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June 12, 2006

Sharon Schellin
Acting Secretary
Zoning Commission
441 4th Street, N W , Suite 200
Washington, D.C. 20001

Re. Z.C. Case No. 06-06. Text Amendments—Charter Schools

Dear Ms. Schellin:

In its May 10 comment letter, AppleTree Institute for Education Innovation (“AppleTree”) expressed its concern that aspects of this rulemaking “appear to have been manufactured by opponents of school choice to stop one project—AppleTree’s—from proceeding.”

After that comment letter was filed, a local newspaper ran a remarkable article that said essentially the same thing.

Then, the neighborhood commission and *the Northeast Neighbors for Responsible Growth, a group formed to oppose the AppleTree project, proposed the rule changes* for school lots in residential areas.

The Office of Planning drafted the 10 proposed amendments and sent them to the [zoning] commission, which accepted two amendments on an emergency basis defining charter schools as public schools and imposing the new minimum square footage requirement

Ben Weinstein, “AppleTree denied building permits,” *Voice of the Hill*, May 11, 2006, p. 3 (emphases added) (attached as Exhibit 1).

We at AppleTree are well aware from personal experience that newspaper reports are not always accurate. We believe, however, that the *Voice of the Hill* article is, at least in this regard, consistent with other available evidence (discussed below) about the flawed nature of the headlong process that the Zoning Commission has pursued in this rulemaking at the persistent urging of the Office of Planning.

We believe that each of the Commissioners ought to consider carefully the following issues before voting to adopt a final rule in this matter:

1. How these proposed regulations came into existence.
2. The severely limited opportunity that various important stakeholders had to offer constructive input on the proposed regulations.

ZONING COMMISSION
District of Columbia

CASE NO. 06-06
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3. The limited nature of the outreach conducted by Office of Planning personnel since the Commission's May 11 public hearing—despite the specific request of the Commissioners that mechanisms for cooperating with the D.C. Public Charter School Board be evaluated.

4. The catastrophic effect that the rule would have on the ability of small public charter schools to operate as neighborhood schools in residential areas.

As I stated at your May 11 public hearing, AppleTree believes a formal, inclusive process for developing amendments to the regulations governing the siting of public schools in residential neighborhoods would be helpful to all parties involved. Unfortunately, the current set of proposed amendments was not developed using a formal or inclusive process. From the outset, Office of Planning (“OP”) personnel were responding to a request from a specific neighborhood and a single ANC; input from other obvious stakeholders—even within D.C. government—was exceedingly limited or non-existent

The first time OP shared its intentions with, for instance, the Friends of Choice in Urban Schools (“FOCUS”) was on the evening of January 18, 2006. Although OP claimed to be only “at the very first stage in drafting” the proposed regulations, FOCUS was given only 11 business days to review and comment on the proposal. *See* e-mail attached as Exhibit 2

That truncated opportunity for review and comment casts new light on OP's February 3 Setdown Report (attached as Exhibit 3), which claimed: “OP has worked closely with charter school groups including FOCUS and interested stakeholders. Comments were solicited throughout the month of January.”

Equally informative is the list of obviously relevant entities that OP did *not* consult in the process of drafting the proposed regulations: the Office of Public Charter School Financing and Support, the D.C. Public Charter School Board, the D.C. Public Charter School Association, and the Public Charter School Center for Student Support and Services, among others.

Meanwhile, the same neighbors who initiated OP's work on the rulemaking kept close tabs on AppleTree's building-permit application, which was filed on February 9, 2006 (before the Commission considered OP's Setdown Report). On April 28, 2006, the Zoning Administrator issued his decision not to approve AppleTree's application, basing that decision on the “Emergency Text Amendment defining charter schools as public schools, and changing various requirements for public schools to locate in the R-4 Residential District as matter of right on February 13, 2006 ” *See* Letter from Bill Crews, Zoning Administrator, to Russ Williams, Managing Director, AppleTree, *Re 138 12th Street, NE* (Apr. 28, 2006) (attached as Exhibit 4).

Although it took the Zoning Administrator *more than two months* to issue his decision, he had previously spoken to the media about his anticipated decision. *See* Gabriel Pacyniak, “Applying Leverage, By The Book,” *Hill Rag*, Mar. 2006, p. 36 (attached as Exhibit 5) (“Crews said that although he is still reviewing the AppleTree construction permit application, ‘I don't think it actually would have qualified under the old rules ... and I am pretty sure it won't qualify under the new ones.’”). As explained further below and in our May 10 comment letter, the Zoning Administrator's statement that the AppleTree project would not have qualified under the

law in effect on the date the permit application was filed is simply wrong. When the permit application was filed, the AppleTree project complied with every applicable zoning regulation.

