

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

**Northeast Neighbors for Responsible
Growth, Inc.**

Plaintiff,

v.

District of Columbia, et al.

Defendants.

Civil Action No. 06-0685

Judge Robert E. Morin

**Next Court Event:
ICS on May 5, 2006**

**MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

Comes now, the Plaintiff by and through counsel and moves this Court to grant leave to file a first amended Complaint. The grounds for this Motion are that a number of events have occurred, which have substantive legal effect, since the Complaint was filed. This amendment also addresses, in part, the Rule 12 and Rule 19 motion to dismiss filed by the District of Columbia Attorney General's office, and is based upon Rule 15 and the new facts and occurrences since the original Complaint. The Amended Complaint is attached hereto.

1. The proposed zoning regulations referenced in our original complaint (§§ 15,16 and 17) have been passed on an emergency basis, in part, so the Complaint must be amended to recognize that fact (see Affidavit of Donald R. Dinan, Exhibit 1 and 9).

2. The regulations passed by the Zoning Commission, as promulgated by the Office of Planning, make the AppleTree proposal a non-conforming use (see, Affidavit of Herb Faling, §§ 3-4). This means that no permits can be granted by Department of Consumer and Regulatory Affairs (hereinafter "DCRA") until, and unless, the Board of Zoning Adjustment grants a special

exception or variance, as the case may be. On information and belief, DCRA and the Zoning Administrator (as well as the Zoning Commission) are under this belief and intend to so act (see Affidavit of Donald R. Dinan, Exhibits 2-6).

3. Despite the newly passed regulations, AppleTree is demolishing the Property as of February 15, 2006 under the guise of public health (see Affidavit of Herb Faling, ¶ 5 and Affidavit of Donald R. Dinan, Exhibits 7-8).

4. AppleTree has now written a letter to the Zoning Commission attacking it for issuing the emergency regulations and questioning their authority to do so in an apparent attempt to get the Zoning Commission to rescind the regulations and not adopt them on a permanent basis.

Motions for leave to amend should be granted liberally. These new substantive facts could not have been plead in the original Complaint as they had not then occurred. The policy favoring resolution of cases on the merits creates a virtual presumption that a Court should grant leave to amend where no good reason appears to the contrary. Bennett v. Fun and Fitness of Silver Hill, Inc., 434 A.2d 476 (D.C. App. 1981). Likewise, AppleTree should not have been named as a party defendant in the original complaint until they engaged in their egregious behavior to circumvent, avoid, and evade, the laws and regulations of the District of Columbia in their attempt to begin demolition and construction of a Property in violation of the zoning regulations.¹

Wherefore, Plaintiff respectfully requests that this Motion to Amend the Complaint be

¹ The District of Columbia, in its pending Motion to Dismiss, (most probably now rendered moot by these intervening causes) argued that AppleTree needed to be included as a defendant in the original complaint under Rule 19, and failure to do so constituted grounds for dismissal. Plaintiff totally disagrees, because at the time the original Complaint was filed, the suit was against the District of Columbia to prevent the District of Columbia from issuing permits; regardless, the point is moot as AppleTree is now affirmatively engaging in actions that warrant that it be made a party-defendant.

granted.

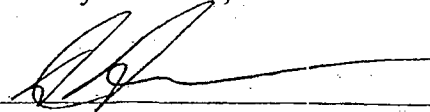
Rule 12-I

Defendant, the District of Columbia, consents to the granting of this motion.

