

Testimony of Jack McCarthy, Managing Director  
AppleTree Institute for Education Innovation before the  
Zoning Commission of the District of Columbia  
May 11, 2006

Good evening, my name is Jack McCarthy. I am the Managing Director of AppleTree Institute for Education Innovation. There are four reasons why the Zoning Commission was wrong to set down amendments to the zoning ordinances -- on an emergency basis -- on February 13, 2006, and I respectfully urge the Zoning Commission to reverse that decision in the interest of the children in the District of Columbia and the many kinds of schools that are working to improve their educational outcomes.

First, there was not then, and is not now, any "emergency" that requires the Commission to enact these kinds of changes without hearing from the public and examining the full impact of the changes to the zoning rules and how these changes affect DC's families and children, as well as those who are educating them. There are processes in place for proposing and making rule changes. These so-called "emergency rules" were recommended without any meaningful input from the affected parties or the residents of the District of Columbia.

The proposed changes had only a very limited circulation to just a few selected individuals for a very limited time. The Office of Planning did not even consult the District's Facilities Master Plan, the DC Office of Charter Schools Financing and Support or the DC Early Care and Education Administration before making their recommendations. Given this context, it is easy to see that these numerous changes which were set down on an emergency basis--so that they would take effect immediately--was a clear abuse of the rulemaking process that should be corrected by the Commission, rather than by the courts or by the Congress.

Second, your decision to change the rules suddenly affected a number of parties--who were relying on the existing rules when making their plans and proposals--which is contrary to any sense of fairness and to the rule of law. The Office of Planning knew that AppleTree's public charter school and other charter schools were in the process of seeking construction permits. Even though one or more Commissioners raised this concern at the zoning commission's meeting held on February 13, 2006, the Office of Planning staff minimized this fact and

neglected to provide you with a list of projects that would be adversely affected by your action.

Third, your decision on February 13, 2006, thwarts the DC School Reform Act of 1996, which was enacted to stimulate the creation of public charter schools. Please recognize that 1 out of every 4 DC families choose a public charter school, despite the sorry history of how these charter schools have been denied access to adequate and sufficient school facilities by the District of Columbia Public Schools and by the District government. Your recent action undermines recent policy initiatives of the Williams Administration and Congress to remedy this inequity, such as the City -Build initiative, which provides facilities financing to encourage the development of quality public charter school choices located within the neighborhoods of the city.

The fourth reason, and probably the most important of all, is that the Zoning Commission was used by a savvy few in an attempt to stop AppleTree's project at 138 12<sup>th</sup> Street, NE. We, at AppleTree, followed the city's processes and followed the instructions of the various city agencies, including the Office of Zoning, the DCRA and the HPRB. We made significant changes to our project--based upon feedback we

received from the ANC and meetings with community leaders, and we received approval from the Historic Preservation Review Board for the planned improvements to our building.

Further, the Zoning Commission's emergency amendments were cited by Zoning Administrator Bill Crews as the only reason for denying AppleTree's permits—even though our application was filed prior to your "emergency" action on February 13th.

I respectfully submit that you cannot, in good conscience, be a party to this abuse of process. If you believe that the zoning ordinances require revision, then it should be done in the sunlight, with a comprehensive and thorough review of any proposed changes and their citywide impact on the District's residents and the District's priorities. Fairness, the rule of law, and the confidence of the governed in those who govern, demands that the Zoning Commission reverse this emergency set down of amendments from February 13<sup>th</sup>.

Thank you