

TESTIMONY BEFORE THE ZONING COMMISSION
ON Z C CASE NO 06-06 TEXT AMENDMENTS-CHARTER SCHOOLS
MAY 11, 2006

Good evening, my name is Ellen Oppenheimer, and I am here to testify in opposition to some of the proposed text amendments to 11 DCMR regarding charter schools

First, I would like to comment on the use of an "Emergency" procedure as a first step in addressing the perceived ambiguities and actual omissions in the 11 DCMR Webster's New World Dictionary defines an emergency as " a sudden, generally unexpected occurrence demanding immediate action " The case before the Zoning Commission, does not fit this definition for two (2) reasons First, Charter Schools have been in existence in the District of Columbia for ten (10) years Nevertheless, no effort had been made by the District of Columbia since their inception to update and correct the definition of public schools in the zoning regulations Second, certainly it was no secret to the city that AppleTree had purchased a building at 138 12th Street, NE during the summer of 2005, and that AppleTree had actively sought and received the advice of the Office of Zoning, DCRA, the Zoning Administrator, and the Historic Preservation Review Board (HPRB) in preparing to apply for construction permits for opening its public charter school for 3 and 4 year olds, hopefully, in September 2006 AppleTree complied with all the requirements found in DC law and regulation, followed and relied upon the advice of all the city employees it consulted, attended several public community meetings, and actively sought the input of community representatives and neighbors of the proposed school

AppleTree even hired a community liaison consultant in an attempt to meet with community representatives in order to discuss the residents' concerns about the proposed new school However, these overtures were largely rebuffed and AppleTree and its consultant were

told that the neighbors refused to discuss any of the zoning-related issues with them. In any case, AppleTree on its own after hearing some of the neighbors' concerns at ANC meetings, revised its proposal in response to those concerns. AppleTree did meet with community representatives regarding its application to the HPRB and did respond and address all of the issues raised by the HPRB, its staff, and those community representatives.

I believe that the "emergency action" taken by the Zoning Commission on February 13, 2006, sets a bad precedent. The Zoning Commission's action was taken hastily without public notice and comment and without consideration of how the parties directly affected by the "emergency rules" were impacted, which is contrary to the Zoning Commission's rulemaking procedures. 11 DCMR Section 3000.9 specifically states that "The Commission may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." However, in this case, AppleTree's rights were definitely negatively affected and prejudiced by the adoption of the "emergency setdown." AppleTree had applied for permits on February 9, 2006. However, AppleTree's property does not meet many of the specific changes to the rules which are contained in the "emergency setdown." Thus, without good cause shown, the Zoning Commission bypassed its own rulemaking procedures which resulted in prejudicing the rights of at least one, and possibly other affected parties.

Further, the Zoning Commission could have decided under 11 DCMR Section 3000.9 to give proper notice and permit public comment including hearing from any and all of the affected parties at its meeting held on February 13, 2006. However, the Zoning Commission instead chose to proceed in a one-sided manner and only heard from the Office of Planning on February 13th, 2006, with regard to the Office of Planning's proposed "emergency set down", rather than

hearing from anyone or any group which opposed or had concerns about the Office of Planning's emergency proposal, and it did not hear from any of the affected parties, including AppleTree, which had requested in writing in advance to be heard on the Office of Planning's emergency proposal. See letter to Chairwoman Carol J. Mitten, dated February 9, 2006, which is attached hereto and incorporated herein.

Finally, I would like to raise a concern about the proposed amendments to the lot area and lot width which are currently required in the Zoning Regulations. If one of the stated purposes of these amendments to the Zoning Regulations is to minimize the negative impact of public schools on residential neighborhoods, why then has the Office of Planning proposed to increase the size of public schools both in lot area and lot width located within residential neighborhoods? It seems to me that the proposed amendments will have the opposite effect and will actually increase the size and density of these schools thereby increasing the potential negative impacts on DC's residential neighborhoods. Further, larger public schools will be less likely to "fit into" the District's residential neighborhoods. Small neighborhood-based schools are clearly desirable not only as effective learning environments but also for having the most minimal impact on residential neighborhoods. The Office of Planning's proposed changes to the zoning regulations appear to have the potential to eliminate the possibility of having any small public schools, including public charter schools, within the District's residential neighborhoods as well as creating the potential for having unwanted negative consequences from the creation of new public schools within our city's neighborhoods. I do hope you will address this concern during your deliberations.

I will be happy to answer any questions you may have.