Memorandum of Points and Authorities

S.C.R. - 12, 15 and 19

Respectfully submitted,



Donald R. Dinan (Bar No. 234997)
**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**
1120 20th Street, N.W.
Suite 700, North Building
Washington, DC 20036-3406
Telephone (202) 973-1200
Facsimile (202) 973-1212
ATTORNEYS FOR PLAINTIFF,

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

**Northeast Neighbors for Responsible
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Plaintiff,

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ORDER

Upon Plaintiff's Motion for Leave to File First Amended Complaint, it is, this ____ day
of _____, 2006,

ORDERED:

1. That said motion be, and the same hereby is, GRANTED.
2. The First Amended Complaint is hereby deemed filed.

Date

Judge Robert E. Morin

Copies to:

Donald R. Dinan
1120 20th Street, N.W.
Suite 700 North
Washington, D.C. 20036

AppleTree Institute for Education Innovation
William J. "Jack" McCarthy, Managing Director
Lex Towle, Co-Founder
400 7th Street, SE
Washington, D.C. 20003

Andrew J. Saindon
Assistant Attorney General
Office of the Attorney General
441 4th Street, N.W.
6th Floor
Washington, D.C. 20001

CERTIFICATE OF SERVICE

I. hereby certify, that on this 1st day of March 2006 a true and correct copy of the above and foregoing was sent by First Class Mail to:

Andrew J. Saindon
Assistant Attorney General
Office of the Attorney General
441 4th Street, N.W.
6th Floor
Washington, D.C. 20001

AppleTree Institute for Education Innovation
William J. "Jack" McCarthy, Managing Director
Lex Towle, Co-Founder
400 7th Street, SE
Washington, D.C. 20003


Donald R. Dinan

**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.

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

and

**AppleTree Institute for Education Innovation
400 7th Street, SE
Washington, D.C. 20003**

Defendants.

Civil Action No. 06-0685

Judge Robert E. Morin

**Next Court Event:
ICS on May 5, 2006**

AMENDED 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 Title 11 § 921 of the Code of the District of Columbia (2001 Ed.) (D.C. Code §11-921) 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 chartered municipality wherein the Property and all other parties are located.

4. Anthony Williams is the Mayor of the District of Columbia. He is named herein in his Official Capacity. AppleTree is a corporation based in the District of Columbia, which is in the business of running Public Charter Schools. It currently operates a Public Charter School at 400 7th Street, S.E., Washington, D.C. and plans to open another Public Charter School at 138 12th Street, N.E., Washington, D.C., which proposed school is the subject matter of this litigation.

III. FACTS

5. 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. All of its members live in the area immediately adjacent to the Property and would suffer severe harm if the school which AppleTree plans to build on the Property were in fact built.

6. AppleTree has bought the Property. AppleTree seeks to place a Public Charter School on that site. The proposed school is chartered by the D.C. Public Charter School Board. The school plans to have approximately 54 three and four-year old children with a staff of approximately 24 persons.

7. 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.

8. AppleTree has taken the position that as a Public Charter School it is not covered by Zoning regulations or Planning rules and regulations and does not need variances or exceptions that would be required for a project of this size in an R-4 zone from either the Board of Zoning Adjustment or the Zoning Commission, as the case may be, 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.

9. AppleTree has already sought the requisite building permits from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA). DCRA is the department within the District of Columbia government which issues and regulates, among other matters, any and all demolition and construction permits in the District of Columbia. These permits are currently before the Zoning Administrator for his approval. The Zoning Administrator is under this Department but is independent and must sign off on these permit requests prior to their issuance.

10. The building of a school of this size in a totally 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. 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.

11. AppleTree, in its position that it is not covered by the Zoning Regulations, 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.

12. 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.

13. 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. HPRB only has jurisdiction on the exterior appearance of the building, not its use. 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 if there are no applicable zoning regulations in place.

14. 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).

15. The District of Columbia Office of Planning has presented 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. These regulations were adopted on an emergency basis by the Zoning Commission on February 13, 2006. Emergency regulations go into effect immediately. These emergency regulations clearly apply to Public Charter Schools and, thus, AppleTree.

