COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004

TOMMY WELLS
Councilmember - Ward 6
Chairperson
Committee on Human Services

Committee Member
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Libraries, Parks, Recreation and Arts
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July 27, 2007

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2007 JUL 30 PM 12: 57

Ms. Jerrily Kress , FAIA
Director
D.C Office of Zoning
One Judiciary Square
441 4th Street, NW, Suite 200 - South
Washington, DC 20001

RE; Case #17532 - Appeal of AppleTree Institute for Education Innovation

Dear Ms. Kress:

I write concerning the pending ruling of Board of Zoning Adjustment (BZA) regarding case #17532, Appeal of AppleTree Institute for Education Innovation. I request that the Zoning Commission (ZC) exercise its authority under Title 11 Chapter 3128 to review the BZA ruling when it is issued.

The motion offered and adopted by the BZA at its January 9, 2007 hearing and decision just released July 26, 2007, ignored the language recently adopted by the Zoning Commission (ZC) in their rulemaking regarding the placement of public and public charter schools in R-4 districts (ZC# 06-06, Text Amendment – Public Schools). Because the language was insufficiently precise for the BZA, they have reversed the clear intent of the ZC and allowed placement of schools in R-4 Districts as a "matter of right".

In the Emergency Rules, the Zoning Commission amended Title 11 § 206.1 to provide:

> Use as a public school that does not meet the requirements of chapter 4 of this title or as a private school, but not including a trade school, and residences for teachers and staff of a private school, shall be permitted as special exception in an R-1 District if approved by the Board of Zoning Adjustment under §3104, subject to the provisions of this section.

This language makes clear that the intent of the ZC was to declare public schools to be a nonconforming use in residential districts if they do not meet the requirements of Chapter 4 of Title 11.he Emergency Rule directly addressed lot dimension requirements by amending Chapter 4. Under any reasonable interpretation of the amended lot dimension criteria, the AppleTree project is clearly a nonconforming use. The BZA ignores this point by invoking Title 11 §401.1, which is not relevant to the case since it relates exclusively to physical attributes of nonconforming lots and does not address exemptions for nonconforming uses. The BZA's confusion on this point is somewhat understandable, given that that the wording of the Emergency Ruling does not explicitly address the relationship of changes in use to criteria that govern nonconforming lots. Nevertheless, it is clear that the ZC intended that a use such as the

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17532
EXHIBIT NO. 44

Board of Zoning Adjustment
District of Columbia
CASE NO. 17532
EXHIBIT NO. 44

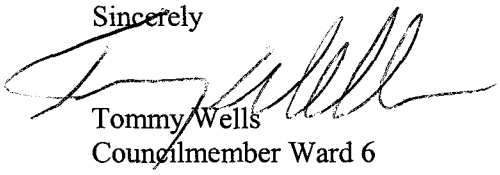
proposed AppleTree school on 12th St NE would be nonconforming on the proposed lot in an R-4 District.

The Zoning Commission by implication amended Title 11 §401.1 by creating a special exception process for all substandard lots not meeting all of the requirements for a "public school". To hold otherwise would mean that the Zoning Commission intended to permit by means of the loophole of Title 11 §401.1, the exact harm -- i.e., public schools being developed in residential districts in a manner causing adverse impacts -- which the Emergency Rules were tailored to prevent. The "public school" special exception process, created by the Emergency Rules, is a mechanism whereby even those lots covered by Title 11 §401.1 and §401.3 must demonstrate an appropriate regard for potential adverse impacts of development on substandard lots.

The decision by the BZA, if left to stand, will allow a charter school to locate on a small lot in a historic residential neighborhood. This will set precedent for the entire city. There are many buildings in Ward 6 where charter schools could appropriately locate but townhouses in residential neighborhoods should never be considered. If the motion of the BZA in case #17532 stands, the prior action of the Zoning Commission will be negated, and the DCRA left without enforceable standards with respect to public and public charter schools.

Thank you for your consideration. If you have any questions please contact me at 202-724-8072

Sincerely



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Washington, DC 20001

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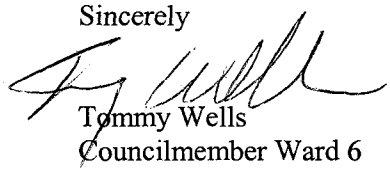

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COUNCIL OF THE DISTRRICT OF COLUMBIA
1350 Pennsylvania Avenue, NW
Washington, DC 20004

DATE: 7/27/07

TO: Ms Sharon Schellin

FAX 727-6072

FROM: Jawana Shafford c/o - Councilmember Wells

SUBJECT: URGENT CASE # 17532
Appeal of Apple Tree Institute

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SPECIAL NOTES

If you have any problems receiving this transmission please contact us at 202-724-8072.
Number of Pages (including this Sheet) 3