District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013

February 12, 2007

Zoning Commission of the District of Columbia
One Judiciary Square
441 4th Street, NW
Washington, DC 20001

RE: BZA Decision on AppleTree Charter School Appeal No. #17532

Dear Zoning Commissioners,

At its regularly scheduled and properly noticed meeting of February 8, 2007, the Advisory Neighborhood Commission for 6A voted (7-0-0, with five required for a quorum) to send this letter.

The Board of Zoning Adjustment (BZA) is about to issue a decision in BZA #17532, Appeal of AppleTree Institute. The motion offered and adopted by the BZA ignored the language promulgated by the Zoning Commission (ZC) regarding the placement of public and public charter schools in R-4 districts. 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". 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 charter schools.

In the Emergency Rules, the Zoning Commission amended §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. Under any reasonable interpretation of the Emergency Rules, the AppleTree project is clearly a nonconforming use. The BZA ignores this point by invoking §401.1, which is not relevant to the case since it relates exclusively to nonconforming lots and says nothing about exemptions for nonconforming uses. The BZA's confusion on this point is somewhat understandable, given the wording of the Emergency Ruling, which appears to link the issues of conforming use with the physical features of lot conformity. Nevertheless, it is clear that the ZC intended that the AppleTree school would be a nonconforming use on the proposed lot in an R-4 District.

The Zoning Commission by implication amended §401.1 by creating a special exception process for all substandard lots not meeting all of the requirements for a "public

District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013

school". To hold otherwise would mean that the Zoning Commission intended to permit by means of the loophole of §401.1, the exact harm — 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 §401.1 and §401.3 must demonstrate an appropriate regard for potential adverse impacts of development on substandard lots.

Furthermore, the BZA found that AppleTree need provide no parking for its staff and teachers except what they provide of their own free will, in clear contradiction of the regulations promulgated in §206.1. AppleTree seeks to occupy a structure that is a contributing property in an historic district. The existing parking area is un-striped, introducing ambiguity into the determination of the number of current parking spaces. Neither is there evidence of how many spaces were required. As Mr. Griffis points out, we must use a best guess as to how many could reasonably fit. Yet, members of the BZA rejected the testimony presented by the Zoning Administrator (ZA), the city's expert in such matters, which clearly showed that six compliant parking spaces could be configured on the property for the purposes of establishing the number of existing spaces. Instead they accepted AppleTree's self-serving assessment that only three compliant spaces could be configured.

The Zoning Commission acts in a quasi-legislative role in its rulemaking capacity. The hallmark of statutory construction is to determine the intent of the legislature and to interpret legislation in such a way as to give effect to all of its provisions. This did not take place at the BZA hearing on AppleTree, despite the fact that Ms. Mitten's statement was read out to the other Board Members.

We ask that the Zoning Commission preempt the decision by the BZA vitiating the ZC's recently issued regulations by using its authority under Title 11 Chapter 3128 to review the BZA decision in case #17532.

For the Commission,

David Holmes
Vice Chair, Advisory Neighborhood Commission 6A

cc: Office of Planning