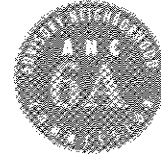


District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013



August 30, 2007

Linda Argo
Acting Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Washington, DC 20002

Re: Permits for 138 12th Street, NE

Ms. Argo:

I request the permits approved (see enclosure #1) on August 23, 2007, to modify the property for a charter school located at 138 12th Street, NE be retracted for two reasons. First, the applicant, AppleTree Institute for Education Innovation, has not received approval to operate a charter school at this location by the Public Charter School Board (see enclosure #2). Second, the Board of Zoning Adjustment (BZA) meeting held to dispose of our Commission's appeal of BZA Case #17532 is under investigation by the Office of the Inspector General (IG) for not providing the proper public notice as required by the ANC Act (see e-mail from IG entitled "BZA impropriety" at enclosure #3).

The prima-facie issue is that in order to apply for a school "use" under the zoning regulations necessitates the applicant to be approved for a charter school at the permit location. Simply put, the cart can not be placed in front of the horse. At the heart of the issue is matter of right development. If a charter school is not approved for a location, and the applicant asserts a "use" not yet obtained, the permits should not be issued. This is not the first time we have written the Zoning Administrator on this issue (see enclosure #4). On March 14, 2007, the Zoning Administrator stated that actions would be taken to ensure entities are not posing as charter schools in attempting to gain matter of right uses. As these permits were issued, what changed between March and August?

The secondary issue relates to proper public notice. The DC Code requires 30 days advance notice of any hearing where matters will be considered that affect the ANC. We were only provided seven days notice. Mr. Clifford Moy, Secretary to the BZA, has informed our Commission that he will be unable to comply with our request for an investigation into the question of proper notice, since the matter is under investigation by the IG. I request that you follow BZA's direction and suspend and retract all actions that occurred after August 9, 2007 (the day we receive the first notice from BZA) regarding these permits until the IG completes their investigation.

In close, I ask that your office respond to this request to retract these permits by September 7, 2007 as well as to explain the change between the March and August positions of the Zoning Administrator. In addition, I extend an invitation for you to attend our September 13, 2007, Commission meeting to update our community on the status of the permits as well as to discuss how DCRA handles permits for charter schools.

Respectfully,

Joseph Fengler, Chair

Cc: Matthew LeGrant, Acting Zoning Administrator
Linda Singer, Attorney General
Councilmember Tommy Wells

Enclosure #1

Building Plan Review Status

Project Information

- Bottom of Form Tracking number: 3758 A 2006
- Date filed: 2/9/2006
- Address: 138 12TH ST NE
- Agent: MIKE WILSON (301) 731-4767

Application Status

Pending. Review of your application has not been completed yet. DCRA will make all efforts to complete the review of your application on or before 3/11/2006 . Please contact us only after 3/11/2006 .

To view comments from the plan review team, select from the links in the left column below. On the page that follows, enter your DC.Gov username and password. If you don't have a username and password, please register.

Discipline	Review Status	Status date
Department of Environment	Approved. We approved this discipline of your application.	8/10/2007
Electrical	Approved. We approved this discipline of your application.	8/23/2007
Elevator	Approved. We approved this discipline of your application.	3/30/2006
Fire	Approved. We approved this discipline of your application.	8/23/2007
Mechanical/Plumbing	Approved. We approved this discipline of your application.	8/23/2007
Structural	Hold for correction. This application requires correction. Please contact the Permits Division staff to address the requirement.	7/13/2006
Zoning	Approved. We approved this discipline of your application.	8/23/2007
Historic	Pending. We are currently reviewing your application.	2/9/2006

Building permit application status data current as of: 8/30/2007, 7:00:48 AM



District of Columbia Public Charter School Board

March 2, 2007

Councilmember Tommy Wells
The John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Councilmember Wells:

The D.C. Public Charter School Board (the "Board") received your letter dated February 26, 2007. In response, I am drafting this letter on behalf of the Board to (1) state that the Board has no jurisdiction over the AppleTree Institute for Education Innovation; (2) clarify the role of the Board regarding the selection and location of facilities of the charter schools it authorizes; and (3) invite you to discuss with the Board the general charter school facility selection issues you raise in your letter.

First, please be advised that the AppleTree Institute for Education Innovation (the "Institute") is a D.C. non-profit organization and is not a public charter school. The Board has issued a charter to AppleTree Early Learning Public Charter School (the "Charter School"), a separate legal entity. The Charter School is located at 680 I Street, SW.

The Board recognizes that the commercial property in question, 138-140 12th Street, NE, has been the subject of an ongoing controversy between the Institute and some residents of the neighborhood, and that the site was acquired by the Institute with the plan to complete renovations and to lease the facility to the Charter School. However, to date the Board has received no petition from the Charter School to modify its charter agreement to approve an additional campus at this site.

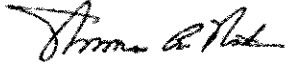
At our last monthly meeting, on February 26, 2007, the Board did approve a request from the Charter School for an enrollment increase. For your information, I have enclosed copies of our Decision Memorandum for the approval of the recent enrollment increase request by the Charter School. In addition, the Charter School provided us with preliminary information on two additional sites under negotiation – in a new building under construction in Columbia Heights, and in a potential co-location with St. Thomas More Catholic School in Washington Highlands. In order to operate at either or both of these prospective new sites, the Charter School must receive Board approval.

Because we have had no request from the Charter School to add a new campus located at 138-140 12th Street, NE, this Board has no jurisdiction to intervene in the matter. As mentioned above, the Institute is not a charter school, and the Board has no jurisdiction over the operations of the organization, including where it chooses to locate.

Enclosure #2

Finally, the Board shares your concerns for the safety and welfare of D.C. school children, and considers the location of charter school facilities to be an important one. Since you raise other general issues regarding the availability of space for charter school facilities, the Board welcomes the opportunity to meet with you, to discuss these issues further, and to establish a direct line of communication between us.

Sincerely,



Thomas Nida
Chair

Enclosure

cc: Victor Reinoso
Advisory Neighborhood Commission 6A
Appletree Early Learning Public Charter School

Enclosure #3

From: Sean McCaney <sean.mccaney@dc.gov>
To: Fengler6a02@yahoo.com
Sent: Tuesday, August 28, 2007 3:50:05 PM
Subject: BZA impropriety

August 28, 2007

Joseph Fengler
Fengler6a02@yahoo.com

Dear Chairman Fengler:

This correspondence will acknowledge receipt of your August 21, 2007, electronic mail message requesting that this Office review the propriety of a meeting conducted by the Board of Zoning Adjustment.

Your request has been forwarded to the Audit Division of this Office for review and action, as appropriate.

Please be advised that our investigative files are not public documents, and we do not provide updates regarding ongoing investigations or unsolicited resolution reports once our cases have been resolved. However, if you wish to obtain the status of a case, you may obtain documentation from the investigative files by making a D.C. Freedom of Information Act (FOIA) request pursuant to D.C. Code §§ 2-531 to 2-539 (2001). You should address your FOIA request to:

ATTN: FOIA Officer
The D.C. Office of the Inspector General
717 14th Street, N.W. , Fifth Floor
Washington , D.C. 20005

A response to this electronic mail message is not necessary.

I hope this information is helpful to you. If we may be of further assistance, please do not hesitate to contact this Office. Thank you for bringing this matter to my attention.

Sincerely,

Charles J. Willoughby
Inspector General

CJW/sm

Enclosure #3

August 21, 2007

Charles J. Willoughby
Inspector General
District of Columbia
717 14th Street, NW, Fifth Floor
Washington, DC 20005

Re: Sunshine laws regarding the Board of Zoning Adjustment

Inspector General Willoughby:

On August 9, 2007, the Board of Zoning Adjustment (BZA) notified our Commission via electronic e-mail of public meeting on August 16, 2007 (Attachment #1), to rule on an appeal filed by our Commission regarding BZA Order #17532 regarding AppleTree Institute for Education and Innovation's attempt to construct a charter school at 138 12th Street, NE. (Attachment #3). On August 16, 2007, BZA notified our Commission that the public meeting would be delayed one day to August 17, 2007 (Attachment #2). Accordingly, I request that your office review these BZA notifications as executed by Ms. Ruthanne Miller and Mr. Curtis Etherly, Jr. as Chair and Vice Chair, respectively, of BZA, to determine if they were executed in accordance with:

- (1) Section 13(a)-(c) of the Advisory Neighborhood Act of 1975, effective October 10, 1975, D.C. Law 1-21, as amended by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000, D.C. Law 13-135, D.C. Official Code Section 1-309.10(a)-(c)(collectively, the ANC Act) sets forth that proposed government action for which ANCs are to receive thirty (30) days advance written notice.
- (2) Title 11, Chapter 31 Board of Zoning Adjustment Rules of Practice and Procedure, Section 3124.3 that states notice of further hearing shall be forwarded to any party who participated in the earlier proceedings or to representative parties at least ten (10) days prior to the date set for further hearing.

Based on the above dates, it appears that BZA did not comply with either the ANC Act or the rules that govern the BZA by providing less than ten (10) days notice of the initial hearing as well as only one (1) day notice of the change of date. As the decision on our appeal was made at this meeting, your swiftest possible review to determine if proper notice was executed is appreciated. Moreover, I request your office to determine if that decision would be null and void for lack of proper public notice and if a new public meeting is required to rule on our appeal.

Regards,

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A

Cc: Councilmember Wells
Councilmember Cheh
Councilmember Mendelson
Attorney General Singer

Enclosure #3

Attachment #1

From: "Nero, Richard (DCOZ)" <richard.nero@dc.gov>
To: Joseph Fengler <fengler6a02@yahoo.com>
Cc: "Moy, Clifford (DCOZ)" <Clifford.Moy@dc.gov>; "Rose, Tracey (DCOZ)" <tracey.rose@dc.gov>
Sent: Thursday, August 9, 2007 9:41:13 AM
Subject: BZA Public Meeting on Appletree

Mr. Fengler:

Please be advised that the Board of Zoning Adjustment has scheduled a public meeting on Thursday, August 16, 2007 to consider a couple of matters including the ANC's Motion for Reconsideration of the AppleTree decision. The meeting will start at 10:00 AM.

Regards,

Rick Nero

Richard S. Nero, Jr.
Deputy Director of Operations
Government of the District of Columbia
Office of Zoning
441 4th Street, N.W., Suite 200-S
Washington, D.C. 20001

Tel:(202) 727-6311
Fax: (202) 727-6072
richard.nero@dc.gov
www.dcoz.dc.gov

Attachment #2

----- Original Message -----

From: "Moy, Clifford (DCOZ)" <Clifford.Moy@dc.gov>
To: Joseph Fengler <fengler6a02@yahoo.com>; David Holmes <holmes.anc6a03@gmail.com>
Cc: "Moy, Clifford (DCOZ)" <Clifford.Moy@dc.gov>; "Nero, Richard (DCOZ)" <richard.nero@dc.gov>
Sent: Wednesday, August 15, 2007 1:59:24 PM
Subject: BZA Special Public Meeting Rescheduled Date

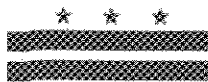
Gentlemen:

This is your notice that the BZA's Special Public Meeting on Thursday, August 16, 2007 has been rescheduled to Friday, August 17, 2007. The 10:00 a.m. starting time is unchanged.

If you have any questions, please call me.

Enclosure #3

Cliff Moy



Clifford W. Moy
Secretary of the
Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street, N.W.
Suite 200-210 South
Washington, D.C. 20001
U.S.A.

clifford.moy@dc.gov
Tel: +1-(1)202.727.0348
Fax: +1-(1)202.727.6072
Front Desk Tel:
+1-(1)202.727.6311
www.dcoz.dc.gov

Enclosure #4

----- Original Message -----

From: "Crews, Bill (DCRA)" <Bill.Crews@dc.gov>
To: Joseph Fengler <fengler6a02@yahoo.com>; Tommy Wells (Council) <twells@dccouncil.us>; Charles (COUNCIL) Allen <Callen@dccouncil.us>; "Rogers, Eric (DCRA)" <Eric.Rogers@dc.gov>
Cc: ANC 6A Open <anc-6a@yahoogroups.com>
Sent: Wednesday, March 14, 2007 4:01:10 PM
Subject: RE: ANC 6A requests denial of Apple Tree permits for 138 12th Street NE (they are not a charter school)

Commissioner Fengler,

I appreciate receipt of this information and will take appropriate actions to ensure entities are not posing as charter schools in attempting to gain 'matter of right' uses when they should not.

Thank you for all your service to your ANC Neighborhood and the District as a whole.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia
Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov

From: Joseph Fengler [mailto:fengler6a02@yahoo.com]
Sent: Wednesday, March 14, 2007 3:44 PM
To: Bill Crews (ZA DCRA); Tommy Wells (Council); Charles (COUNCIL) Allen; Eric (DCRA ANC) Rogers
Cc: ANC 6A Open
Subject: ANC 6A requests denial of Apple Tree permits for 138 12th Street NE (they are not a charter school)

Mr. Crews, please accept this signed, electronic copy until the original arrives by postal service.

The DC Public Charter School Board states that the AppleTree Institute for Education Innovation is not a public charter school and that they have not received a petition from the (AppleTree Public) Charter School to approve an additional campus at this site.

To that end, any building permit application for 138 12th Street, NE that claims public school status for matter of right construction of a charter school should be denied.

We share your commitment that all construction should be done according the zoning regulations and we support your continued firm stance in this instance.

Ms. Nelson, please post to our website.

Commissioner Holmes, please mail the appropriate copies.

Enclosure #4

Respectfully,

Joseph Fengler, ANC Commissioner 6A02
Phone: 202-423-8868
fengler6a02@yahoo.com
Please visit our website - www.anc6a.org

Text of attachment:

March 14, 2007

Mr. William Crews
Zoning Administrator
Department of Consumer and Regulatory Affairs
District of Columbia
941 North Capitol Street
Washington . DC 20002

Mr. Crews:

At our regularly scheduled meeting on March 8, 2007, and with a quorum present, we voted unanimously to bring to your attention a letter (attached) received by Councilmember Wells from Thomas Nida, Chair of the Public Charter School Board, addressing concerns raised by Board of Zoning Adjustment (BZA), case #17532, an appeal by AppleTree Institute for Education Innovation (the Institute) of the denial of building permits at 138 12th Street, NE, by the Zoning Administrator.

In his letter, Mr. Nida states that the Institute: "*...is a D. C. non-profit organization and is not a public charter school.*" He further states that the PCSB: "*...has received no petition from the (AppleTree Public) Charter School ...to approve an additional campus at this site.*"

Since the applicant for the permits is not a public school, and since no public school has been authorized at this site by the chartering authority, our Commission asserts that no valid request for a school "by-right" modification of 138 12th Street is, or ever has been, pending. We consequently assert that the original application is void, and the subsequent appeal by the Institute of the decision of the Zoning Administrator is moot.

Accordingly, we request that any building permits for this site, located at 138 12th Street, NE , that claim public school status for a matter of right development be denied.

On behalf of the Commission,

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A

Cc: Councilmember Wells