate the allegations of Paragraphs 1 through 55 as if fully replied herein.

57. Defendant AppleTree’s permit was issued on October 26, 2007 and was based upon an Order of the BZA, the latest of which was in December of 2008.

58. Defendant AppleTree failed to initiate work on the Property on or before six (6) months from the date of the December 2008 Order.

59. Assuming, without conceding, that an extension was sought in writing by AppleTree, and further assuming that 11 D.C.M.R. §3130.6 applies to this proceeding, any request, if filed, was not served upon the parties to the application and no good cause existed to permit an extension.

60. Furthermore, no written Order was ever issued by the BZA permitting an extension beyond the six (6) months allowed to begin construction.

61. As a result, the permit upon which AppleTree relies has expired.

WHEREFORE, the foregoing premises considered, Plaintiffs respectfully request that this Honorable Court:

- (a) Enter a Declaratory Judgment that the permit upon which AppleTree relies is expired;
- (b) Award Plaintiffs reasonable attorney’s fees and costs of suit;
- (c) Award such other relief as the Court deems just and proper.

Count 2 – Declaratory Judgment
AppleTree’s Permit Expired Under 12 D.C.M.R. §105.5

62. Plaintiffs incorporate the allegations of Paragraphs 1 through 61 as if fully replied herein.

63. Defendant AppleTree did not begin work on the property within one year of the October 26, 2007 permit issuance date.

64. Defendant AppleTree did not begin work on the property within one year of the December 2008 Order of the BZA.

65. As a result of the foregoing, AppleTree was required to obtain an extension.

66. The three year-long extensions issued by DCRA are in violation 12 D.C.M.R. §105.5.1, and should be deemed void *ab initio*.

67. Voidance of the extensions renders AppleTree's permit invalid.

WHEREFORE, the foregoing premises considered, Plaintiffs respectfully request that this Honorable Court:

- (a) Enter a Declaratory Judgment that the permit upon which AppleTree relies is expired;
- (b) Award Plaintiffs reasonable attorney's fees and costs of suit;
- (c) Award such other relief as the Court deems just and proper.

Count 3 – Declaratory Judgment
AppleTree Is Bound By The Amendatory Provision Of 11 D.C.M.R. §401.3

68. Plaintiffs incorporate the allegations of Paragraphs 1 – 67 as if fully replied herein.

69. Pursuant to 11 D.C.M.R. §3130, the permit upon which AppleTree relies is now expired.

70. Pursuant to 12 D.C.M.R. §105.5, the permit upon which AppleTree relies is now expired.

71. As a result, in accordance with 11 D.C.M.R. §3202.7, the permit cannot now be renewed unless it is in compliance with the current regulations set forth under Title 11, including the amendatory provision of 11 D.C.M.R. §401.3.

72. Notwithstanding the foregoing, even if it is assumed that the permits are valid, AppleTree failed to complete construction within two years of the date of issuance of the permit,

October 26, 2007, and within two years of the date of the second Order of the BZA, December of 2008.

73. As a result, pursuant to 11 D.C.M.R. §3202.4, any construction which AppleTree now seeks to engage on the Property must be in compliance with the current requirements of Title 11, including the amendatory provisions of 11 D.C.M.R. §401.3.

WHEREFORE, the foregoing premises considered, Plaintiffs respectfully request that this Honorable Court:

- (a) Enter a Declaratory Judgment that the permit upon which AppleTree relies is expired;
- (b) Or, in the alternative, enter a Declaratory Judgment that AppleTree is bound by the amendatory provision of 11 D.C.M.R. §401.3 for failing to complete construction within two years of the second July 2008 Order of the BZA;
- (c) Award Plaintiffs reasonable attorney's fees and costs of suit;
- (d) Award such other relief as the Court deems just and proper.

Count 4 – Violation of D.C. Code § 6-641.09
As To Defendant AppleTree

74. Plaintiffs incorporate Paragraphs 1 – 73 as if fully replied herein.

75. AppleTree is currently engaging and/or intends to immediately engage in construction on the Property based upon the permit it received in October of 2007.

76. AppleTree intends to do so despite the expiration of its building permit and the non-conformance of the construction with applicable zoning regulations.

77. Construction on the property will irreparably harm the Plaintiffs.

78. Such harm consists of, *inter alia*, excessive noise, excessive disruption arising from extensive construction on a narrow street in a quiet community, increased traffic congestion, and a decrease in the economic value of the Plaintiffs' properties.

79. Additional harm exists in the form of physical damage to the adjacent landowners, including Plaintiff Blinick (whose property abuts the exterior wall of the proposed charter school), which may arise from extensive unregulated and illegal construction.

80. There is no adequate remedy at law to compensate the Plaintiffs for the disruption that will be caused as a result of AppleTree's construction on the Property.

81. Pursuant to D.C. Code § 6-641.09, if an entity engages in construction without a valid permit, a neighboring property owner may, in addition to all other remedies provided by law, "institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, [or] alteration."

WHEREFORE, the foregoing premises considered, Plaintiffs respectfully request that this Honorable Court:

- (a) Issue an injunction ruling that AppleTree is enjoined from engaging in any further construction on the Property until it applies and receives a valid permit;
- (b) Award Plaintiffs reasonable attorneys fees and costs of suit;
- (c) Award such other relief as the Court deems proper.

Count 5 – Violation of D.C. Code § 6-641.09
As To Defendant AppleTree

82 Plaintiffs incorporate Paragraphs 1 – 81 as if fully replead herein.

83 Pursuant to 12 D.C.M.R. §3307.2, any person causing work to be made that will affect an adjoining property owner shall provide written notice advising them of the intended work and that the adjoining buildings should be protected.

84 If the work is non-structural, AppleTree is required to provide written notice, with a copy to the code official, 10 days prior to the scheduled starting date of work.

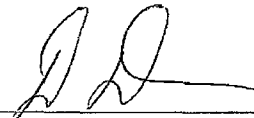
85. If the work involves excavation, or may otherwise impact the structural support of the adjoining building, AppleTree is required to provide thirty (30) days written notice by registered mail, with a copy to the code official, and the adjacent landowner is given thirty (30) days to respond in writing.

86. AppleTree did not provide the required notices prior to entering onto the Property to engage in construction. As a result, AppleTree has violated D.C. Code §6-641.09.

WHEREFORE, the foregoing premises considered, Plaintiffs respectfully request that this Honorable Court:

- (a) Issue an injunction ruling that AppleTree is enjoined from engaging in any further construction on the Property until it acts in compliance with 11 DCMR §3307;
- (b) Award Plaintiffs reasonable attorneys fees and costs of suit;
- (c) Award such other relief as the Court deems proper.

Respectfully Submitted,



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