16. Under D.C. law, emergency regulations are only in effect for 90 days. In that time, they must be adopted by the Zoning Commission on a permanent basis in order to go into lasting effect:

17. Based on a study of the plat maps for the Property, the lot area is 4,230 square feet and the lot width is 36 feet. The lot occupancy appears to be 60 percent. Under the emergency regulations, the minimum lot area is 9,000 sq. feet and the minimum lot width is 120 feet. The maximum lot occupancy is 70 percent. The current FAR and the maximum height for the building as proposed by AppleTree, as opposed to the existing structure, are not known. On information and belief, the maximum lot occupancy under AppleTree's plans would exceed 70 percent.

18. 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 area; so, as a matter of public policy and interest they are clearly necessary.

19. The public charter school which AppleTree plans to construct on the Property is a non-conforming use. Under the emergency regulations, regardless of the nature and size of the building which it plans to construct, which may also be non-conforming, the lot size and width are much too small. As a non-conforming use, AppleTree would have to obtain a special

exception and possible variances from the Board of Zoning Adjustment (hereinafter "BZA") before any building permits could be issued.

20. The Defendant, the District of Columbia, is the entity with the legal authority to issue these aforementioned permits and is required to follow their own statutes, regulations and planning requirements that it has heretofore strongly supported; especially with regard to the impact on traffic, parking, safety of the public and the students, and noise. No permits should be allowed to issue until the BZA has ruled on any appropriate application, and such ruling becomes final.

21. AppleTree has already begun preliminary demolition work despite the fact that the building permits have not been issued by DCRA and no special exceptions or variances have been sought from BZA. On January 12, 2006, AppleTree began demolition work in the back of the Property, although no permits were issued. They were only stopped by the interaction of the residents. Subsequently, on February 21, 2006, AppleTree, under a permit from the Department of Health, began demolition work on the building, allegedly removing asbestos floor tile and the mastic used to install it as well as removing asbestos pipe insulation located in the basement of the building. This demolition, which is occurring, appears to involve the removal of interior partitions and ceilings which may be beyond the scope allowed by the permit. AppleTree has been unloading heavy equipment including canisters at the Property.

22. On information and belief, AppleTree is doing everything possible to avoid and evade the laws and regulations of the District of Columbia in the demolition and construction of this building on the Property.

23. Based on AppleTree's actions to date, including trying to begin demolition, and its position that it is exempt from the relevant laws, it is likely they will attempt to proceed

regardless 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 the prohibited work in January. This has been denied by DCRA. AppleTree has now written a letter to the Zoning Commission attacking it for adopting the emergency regulations and questioning its legal authority in an apparent attempt to have the Zoning Commission rescind the emergency regulations, and not make them permanent.

24. On information and belief, AppleTree is conducting a disinformation campaign designed to spread false information about the project in an attempt to avoid and evade the zoning regulations of the District of Columbia.

25. 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

26. The Plaintiffs adopt and incorporate paragraphs 1 through 25 herein and relies on therein.

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

28. 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.

29. 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.

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 as 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.

COUNT II

30. The Plaintiff adopts and incorporates paragraphs 1 through 29 of this Complaint and relies on them hereafter.

31. 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.

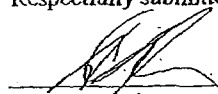
32. The Office of Planning has prepared and issued draft regulations to the Zoning Commission governing the placement and construction of public schools and Public Charter Schools, of which the proposed project is one, to insure their proper incorporation into the urban residential plan and their compliance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



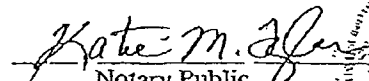
Donald R. Dinan (Bar No. 234997)
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GOLDEN & NELSON, P.C.
1120 20th Street, N.W.
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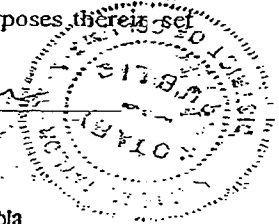
Verification

I hereby 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, KATIE M. TAYLOR, in and for Washington, D.C., on this 1ST day of MARCH, 2006 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:

8-31-2006
(SEAL)

Katie M. Taylor
Notary Public, District of Columbia
My Commission Expires 08-31-2006

My Commission No.:
