

dBF Associates, Architects

March 6, 2006

Bill Crews
Zoning Administrator for the District of Columbia
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N E , Suite 2000
Washington, D C 20002

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DC OFFICE OF ZONING

RECEIVED

Re Building Permit Application for Public Charter School at 138 12th Street, N E
(Tracking Number 3758-A-6)

Dear Mr Crews

I write with regard to the building permit application filed on February 9, 2006, on behalf of AppleTree Institute for Education Innovation. On March 6, AppleTree received notice that the "Northeast Neighbors for Responsible Growth, Inc." had named AppleTree as a defendant in a lawsuit that seeks to prevent you and others in the District of Columbia government from following the usual procedures in processing AppleTree's application. The papers they filed with the D C Superior Court included copies of e-mail correspondence in which you expressed the view that AppleTree's pending application would need to comply with the text adopted pursuant to an emergency rulemaking by the Zoning Commission at its meeting on February 13, 2006.

Before the February 13 meeting of the Zoning Commission, AppleTree expressed some of its grave concerns about the process by which the Commission adopted the emergency text amendment, and the course of the meeting itself did not allay those concerns. Nevertheless, I write to note that AppleTree's pending application meets all applicable zoning requirements—even assuming for the sake of argument that the emergency text amendment is in effect and applies to your evaluation of AppleTree's application.

The emergency amendment makes clear that charter schools are "public schools" for purposes of the Zoning Regulations, just as AppleTree's counsel, Mark A. Perry of Gibson, Dunn & Crutcher LLP, explained in a letter to you on November 21, 2005.

Some of the residential height, area, and density regulations would not be affected by the emergency rulemaking. Thus, no change would be made to §§ 402, 404, 405, and 406, each of which is satisfied by AppleTree's application. Under § 402.4, the maximum floor area ratio would remain 1.8, well above AppleTree's actual floor area ratio of 1.53. Under § 404.1, a rear yard must be at least 20 feet deep, and AppleTree's would be 47 feet deep. Under §§ 405.1 and 405.2, no side yard is or would be required, and AppleTree's development would have none. Section 406 is inapplicable because there would be no open or closed court.

ZONING COMMISSION

CASE No. 06-06

EXHIBIT No. 5 **ZONING COMMISSION**

District of Columbia

CASE NO.06-06

EXHIBIT NO.5

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Other parts of Chapter 4 would be altered by the emergency text, but not to such a degree that AppleTree's proposed development would be non-compliant. Thus, under § 400 11, the permissible height for a public school in an R-4 district would be reduced from 90 feet to 60 feet—still much taller than AppleTree's building, which would be only 33 feet high. Similarly, under § 403 1, the maximum lot occupancy for a public school in an R-4 zone would be 70 percent, significantly more than the 60 4 percent that AppleTree's building would occupy (including 58 8 percent for the building and an additional 1 6 percent for a deck that would be less than 20 feet high and therefore meet the conditions of § 403 1).

The emergency text amendment would dramatically increase the minimum-lot-area and the minimum-lot-width requirements for public schools in R-4 districts. Under the amended version, the minimum lot area would jump from 4,000 square feet to 9,000 square feet, and the minimum lot width would triple by going from 40 feet to 120 feet. Although AppleTree's lot is 4,230 square feet in area and 36 feet wide, and would thus appear not to satisfy those requirements, ***it is exempted from them by the operation of § 401.1***. That long-standing provision reads in relevant part:

[I]n the case of a building located, on May 12, 1958, on a lot with a ***lot area or width of lot, or both***, less than that prescribed in § 401 3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all ***other*** provisions of this title.

11 DCMR § 401 1 (2005) (emphases added). The emergency rulemaking did not purport to alter § 401 1. As the Board of Zoning Adjustment explained in one of its 2002 decisions, that provision "means that a replacement for a pre-1958 building on a nonconforming lot is permitted so long as it meets all zoning requirements 'other' than lot width." *Appeal No. 16830 of Advisory Neighborhood Commission 2A and Richard J Price*, at 5 (BZA Mar. 5, 2002). (Although lot area was not relevant in that case, § 401 1 also creates a parallel exception from the minimum-lot-area requirement.) As AppleTree's building permit application noted, the building on AppleTree's lot existed as of May 12, 1958. Accordingly, AppleTree's development ***need not satisfy § 401.3*** unless it cannot meet some other zoning requirement.

The only other requirements that AppleTree could be alleged to fail are those in Chapter 21 governing parking. There again, however, a pre-existing exemption would, even under the emergency rulemaking, continue to apply to AppleTree's proposed development. Under the standard formula for elementary schools, AppleTree's 15 staff members would necessitate 10 parking spaces, while there is room for only 3 spaces on-site (though, as the application made clear, AppleTree has also secured a long-term lease in a nearby parking lot for a minimum of 10 parking spaces). Nevertheless, that requirement is made inapplicable by the exemption in § 2100 5, which reads as follows:

No additional parking spaces shall be required for a historic landmark or a building or structure located in a historic district that is certified by the State Historic Preservation Officer as contributing to the character of that historic district.

11 DCMR § 2100 5 (emphasis added). As AppleTree's application noted, its building has been certified by the D.C. Historic Preservation Office as a contributing element in

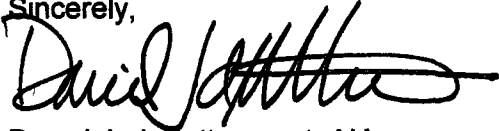
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the Capitol Hill Historic District Accordingly, AppleTree would not even need to provide for both the 3 on-site and the 10 nearby parking spaces that it proposes

In light of the foregoing, I trust that you will process AppleTree's application expeditiously and recognize that—even assuming the emergency rulemaking has taken effect and applies—AppleTree needs no special exception or variance to meet all applicable requirements of the Zoning Regulations

Please do not hesitate to call me if you would like to discuss any of these issues further

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. deBettencourt", with a stylized flourish at the end.

Daniel J. deBettencourt, AIA

Cc Zoning Commission Members

Andrew J. Sandon, Esq