

IN THE DISTRICT OF COLUMBIA  
COURT OF APPEALS

|                                   |   |                       |
|-----------------------------------|---|-----------------------|
| Joseph Jorgens, III, et al.,      | ) |                       |
|                                   | ) |                       |
| <i>Petitioners,</i>               | ) | Agency Case No. 17532 |
| v.                                | ) | Appeal No. 07 AA 943  |
|                                   | ) |                       |
| Government of the District of     | ) |                       |
| Columbia, Board of Zoning         | ) |                       |
| Adjustment,                       | ) |                       |
|                                   | ) |                       |
| <i>Respondent.</i>                | ) |                       |
|                                   | ) |                       |
| and                               | ) |                       |
|                                   | ) |                       |
| AppleTree Institute for Education | ) |                       |
| Innovation, Inc.,                 | ) |                       |
|                                   | ) |                       |
| <i>Intervenor.</i>                | ) |                       |

INTERVENOR'S RESPONSE  
TO PETITIONERS' MOTION TO DISMISS

Intervenor AppleTree Institute for Education Innovation, Inc. ("AppleTree") is the prevailing party in the July 25, 2007 order of the Board of Zoning Adjustment that Petitioners have asked this Court to review. On October 31, 2007, Petitioners filed a motion to dismiss this appeal. Although AppleTree has no objection to dismissal, it is important to note that the premise of Petitioners' motion is incorrect.

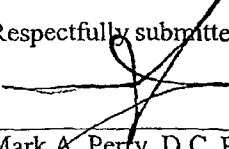
Petitioners "believe" that this appeal has "become moot" as a result of the Zoning Commission's adoption of certain amendments to 11 DCMR § 401.1, which governs minimum lot dimensions in residential districts. Mot. at 1. That belief is misplaced. The Commission's order adopting those amendments (No. 07-03) was published in the *D.C. Register* on September 14, 2007, and became effective on that date. 11 DCMR § 3028.9 ("A written order setting forth a final action shall become final and effective upon publication in the *D.C. Register*").

Because the amendments cited in Petitioners' motion did not take effect until September 14, 2007, they do not apply to AppleTree's application. "All applications for building permits authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date those orders are promulgated." 11 DCMR § 3202.6. The BZA's order authorizing the issuance of a building permit to AppleTree was promulgated on July 25, 2007 and became final and effective on August 6, 2007. *See* 11 DCMR § 3125.9. Thus, any subsequent amendments to the Zoning Regulations—including the amendments effective September 14, 2007—do not apply to the application at issue.

The Court should be aware that on October 26, 2007, the Department of Consumer and Regulatory Affairs issued a building permit to AppleTree. *See* Exh. A, *infra*. If the Court grants Petitioners' motion and dismisses this appeal, Petitioners will have forfeited any opportunity to obtain judicial review of the BZA's order authorizing issuance of the permit.

Respectfully submitted,

Dated: November 5, 2007



Mark A. Perry, D.C. Bar No. 438203  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue N.W.  
Washington, D.C. 20036-5306  
Telephone: (202) 955-8500  
Facsimile: (202) 467-0539  
MPerry@gibsondunn.com

*Attorneys for Intervenor AppleTree Institute for  
Education Innovation, Inc.*