The Zoning Administrator had also been in correspondence with AppleTree's neighbors. They complained that AppleTree's permit application was not accompanied by any plans. See E-mail from Herb Faling to Cody Rice & George Keys, Feb. 16, 2006, 2:27 pm (attached as Exhibit 6) ("[My permit expediter] checked the permit status of [AppleTree's] application and found, that while a permit application had been filled out as reported by Cody [Rice] there were no plans submitted. Just in case the plan desk had misplaced the paperwork he checked the plan review room to confirm that the plans were not there. As expected no plans in the plan review room."). The Zoning Administrator told them. "I have the application and plans sitting in my office ... It is my interpretation of the regs that this permit application must comply with the emergency text amendment." E-mail from Zoning Administrator Bill Crews to ANC6A Commissioner Cody Rice, Feb. 16, 2006, 5:44 pm (attached as Exhibit 7).

Notwithstanding the acknowledgement that AppleTree's plans were in his own office just one week after the application had been filed, the Zoning Administrator sent another e-mail less than two hours later to George Keys, an attorney representing Northeast Neighbors for Responsible Growth, the group formed to oppose the AppleTree project, in which he said: "We will be reviewing the plans in the normal course of reviews, no special treatment." E-mail from Zoning Administrator Bill Crews to George Keys, Feb. 16, 2006, 6:51 pm (attached as Exhibit 8)

The review process turned out to be anything but routine. As AppleTree's own permit expediter explained to the Zoning Administrator in an April 14, 2006 e-mail (attached as Exhibit 9):

I am contacting you about the status of your review for the Appletree School, located at 138 12th Street, NE, DC File #3758-A. We spoke on Friday, March 30 and you told me you expected to have comments ready the following Monday. I realize you were then out for nearly the entire week to follow. ***Unfortunately, during that time the application was not with the plans and could not be located by DCRA.*** We were unable to review the current comments or move the job to Structural for first review.

I have tried to contact you several times this week. As you can see from the attached PDF, Electrical, Fire, and Mech/Plumb reviews were all completed four weeks ago. Since that time we believe Elevator has approved the job as well (thought not confirmed), but we have not received your comments or had Structural review the job. ***The job was filed 2/9/06, over 2 months ago.***

(Emphases added.)

* * *

AppleTree purchased its property almost one full year ago. Before doing so, it confirmed that the lot could have been developed, under the Zoning Regulations, as a public charter school. Previous Zoning Administrators did not hesitate to treat charter schools as "public schools" under the Zoning Regulations, significantly undercutting the premise of this rulemaking that regulatory ambiguity is stifling the development of charter schools in the District. See, e.g.,

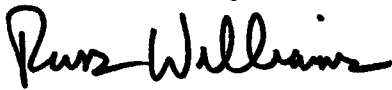
Letter from Toyé Bello, Office of the Zoning Administrator, to Milton Shinberg (Oct. 25, 2001); Letter from Steven E. Sher to Gladys Hicks, Acting Zoning Administrator (May 6, 1998) (both attached as Exhibit 10)

In order to protect AppleTree's substantial investment in its property, and in recognition of the status quo before last fall, the Zoning Commission should, at the very least, determine that this rulemaking will not affect permit applications that were filed before February 11.

More broadly, the Zoning Commission must realize, as several other commenters have explained, that adopting the proposed rule on a permanent basis would sound the death knell for small public charter schools in residential areas in the District. The Commission would effectively be making a decision with public-policy ramifications that go far beyond mere land use. Yet the public record for this rulemaking does not evince any serious attempt by OP or the Commission to ensure that other important public policies are being taken into account. As multiple witnesses testified at the Commission's May 11 hearing, the children of the District of Columbia deserve better.

Thank you for considering these comments.

Respectfully yours,

A handwritten signature in black ink that reads "Russ Williams". The signature is fluid and cursive, with the first name "Russ" and last name "Williams" clearly distinguishable.

Russ Williams
Managing Director
AppleTree Institute for Education Innovation

cc. Alan Bergstein, Esq.