

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**Northeast Neighbors for Responsible
Growth, Inc.
144 12th Street, N.E.
Washington, D.C.**

Plaintiff,

v.

Civil Action No.

**District of Columbia
c/o Anthony Williams, Mayor
1333 1/2 Pennsylvania Avenue, N.W.
Washington, D.C. 20002**

and

**Anthony Williams, Mayor
in his Official Capacity
1333 1/2 Pennsylvania Avenue, N.W.
Washington, D.C. 20002**

and

**Department of Consumer and Regulatory
Affairs
c/o Dr. Patrick Canavan
in his capacity as Director
941 North Capitol Street, N.E.
Washington, D.C. 20001**

and

**Dr. Patrick Canavan
in his Official Capacity as Director of
Department of Consumer and Regulatory
Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20001**

and

**Williams Crews
in his Official Capacity as
Zoning Administrator
941 North Capitol Street, N.E.
Washington, D.C. 20001**

Defendants.

COMPLAINT FOR INJUNCTION RELIEF

Comes now, Plaintiff, Northeast Neighbors for Responsible Growth, Inc. ("Northeast Neighbors"), by and through counsel and requests this Court enjoin the defendants from issuing building permits to the AppleTree Institute for Education Innovation ("AppleTree") for demolition and construction at 138 12th Street, N.E., Washington, D.C. (the "Property").

I. JURISDICTION

1. This Court has jurisdiction pursuant to Chapter 11 § 1101 of the Code of the District of Columbia (2001 Ed.) as all parties and activities are located herein.

II. PARTIES

2. The Plaintiff is a non-profit corporation established by the residents in the Lincoln Park area of Capital 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, N.E..

3. The District of Columbia is a municipality wherein Anthony Williams as Mayor is the executive in charge.

4. Anthony Williams is the Mayor of the District of Columbia. He is named herein in his Official Capacity.

5. The District of Columbia Department of Consumer and Regulatory Affairs 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. The Zoning Administrator is under this Department but independent and must sign off on these permit requests prior to their issuance.

6. Dr. Patrick Canavan is the Director of the Department of Consumer and Regulatory Affairs. He is named herein in his Official Capacity.

7. Williams Crews is the Zoning Administrator. He is named herein in his Official Capacity.

III. FACTS

8. The Plaintiff by and through its members are concerned about unregulated, unplanned development specifically in their neighborhood; as well as, other residential neighborhoods within the District of Columbia.

9. AppleTree, which plans to construct a school designed to accommodate 53 three to four year old students with a staff of 24 has already sent workmen to the site to do construction and demolition work although no permits have been issued.

10. The one hundred block of 12th Street, N.E. is narrow and residential. The Property is contiguous and abutting to the residential housing and the zoning is R-4 (Residential) and in the Capitol Hill Historic District.

11. AppleTree has taken the position that they are not covered by Zoning Regulations or Planning rules and regulations and do not need variances or exceptions despite the fact that this narrow tree-lined street and the present building are respectively too narrow and too small for their needs. There is no safe pick-up and drop-off spot. The building would hereto be bigger

than the 40 percent occupancy allowed for non-residential use in a R-4 zone.

12. AppleTree relies on a definition and a zoning regulation for charter schools created under the District of Columbia Board of Education for schools licensed by them. AppleTree is not licensed by the District of Columbia Board of Education.

13. The school proposed by AppleTree is a licensed charter school under federal law incorporated into D.C. law in Chapter 38 §§ 1800 et seq. of the D.C. Code and under the Public Charter School Board not the D.C. Board of Education. In § 38-1800.02(29)(B) the definition of a “public charter school” is as follows:

District of Columbia public school. -

(A) In general. - The term “District of Columbia public school” means a public school in the District of Columbia that offers classes:

- (i) At any of the grade levels from prekindergarten through grade 12; or
- (ii) Leading to a secondary school diploma, or its recognized equivalent.

(B) Exception. - The term “District of Columbia public school does not include a public charter school.”

14. As part of the Capitol Hill Historic District, the Historic Preservation Review Board (HPRB) must rule on AppleTree’s application. The HPRB has indicated a favorable ruling is imminent. Further, on information and belief, Plaintiff has been led to believe DCRA will issue building permits for demolition and construction without regard for either the BZA or the Zoning Commission.

