

**AppleTree Institute for Education Innovation
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October 28, 2006

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

Re: Public Charter School at 138 12th Street, N.E.

Dear Mr. Crews:

I am writing, on behalf of the AppleTree Institute for Education Innovation, in response to the October 6, 2005, letter from Advisory Neighborhood Commissioner Cody Rice to you regarding AppleTree's proposed development of the property located at 138 12th Street, N.E.

AppleTree is a nonprofit organization committed to improving the number of effective schools through innovation. We are working to develop a high quality early literacy program as a key to closing the achievement gap and breaking the cycle of poverty. Our vision is that students from all backgrounds should enter first grade able to read and ready to succeed. For more information, please visit our website (www.appletreeinstitute.org).

AppleTree recently received a charter from the District of Columbia Charter School Board to operate a public charter school to serve preschool and pre-kindergarten children, ages 3-4. The mission of AppleTree Early Learning Public Charter School is to provide young children with the social, emotional & cognitive foundations that will enable them to succeed in school as they get older. We have recently purchased a building in Northeast to house the school, as well as certain administrative offices. It is located at 138 12th Street, N.E. and we recently submitted development plans to the D.C. Historic Preservation Review Board.

AppleTree's building is located in an area zoned R-4. For development in such areas, the Zoning Regulations generally give "of right" status to public schools, 11 DCMR § 330.5(a), and require exemptions for private schools, 11 DCMR § 332.1(a). But Mr. Rice, in his October 6 letter, maintains that a public charter school is not a "public school" under the Zoning Regulations. That is clearly incorrect. Public charter schools in the District of Columbia are "public schools" for all relevant purposes.

In 1996, Congress passed the Public Charter Schools Act (D.C. Law 11-135), which authorized charter schools to operate in the District. The term "public school" is defined in the Act as "either a public school under the authority and control of the Board [of Education] *or* a charter school." D.C. Code § 38-1701.01(14) (2001) (emphasis added). Congress has therefore decreed that public charter schools are, as their name indicates, *public* schools -- not private.

The Code provision defining "public school" to include public charter schools stands to reason. Charter schools in the District of Columbia receive public funding and are open to all residents, who pay no tuition. They are chartered by, and subject to the regulation and supervision of, public authorities. They were intended to "provide parents and students with expanded choices in the types of *public* educational opportunities available in the District of Columbia." D.C. Code § 38-1701.03(6) (emphasis added).

Mr. Rice's argument that a public charter school is not a public school is premised solely on a regulation that defines "school, public" as "a building operated and maintained by the District of Columbia Board of Education for educational purposes." 11 DCMR § 199 (2005). Because public charter schools are operated and maintained by nonprofit entities, Mr. Rice contends that they do not fall within this definition.

Mr. Rice's argument founders on history. The Zoning Regulations were adopted in 1958. At that time, there were just two kinds of schools in the District: public and private. The Zoning Regulations have not been amended to reflect the adoption of the public charter school law in 1996. (The definition of public school was apparently last amended in 1968.) But the 1996 law, which authorizes the creation of public charter schools and expressly defines such schools as public schools, was ratified by the Mayor and both Houses of Congress and overrides the outdated definition of "public school" in the Zoning Regulations. When those regulations were

adopted, all public schools were operated by the Board of Education; since 1996, an increasing number of public charter schools have been operated by nonprofit entities. But as the charter school law makes clear, such schools are “public schools” for legal purposes.

It does not appear that the zoning authorities have directly confronted this question, probably because no one has seriously challenged the status of public charter schools as public schools. For example, Chairperson Griffis recently observed during a public meeting of the Board of Zoning Adjustment that “[c]harter schools don’t come under the zoning regs” because “[t]hey are matter-of-right.” BZA Tr. (Apr. 26, 2005), at 114. Similarly, in discussions regarding development of the U.S. Armed Forces Retirement Home site, several members of the Zoning Commission appeared to understand that a public charter school was a “public school” for zoning purposes. ZC Tr. (June 6, 2003), at 16-38.

There are currently 52 public charter schools in the District of Columbia, serving more than 18,000 students. Yet it does not appear that any of them have been required to obtain an exemption from the Zoning Regulations in order to occupy or develop their respective spaces. This is strong evidence that the zoning authorities have treated charter schools as public schools, with “of right” zoning status, since the charter school law was passed in 1996.

It is telling that Mr. Rice does not even attempt to argue that a public charter school is a “private school.” Instead, he contends that AppleTree’s public charter school should be considered a “child development center,” presumably because AppleTree will be operating a school for preschool and pre-kindergarten children. But AppleTree holds one of only a few charters for this age children in the District. All other public charter schools are either elementary, middle, or high schools. The zoning authorities should establish a single rule for *all* public charter schools, regardless of the age of children being educated.

In any event, the public charter school does not meet the regulatory definition of “child development center,” which is a facility for the “licensed care” of specified persons. 11 DCMR § 199. Daycare centers, for example, are licensed by the Mayor. D.C. Code § 7-2034. A public charter school, by contrast, is not required to seek such a license. Rather, it receives a charter from one of the two chartering authorities, the D.C. Public Charter School

Board or the Board of Education, and operates under the supervision of that agency. It is an entirely different entity from the "child development centers" described in the Zoning Regulations. The Board of Zoning Adjustment appears to have recognized the distinction on at least one occasion. *See* BZA Tr. (Apr. 8, 2003), at 164. Our public charter school is more like the preschool programs operated at many public schools under the aegis of the federal Head Start program, which also are not considered "child development centers."

In summary, we understand a public charter school in the District of Columbia is a "public school" for most purposes, including the application of the Zoning Regulations. As a result, we believe AppleTree Early Learning Public Charter School may occupy the property at 138 12th Street, N.E., which is zoned R-4, as a matter of right. 11 DCMR § 330.5(a).

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me at 202.488.3990.

Respectfully yours,

A handwritten signature in black ink that reads "Russ Williams". The signature is written in a cursive, flowing style.

Russ Williams
Managing Director
AppleTree Institute for Education Innovation

CC: Mr. Cody Rice, Advisory Neighborhood Commissioner (SMD 6A03)
Hon. Sharon Ambrose, Ward 6 Councilmember
Mr. Tom Nida, Chair, DCPCSB
Dr. Patrick J. Canavan, Director, DCRA