



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



November 14, 2005

Bill Crews  
Zoning Administrator  
Department of Consumer and Regulatory Affairs  
941 North Capitol Street NE, Room 2000  
Washington, DC 20002

Re: Need for Board of Zoning Adjustment Review of 138 12th Street NE

Dear Mr. Crews:

On November 10, 2005, at our regularly scheduled monthly public meeting, our Commission unanimously voted to send this letter explaining the need for the AppleTree Institute to seek special exceptions and variances from the Board of Zoning Adjustment (BZA) for their planned preschool use and expansion of 138 12th Street NE. Our concern is that DCRA will incorrectly issue building permits and a certificate of occupancy for a "public school" use at this location in the R-4 zone district.<sup>1</sup>

In this case, the building will be operated and maintained by the AppleTree Institute for Education Innovation, a nonprofit organization. However, according to the zoning regulations, a public school must be operated and maintained by the DC Board of Education. By definition, if a building is operated or maintained by another entity, then it cannot be a public school for zoning purposes.<sup>2</sup> Therefore, DCRA should not treat this use as a public school for zoning purposes.

Instead, DCRA should recognize the intended use of the building as a "child development center." This use encompasses other educational uses such as child care centers, preschools, nursery schools, and before-and-after school programs.<sup>3</sup> Child development centers are permitted in an R-4 District as a matter of right per 11 DCMR 330.5(d), provided that the center shall be limited to no more than sixteen (16) individuals. A child development center may serve additional children if BZA grants a special exception and may expand beyond 40% lot occupancy if BZA grants a variance. Alternatively, DCRA could treat all charter schools as "private schools." Either treatment would conform to the zoning regulations as they are currently written, since the "public school" definition is reserved exclusively for buildings that are operated and maintained by BOE.

There are sound public policy reasons for limiting "by right" zoning treatment to public school buildings that are operated and maintained by the DC Board of Education (BOE):

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<sup>1</sup> Public schools are matter of right use beginning in the R-1 District per 11 DCMR 201.1(k) and may exceed 60% lot occupancy per 11 DCMR 403.1, subject to certain limitations.

<sup>2</sup> 11 DCMR 199.1 reads in relevant part: "School, public - a building operated and maintained by the District of Columbia Board of Education for educational purposes and such other community uses as deemed necessary and desirable."

<sup>3</sup> 11 DCMR 199.1 reads in relevant part: "Child/Elderly development center - a building or part of a building, other than a child development home or elderly day care home, used for the licensed care, education, counseling, or training of individuals fifteen (15) years of age or less and/or for care of elderly individuals, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities."

- First, when BOE proposes a “by right” school there is a facility planning process with substantial community involvement and feedback. This process exists to engage affected neighbors and manages potential spillover effects. By contrast, AppleTree has claimed the right to 80% lot occupancy for a building with capacity for 72 students and 16-20 staff without any formal process to weigh concerns about traffic, noise, and effects on light and air of nearby properties.
- Second, for its public schools BOE has generally selected larger sites that provide for setback from neighboring properties, recreational fields, and adequate parking. By contrast, AppleTree proposes to embed their facility in the middle of a continuous block of residential rowhouses, leaving room for only three parking spaces and a rooftop play area.
- Third, if residents are dissatisfied with a BOE proposal or a public school’s operation and maintenance, their elected school board representatives can be held accountable. By contrast, AppleTree answers first to their private board of directors and then to the DC Public Charter School Board, which is unelected.
- Fourth, BOE schools have enrollment boundaries that ensure that most of the public benefit of the school will accrue to the surrounding residential area that must absorb its impact. By contrast, charter schools have open admissions to all DC residents and cannot guarantee any level of enrollment benefit to residents in the immediate area of the school.


It is understandable that AppleTree would prefer the “by right” privilege rather than seeking zoning relief. If treated as a public school for zoning purposes, AppleTree can maximize their enrollment (and revenue) without regard to any other consideration. Having AppleTree seek zoning relief from the BZA would ensure a fair and open process to parallel what BOE undertakes in exchange for their “by right” treatment in the R-4 zone district. It also happens to be what the zoning regulations currently require.

It is important to the residents of the neighborhood that DCRA correctly treat this property as a child development center and take steps to determine the number of children to be served at the location. If incorrectly treated as a public school, the neighbors of the property will have no effective venue for input on traffic, pedestrian safety, noise and parking demand associated with facility operations, or on potential impacts to light, air, and property values of adjacent properties from expansion of the existing building.

Based on these concerns, we request that you direct AppleTree to the Board of Zoning Adjustment to seek the required zoning relief before issuing any building permits. We would greatly appreciate the courtesy of a written response within two weeks.

Thank you for your attention to this matter. If you have any questions or need further information, please contact Commissioner Rice at 202-544-3734 or [rice6A03@verizon.net](mailto:rice6A03@verizon.net).

On behalf of the Commission,



Joseph Fengler  
Chair, Advisory Neighborhood Commission 6A

cc: Councilmember Sharon Ambrose  
Dr. Patrick Canavan, DCRA Director  
Emily Paulus, Historic Preservation Office