

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



November 3, 2006

Board of Zoning Adjustment
441 4th St, NW, Suite 210
Washington, DC 20001

RE: BZA Appeal # 17532 - Support of Department of Consumer and Regulatory Affairs (DCRA) Decision to Require Special Exception

Dear Board Members,

At the regularly scheduled and properly noticed meeting of September 14, 2006, our Commission voted unanimously to support the April 27, 2006, Zoning Administrator's decision to require a special exception for the planned development of a charter school at 138 12th Street NE.

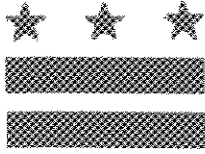
Our support of the Zoning Administrator's decision is in response to the appeal by the Apple Tree Institute for Education Innovation (BZA Appeal # 17532). In their June 27, 2006, letter to the Board of Zoning Administration, Apple Tree believes the Zoning Administrator erred in the decision. We have concluded that the arguments presented in points 1-3 of that letter are without merit. The basis for our conclusions is as follows:

Point 1 - Apple Tree argues that their proposal is exempt from the minimum lot area and minimum lot width requirements based on §401.1 of the Zoning Regulations.

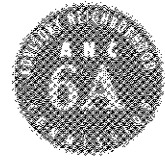
The provision in §401.1 clearly speaks to whether or not a structure can be enlarged for its current use if that use existed at the time of the enactment of Title 11. Its applicability to the current case is questionable because the proposed future use represents a change from a previously conforming use to a nonconforming use. Furthermore, this provision does not define what is or is not a conforming use.

Under the zoning regulation of the emergency text amendment Z.C. 06-06, a charter school is clearly a nonconforming use for the property at 138 12th St NE, as that property does not meet the minimum lot area and minimum lot width requirements established by Z.C. 06-06. Apple Tree concedes that a charter school is not a conforming use when it assumes the validity and applicability of the Zoning Commission's emergency rule making.

Consideration of how §401.1 applies to this case must be taken in the context of other applicable zoning regulations, since §401.1 explicitly states that any enlargement of the building must comply with all other provision of Title 11. In addition, the applicability of §401.1 is conditioned by the requirements set forth in Chapter 20, by its opening phrase ("Except as



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



provided in chapters 20 through 25"). Two provisions of Chapter 20 apply in this case. These are §2002.3¹ and §2002.5².

The most recent use of the property was a conforming use (a private club). In proposing to place a charter school in the existing structure Apple Tree proposes to extend a nonconforming use into a structure devoted to a conforming use. Placing a nonconforming use in a structure previously devoted to a conforming use is prohibited by §2002.3

If a charter school is allowed to occupy the original structure, then §2002.5 prohibits Apple Tree from enlarging the structure for use as a charter school. This statute prohibits the enlargement of a structure devoted to a nonconforming use unless the enlargement is devoted to a conforming use.

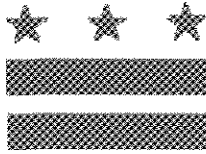
Point 2 -Apple Tree argues that §2100.5 exempts the proposed project from the Zoning Administrator's ruling that ten parking spaces are required for the proposed charter school.

Chapter 20, §2100.5 stipulates that no additional parking spaces shall be required for a historic landmark or building. On the basis of §2100.5, Apple Tree argues that, because the structure is a historic structure, no parking spaces in addition to the 3 parking spaces shown in their plans can be required. This argument is completely without merit. It presumes that future use, rather than existing use, determines the basis against which to measure what constitutes an addition to the number of parking spaces. Consider, for example, an applicant who submits plans that include no parking spaces at all for a historic structure with existing parking. Using Apple Tree's flawed reasoning, the number of parking space against which to measure an increase is zero. The applicant would be completely exempt from any parking requirements whatsoever; because any required parking would be an increase (from the false basis of zero). The applicant would be free to eliminate existing parking which is precisely what Apple Tree proposes to do.

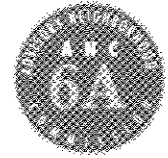
§2100.5 notwithstanding, ten parking spaces can be required for the charter school since that number clearly does not represent an increase to the current number of existing parking spaces. The previous use of this property includes a paved rear parking lot that accommodates a minimum of 10 vehicles. Currently the dimensions of the rear yard, as can be seen on the plans submitted by Apple Tree, measure 36 ft. by 77.7 ft. This entire area is paved and is accessible to vehicles from the rear alley.

¹ §2002.3 - A nonconforming use shall not be extended to portion of a structure not devoted to that nonconforming use at the time of enactment or amendment of this title, or to another structure.

² §2002.5 - A structure devoted to a nonconforming use shall not be enlarged, except if the enlargement is to be devoted to a conforming use.



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



Point 3 - Apple Tree argues that the “emergency” rule making is legally null because there was no rule making.

The charter school proposed by Apple Tree on 12th St NE highlighted the inadequacies of zoning regulations, as they existed prior to the emergency rule making, given the change in the public school paradigm brought about by charter schools. With the advent of charter schools, smaller school facilities have begun to appear, public schools have become much more numerous than they were in the past and most important, the siting and physical environment of public schools is no longer routinely subject to public input or the oversight of the Board of Education and the City Council. For these reasons it was imperative to immediately update the zoning regulations so that they both adequately protect residential neighborhoods and provide guidance to those planning to create or expand charter schools.

In close, we encourage the Board of Zoning Adjustment to reject Apple Tree’s appeal. Please be advised that Commissioners Nicholas Alberti and Joseph Fengler are authorized to act on behalf of the Commission for the purposes of this appeal.

On behalf of the Commission,

A handwritten signature in cursive script that reads 'Joseph Fengler'.

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A