15. Clearly, the school AppleTree is proposing is not “a part of the District of Columbia public schools” and therefore is not exempt from the D.C. Zoning Regulations (see § 199 of the D.C. Zoning Regulations).

16. The District of Columbia Office of Planning has presented draft regulations to the D.C. Zoning Commission to ensure appropriate placement of public charter schools and other such institutions, especially as to residential neighborhoods with regards to traffic, safety, noise

and quality of life. The regulations are in the Second Draft stage, and on information and belief, are due to be issued on February 13, 2006.

17. These regulations will give all parties a reasonable framework under which to operate subject to an urban planning model for public schools and public charter schools and for all similar development in this and most other major cities residential areas so as a matter of public policy and interest they are clearly necessary.

18. Plaintiff represents the homeowners and neighbors of the proposed AppleTree school. They will suffer immediate and irreparable harm if the project is not enjoined and have standing to request enjoining of these imminent proposed demolitions.

19. The Defendants are the entities with the legal authority to issue there aforementioned permits and are required to follow their own statutes, regulations and planning requirements that they have heretofore strongly supported; especially with regard to the impact on traffic, parking, safety of the public and the students, and noise.

20. An R-4 (Residential) zone, as herein, has limits on size of building, set backs, FAR and other requirements with which AppleTree's proposed plans do not comply.

21. Based on AppleTree's actions to date (trying to begin demolition) and its position that it is exempt from the relevant laws, it is likely they will attempt to proceed imminently and so an injunction is the sole possible remedy. AppleTree has issued statements to the press claiming that they had verbal permission from DCRA to do this work. This was denied by DCRA.

22. At a meeting before the Stanton Park Citizens Association, officials of DCRA said they would not guarantee that AppleTree would not receive permits under the existing regulations. They further said they would not guarantee that permits would not be granted to

AppleTree prior to the Office of Planning issuing its final regulations.

COUNT I

23. The Plaintiffs adopt and incorporate paragraphs 1 through 22 herein and relies on therein.

24. The permits once issued cannot easily be withdrawn and the intent of AppleTree to move quickly to avoid such planning and zoning considerations are obvious.

25. Any proposed urban planning and required zoning actions will be moot if the demolition is commenced so the only reasonable act is to enjoin such actions until the District of Columbia government is able to comply with its obligations.

26. Any such action as proposed would require approvals, use exceptions and variances from the Board of Zoning Adjustment and the Zoning Commission, as the case may be.

COUNT II

27. The Plaintiff adopts and incorporates paragraphs 1 through 26 of this Complaint and relies on them hereafter.

28. The actions of AppleTree, and their misrepresentation of the law, has shown the necessity for the city to promulgate regulations consistent with its urban planning model to govern the placement and construction of public schools and federally created Public Charter Schools, so as to insure they are reasonably and sensibly incorporated into appropriate locations in an urban residential community.

29. The Office of Planning has prepared and issued draft regulations to the Zoning Commission governing the placement and construction of public schools and Public Charter Schools, of which the proposed project is one, to insure their proper incorporation into the urban

residential plan and their compliance with necessary laws.

WHEREFORE, Plaintiff respectfully prays that this honorable Court issue an injunction ruling that the District of Columbia and its agencies, including but not limited to, the Zoning Administration and the Department of Consumer and Regulatory Affairs, are enjoined from:

1. Granting any permits, including but not limited to building permits for the AppleTree project until such time as the Board of Zoning Adjustments and the Zoning Commission has ruled on the project, such permits to be in accordance with those rulings.
2. Granting any permits for the AppleTree project until such time that the Office of Planning draft regulations are promulgated adopted, amended or denied by the Zoning Commission; such permits to be in accordance with those regulations, as adopted.

Respectfully submitted,

Donald R. Dinan (Bar No. 234997)
**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**
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Telephone (202) 973-1200
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ATTORNEYS FOR PLAINTIFF,

Verification

I herby swear and affirm the matter set forth in this Complaint are true and correct to the best of my belief.

Donald R. Dinan

Before me, _____, in and for Washington, D.C., on this _____ day of _____ personally appeared Donald R. Dinan, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Notary Public

My Commission Expires:

(SEAL)

My Commission No.:
