



Single Member District 6A-03
310 9th Street NE
Washington, DC 20002

November 2, 2005

Bill Crews
Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street NE, Room 2000
Washington, DC 20002

Re: Response to AppleTree Letter on Zoning Treatment of Charter Schools

Dear Mr. Crews:

I am writing in response to a letter dated October 28, 2006 [*sic*] from the AppleTree Institute for Education Innovation to you regarding their proposed preschool at 138 12th Street NE. As you know, I wrote to you on October 6, 2005 regarding their need for zoning relief and requesting a written response on whether the zoning regulations have been correctly applied. In addition to responding to AppleTree's letter, I would also like to alert you to two additional zoning issues concerning AppleTree's proposed off-street parking and administrative office use.

With regard to the zoning regulations that you are charged with administering, the definition of what constitutes a "public school" for zoning purposes is clear. According to 11 DCMR 199.1, a public school must be "operated and maintained by the District of Columbia Board of Education." In this case, the proposed charter school will be operated and maintained by AppleTree, a nonprofit organization with a charter from the DC Public Charter School Board. Neither the organization operating and maintaining the building, nor the chartering authority, is the District of Columbia Board of Education (BOE).¹ Thus, at least for zoning purposes, the proposed use is not a public school.

There are sound public policy reasons for limiting "by right" zoning treatment to public school buildings that are operated and maintained by BOE:

- First, when BOE proposes a "by right" school there is a facility planning process with substantial community involvement and feedback. This process exists to engage affected neighbors and manages potential spillover effects. By contrast, AppleTree is claiming the right to 80% lot occupancy for a building with capacity for 72 students and 16-20 staff without any formal process to weigh concerns about traffic, noise, and effects on light and air of nearby properties.
- Second, for its public schools BOE has generally selected larger sites that provide for setback from neighboring properties, recreational fields, and adequate parking. By contrast, AppleTree proposes to embed their facility in the middle of a continuous block of residential rowhouses, leaving room for only three parking spaces and a rooftop play area.
- Third, if residents are dissatisfied with a BOE proposal or a public school's operation and maintenance, their elected school board representatives can be held accountable. By contrast, AppleTree answers first to their private board of directors and then to the DC Public Charter School Board, which is unelected.

¹ D.C. Code § 38-1702.05 (p) states that "A charter school shall be organized under subchapter I of Chapter 3 of Title 29, and shall not be deemed, considered, or construed to be an entity of the District of Columbia government."

- Fourth, BOE schools have enrollment boundaries that ensure that most of the public benefit of the school will accrue to the surrounding residential area that must absorb its impact. By contrast, charter schools have open admissions to all DC residents and cannot guarantee any level of enrollment benefit to residents in the immediate area of the school.

It is understandable that AppleTree would prefer the “by right” privilege rather than seeking zoning relief. If treated as a public school for zoning purposes, AppleTree can maximize their enrollment (and revenue) without regard to any other consideration. Having AppleTree seek zoning relief from the Board of Zoning Adjustment (BZA) would ensure a fair and open process to parallel what BOE undertakes in exchange for their “by right” treatment in the R-4 zone district. It also happens to be what the zoning regulations currently require.

AppleTree’s letter provides a number of quotes and citations in an attempt to confuse the issue of what a public school is for zoning purposes, but is unable to refute the clear language of the specific (zoning) regulations that you administer. AppleTree quotes a couple of passages from meeting transcripts, but these statements do not have any formal interpretive standing. As far as I know, there has been no BZA or Zoning Commission finding on this issue. AppleTree also cites a definition of “public school” from D.C. Code § 38-1701.01, however AppleTree leaves out the introductory language indicating that the definitions found there are only “for the purposes of this subchapter” and do not amend the zoning code. Furthermore, it appears that this definition may only refer to charter schools under the BOE chartering authority since Chapter 17 deals with BOE charters and does not mention the DC Public Charter School Board (which first appears in Chapter 18). AppleTree neglects to provide the definition of “public school” in Chapter 18 at D.C. Code § 38-1800.02(12)(B) which states in relevant part “Exception. -- The term “District of Columbia public school” does not include a public charter school”²

Although AppleTree’s references ultimately have minimal bearing on the definitions in the zoning regulations, what AppleTree omits from the Chapter they cite is also interesting. First, there is D.C. Code § 38-1702.13(c) which notes that “Except as otherwise provided in this subchapter, a charter school shall be subject to all statutes, policies, rules, and regulations established by the District of Columbia that are applicable to nonprofit corporations.” Then there is D.C. Code § 38-1702.05(f)(3) which states that “If the Educational program of a charter school includes pre-school or pre-kindergarten, within 30 days of receipt of the charter, the Board of Trustees of a charter school shall seek to be licensed as a child development center by the District of Columbia government and shall maintain such a license once it is obtained.”

