

17532

BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

APPEAL

Notice: [Click Here for Appeal Form Instructions](#)

I, Bill Crews, Zoning Administrator, pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken of the administrative decision of: Bill Crews, Zoning Administrator made on: 04/28/2006, to the effect that: see attached information

Application for Construction Permits on Private Property, regarding 138 12th Street, N.E. (File Job #3758-A), is denied for failure to meet R-4 zone district requirements for minimum lot area, minimum width of lot, and minimum parking spaces.

Address(es)* of Affected Premises	Square(s)*	Lot(s)*	Zoning Districts*
138 12th St., N.E.	988	820	R-4

Current Use of Property*: Assembly
Proposed Use of Property*: Public School
Owner of Property*: AppleTree Institute for Education Innovation Telephone No.*: (202)488-3990
Name, address and telephone number of lessee:

Lessee: _____
Name, address and telephone number of appellant, if other than owner: _____

Specifically, manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation):
Use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal.

Date: 06/27/2006 Signature: Russ Williams
This appeal is filed by agent of the Appellant. Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing agent to act on his behalf in this appeal.

To be notified of hearing and decision:
(Appellant or Authorized Agent)*

Name: Russ Williams
Address: 4007th St, N.E. City: Washington State: DC Zip: 20003
Phone No.: (202)488-3590 Fax No.: (202)488-3991 E-Mail: _____

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17532
EXHIBIT NO. 1

Form 125 Appeal — Attachment
AppleTree Institute for Education Innovation
June 27, 2006

EXCEPTIONS TO ADMINISTRATIVE DECISION

The Zoning Administrator concluded that the proposed use failed to meet the requirements for minimum lot area, minimum lot width, and minimum parking spaces. Appellant AppleTree argues that the Zoning Administrator erred in the following ways:

- I. Even assuming the validity and applicability of the Zoning Commission's February 13, 2006 "emergency" rulemaking regarding charter schools, AppleTree's proposed use is exempted from the minimum-lot-area and minimum-lot-width requirements by § 401.1 of the Zoning Regulations, because the building AppleTree seeks to enlarge was located on the lot on May 12, 1958, and the proposed use complies with all other provisions of the Zoning Regulations.
- II. Again assuming the validity and applicability of the February 13, 2006 "emergency" rulemaking regarding charter schools, AppleTree's proposed use does not require the ten parking spaces demanded by the Zoning Administrator because, under § 2100.5 of the Zoning Regulations, "[n]o additional parking spaces shall be required for" a building—such as AppleTree's—that is certified as contributing to the character of a historic district.
- III. The Zoning Administrator erroneously relied upon the Zoning Commission's February 13, 2006 "emergency" rulemaking, which is a legal nullity because there was no "emergency" (as required by § 2-505(c) of the D.C. Code) and no clear explanation of any "emergency" (as required by § 311.4(e) of title 1 of the D.C. Municipal Regulations). Even without the "emergency" rules, which are null and void, AppleTree's application still complies with all applicable zoning requirements due to the operation, inter alia, of §§ 401.1 and 2100.5 of the Zoning Regulations.
- IV. Even assuming that the February 13, 2006 "emergency" rulemaking was initially valid and applied to AppleTree's application, the "emergency" rules cannot be applied for "longer than 120 days" under § 2-505(c) of the D.C. Code. The Zoning Commission's purported "extension" of the "emergency" rulemaking on June 12, 2006 is a legal nullity because the D.C. Code makes no provision for such an extension, because there was no "emergency" (as required by § 2-505(c) of the D.C. Code), and because no clear explanation of any "emergency" (as required by § 311.4(e) of title 1 of the D.C. Municipal Regulations) appears in the record. The Zoning Administrator erred in not responding to a request to reconsider AppleTree's application after the expiration of the 120-day emergency period. Even without the "emergency" rules, which were null and void after June 13, 2006, AppleTree's application still complies with all applicable zoning requirements.
- V. Because AppleTree's application complied with all applicable zoning requirements on the date the Zoning Administrator made his decision (or, in the alternative, after the emergency rules expired on June 13, 2006), it should be granted without regard to any

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17532

EXHIBIT NO. 2

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future rulemakings, because § 3202.4 of the Zoning Regulations provides that the applicable rules are those “in effect on the date that the permit is issued,” and the Board should conclude that the permit should have been issued at one of those times.

HOW APPELLANT INTENDS ON PROVING ITS CASE

Appellant intends to file a pre-hearing brief explaining its arguments in greater depth and including evidence of pertinent facts (such as the certification of the building as contributing to a historic district).

PROOF OF SERVICE

On June 27, 2006, I personally delivered a copy of this application to the Office of the Zoning Administrator and sent a copy by first-class mail to the Advisory Neighborhood Commission.


Russ Williams