My proposed solution for the AppleTree project is to recognize the intended use of the building as a “child development center” for zoning purposes. This use encompasses educational uses similar to the AppleTree program such as child care centers, pre-schools, nursery schools, and before-and-after school programs. This use is permitted in an R-4 District as a matter of right per 11 DCMR 330.5(d) for up to 16 children. A child development center may serve additional children if the Board of Zoning Adjustment grants a special exception, and may expand beyond 40% lot occupancy with a variance.

AppleTree does raise an interesting issue of zoning consistency among charter schools. The Zoning Administrator could treat charter schools such as AppleTree that serve only 3 and 4 year olds as “child development centers” and treat charter schools with older children as “private schools.” Alternatively, the Zoning Administrator could treat all charter schools as “private schools.” Either treatment would conform to the zoning regulations as they are currently written, since the “public school” definition is reserved exclusively for buildings operated and maintained by BOE.

² Likewise per DC Code § 38-1800.02 (29): “Public charter school. -- The term “public charter school” means a publicly funded school in the District of Columbia that: (A) Is established pursuant to subchapter II of this chapter; and (B) Except as provided under §§ 38-1802.12(d)(5) and 38-1802.13(c)(5) is not a part of the District of Columbia public schools.”

As I mentioned earlier, there are two additional zoning-related issues that I would like to bring to your attention. These issues emerged during AppleTree's presentation to the Economic Development and Zoning Committee of ANC 6A (see attached report):

- First, the AppleTree proposal includes only 3 off-street parking spaces. AppleTree indicated that that these spaces would be reserved for loading and unloading of children. Thus, there are no off-street spaces for AppleTree's proposed maximum staffing capacity of 16 to 20 employees. If you decide to treat AppleTree as a public or private school for zoning purposes, 11 DCMR. 2101.1 requires 2 off-street parking spaces for each 3 teachers and other employees (11 to 14 off-street parking spaces for the capacity of the building). These spaces could be provided on the existing lot behind the building, but would limit the lot occupancy. As you are aware, the requirement for child development centers is less onerous at 1 for each 4 teachers and other employees (4 to 5 off-street parking spaces for the capacity of the building). In either case, the current AppleTree proposal does not provide the required number of off-street parking spaces for teachers and other employees.
- Second, AppleTree proposes to have administrative offices for at least 2 staff members with responsibilities beyond the educational program at this location. If you decide to treat AppleTree as a public school for zoning purposes, note that the existing definition does not allow such administrative offices with responsibilities for "the entire school system." In this case, the entire school system is limited to the schools operated by AppleTree under their charter since each charter is treated as a local education agency. As a result, this administrative office use at this site is not permissible by right. Generally, in the R-4 zone, office uses beyond those covered by a Home Occupation Permit require a variance.

Based on these continuing concerns, I request that you provide a written response on your review of administrative actions for this property to ensure that your staff has not made any errors in interpretation or application of the zoning regulations.

Thank you for your continued attention to this matter. If you have any questions or need further information, please contact me at 202-544-3734 or rice6A03@verizon.net.

Respectfully yours,

//original signed//

Cody Rice

Advisory Neighborhood Commissioner (6A03)

cc: Dr. Patrick J. Canavan, Director, DCRA
Councilmember Sharon Ambrose
Russ Williams, AppleTree Institute for Education Innovation
Emily Paulus, DC Historic Preservation Office

**REPORT OF THE
ECONOMIC DEVELOPMENT AND ZONING COMMITTEE
OF ANC 6A
October 25, 2005**

Present: Commissioners Nick Alberti and Cody Rice; Resident Members Rich Luna, Drew Flonneberg, Bill Schultheiss, and Mary Spencer.

Commissioner Rice chaired the meeting.

HPA #05-522: AppleTree PCS at 138 12th Street NE

The committee heard a presentation by representatives of AppleTree Early Learning Public Charter School. AppleTree has purchased a building at 138 12th Street NE and applied for permits to expand the building for a preschool language and literacy program for 3 and 4 year olds. Because the building is in the Capitol Hill Historic District, the application has been referred to the Historic Preservation Review Board (HPRB) for design review. The HPRB hearing is scheduled for November 17, 2005.

AppleTree PCS was chartered by the DC Public Charter School Board (DCPCSB) in 2005 and is operated by the AppleTree Institute for Education Innovation, Inc., a 501(c)(3) nonprofit organization. AppleTree currently has a charter preschool for 35 children at Riverside Baptist Church at 680 I Street SW. They purchased 138 12th Street NE in May 2005 for a program expansion and administrative offices. Admission to their preschools is by lottery from applications for 3-4 year olds who reside in DC. There are no additional requirements aside from age and residency, and funding for the school comes from a per-pupil allotment of District tax dollars. Currently, ten families from Capitol Hill have applied for enrollment.

Since AppleTree has already received their charter from DCPCSB, they only need to file paperwork to expand their operation to a new building. No DCPCSB hearing is required. AppleTree has received an initial determination from the Zoning Administrator in the Department of Consumer and Regulatory Affairs (DCRA) that the use, number of students, and size of the expanded building would be a matter of right. Commissioner Rice has requested that the Zoning Administrator provide a written determination of whether there have been any errors in interpretation or application of the zoning regulations (see attached letter).

According to AppleTree's submission to HPRB, the existing 4,320 sq. ft. building is a two-story plus basement with dimensions of 36' x 40' on a lot that is 36' x 117.5'. This corresponds to 34% lot occupancy. Their plans call for an expansion to dimensions of 36' x 94' with an additional 800 sq. ft. third floor, patio and rooftop outdoor play area. This corresponds to 80% lot occupancy and 10,952 interior sq. ft. plus approximately 1,100 sq. ft. of usable roof space. The expansion would leave room for 3 parking spaces in the rear.

As proposed, the expanded building would have capacity for 72 students and 16-20 staff. There would be room for 4 classes of 18 students each. Each class would have 3 teaching staff. In addition, there would be a principal, a special education coordinator, 2 additional administrators with responsibility for organizational development, and potentially other part-time staff in the afternoon. Program hours would

be from 8 am to 6 pm with cleaning occurring after school hours until 7:30 or 8 pm. The program would initially run during the school year, but may expand to a summer program of 4-5 weeks. Student drop-off would be staggered and could occur in the front or rear. AppleTree has not requested a front loading zone and the three rear parking spaces would be for drop-off and pick-up. AppleTree is seeking other parking spaces off-site and would provide a transit subsidy to employees.

Several parents with current or prospective students spoke in favor of the effectiveness of the AppleTree program and the convenience of the new location to where they live. Some of these parents noted the large number of young children in the area and expressed the opinion that this is a use that the neighborhood needs and that schools belong in neighborhoods.

A large number of residents who live near 138 12th Street NE expressed opposition to the use of the building as a preschool. Concerns included:

- that this is an inappropriate use in the middle of a residential block with little parking and no buffer from surrounding residential properties like public schools usually have;
- the amount of traffic that would be generated by parents dropping off 72 children;
- potential blocking of the street, alley, and garages during rush hours while parents extract children from car seats, walk them into the building, and make the hand-off to staff;
- safety in the alley with additional traffic presenting a risk to children with yards that back up to the alley;
- excess traffic on several surrounding streets due to the difficulty of navigating one-way streets and Lincoln Park to reach the property;
- concerns about traffic/pedestrian safety related to the nearby unsignalized intersections at 12th & Constitution Ave NE and at Lincoln Park;
- noise from children playing on the rooftop recreation area;
- safety of children on the rooftop recreation area;
- effects on light and air of a 2+ story party wall extending past the rear of adjoining properties;
- that the proposal is trying to squeeze in a building that covers 80% of the lot when neighboring residential properties are limited to 60% by right;
- the visibility of the third story addition and play equipment on the roof;
- the compatibility of a building of this scale on the residential character of the historic district;
- the complete lack of green space in the rear of the property;
- no parking for 16-20 staff and the increased parking demand on the surrounding area;
- the possibility that AppleTree may go out of business and leave a vacant, non-conforming building;
- impact on the new preschool program at Maury ES;
- that slots for 3 and 4 year olds are not universally available and are being allocated through lottery system rather than by need of the student or family;
- operation will require food catering and trash pick-up, but the plans do not account for these needs.

Recommendation: 1) That the ANC send a letter to HPRB requesting a) that the hearing be delayed until DCRA makes a written determination of whether the proposed use is a matter of right or requires zoning relief and b) opposing the proposed design because of incompatibility with the surrounding neighborhood; 2) That the ANC send a letter to DCRA explaining the need for this project to received

prior approval from the Board of Zoning Adjustment; and 3) That the ANC send a letter to the District Department of Transportation asking them to require a traffic study for this proposal.

DDOT Request for Opinion Regarding Carsharing Spaces

Due to the late start in discussing this item, the committee decided to table discussion until the next meeting. In the interim, it would be helpful if Commissioners and residents would forward nominations to the committee (via Commissioner Rice) for on-street or off-street spaces that might be good locations to park carsharing vehicles. According to DDOT guidance, the on-street spaces should not be on streets with rush hour, street cleaning, Residential Permit Parking, or snow route restrictions. It was agreed that it would be helpful to invite representatives from DDOT, Zipcar, and Flexcar to the next committee meeting to answer questions about carsharing and the designation of on-street parking spaces for carsharing.

Next Scheduled ED&Z Committee Meeting:

Tuesday, November 29, 2005

7-9 PM

900 G Street, NE

Community Room of the Capitol Hill Towers