

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



December 4, 2006

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

RE: BZA Appeal # 17532 – ANC letter to support Zoning Administrator's decision

Dear Board Members,

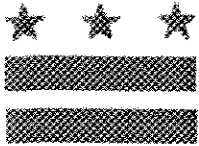
Reference our letter dated November 3, 2006, where our Commission states that at our regularly scheduled and properly noticed meeting of September 14, 2006, we voted unanimously to support the April 27, 2006, Zoning Administrator's decision to require a special exception for the planned development of a charter school at 138 12th Street NE. That letter is provided for your review at attachment #1.

At our September meeting, we had seven Commissioners present, which constituted 100% of the Commission as Commissioner Cody Rice resigned from the Commission in September of this year. In accordance with District of Columbia law, that seat will remain vacant until the Commissioner-elect is sworn in for the next term that starts in January 2007.

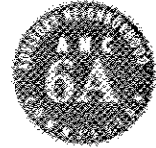
Again to state for the record, with a quorum present, seven of seven Commissioners voted to support the Zoning Administrator's decision to require a special exception for the planned development of a charter school at 138 12th Street NE at the publicly conducted September 14, 2006, Advisory Neighborhood Commission 6A. That vote is recorded in our minutes on page 7, at the bottom of the page. The minutes are provided at attachment #2.

On behalf of the Commission,

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A



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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.

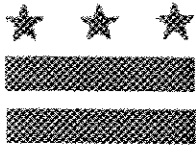
Our support of the Zoning Administrator's decision is in response to the appeal by the Apple Tree Institute for Education Innovation (BZA Appeal # 17532). In their June 27, 2006, letter to the Board of Zoning Administration, Apple Tree believes the Zoning Administrator erred in the decision. We have 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.

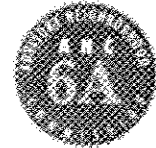
The provision in §401.1 clearly speaks to whether or not a structure can be enlarged for its current use if that use existed at the time of the enactment of Title 11. Its applicability to the current case is questionable because the proposed future use represents a change from a previously conforming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



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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.

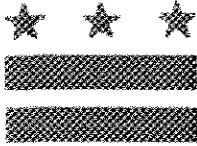
Point 2 -Apple Tree argues that §2100.5 exempts the proposed project from the Zoning Administrator's ruling that ten parking spaces are required for the proposed charter school.

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.



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

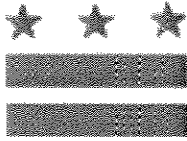
The charter school proposed by Apple Tree on 12th St NE highlighted the inadequacies of zoning regulations, as they existed prior to the emergency rule making, given the change in the public school paradigm brought about by charter schools. With the advent of charter schools, smaller school facilities 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.

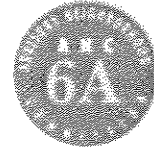
On behalf of the Commission,

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

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A



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**Advisory Neighborhood Commission 6A
Miner Elementary School**

Minutes

September 14, 2006

The meeting was called to order at 7:00 p.m.

Present: Commissioners Alberti, Beatty, Borbely, Fengler, Ibangha, Mack and Marshall.

Approval of agenda

The agenda, as amended, was adopted without objection.

1. Minutes

The minutes for the July meeting were adopted without objection

2. Community Comment

An announcement was made about the Higher Achievement Program, an after-school tutoring program at Stuart Hopkins, School and a request was made for volunteers for the program which meets on Tuesday and Thursday.

Anwar Saleem said that H Street Main Street never had a proposal from the Capitol BID, but he had met with them and discussed different ideas. He is now in discussions with the developers at the west end of H Street, who are interested in underwriting an H Street BID.

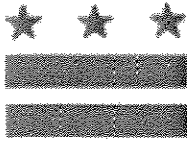
Mr. Marshall thanked Ms. Beatty on behalf of his SMD for her work in keeping Woodward Liquors from opening on H Street.

3. Department of Consumer and Regulatory Affairs Update

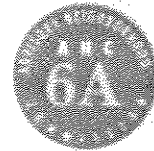
Bill Crews and Eric Rogers of the Department of Consumer and Regulatory Affairs took questions from members of the Commission.

Nick Alberti

1405 North Carolina Avenue: Mr. Alberti said he has copies of the permits for the project at that address, but has been waiting for six weeks for a response to a FOIA request for the plans, and the only response he has received is that they're looking at it. His question: When will he receive a response and what is the status of the investigation? Mr. Crews said that he didn't know there was a FOIA on the application. He said he had put a stop work order on the project, and told the contractor to get back to DCRA because they can't leave the site as it is. The contractor came in good faith, and went back to find a new architect to build a two-unit building. He said the Service Integrity Officer turned the matter over to him. Mr. Rogers said that no permits are given unless an application is filed. He said that the application was filed on April 28th and the permit was granted on April 30th, and DCRA is now looking at the possibility of criminal charges. Mr. Alberti responded that he expects



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information on the status of the investigation, and the public deserves the information. He said he wants to have the plans when DCRA receives them. He said that the lot is not configured for parking, and with two units, parking plans are needed, with a formal review process. Mr. Rogers replied that the applicant doesn't meet the requirements, he won't get the permit.

1519 Constitution Avenue

Mr. Alberti said the house is in his SMD and he has requested all the information relating to the plans and permit, and he has learned that the permits have been issued and the construction is not legal. He has requested the plans, and has not received a call to get them. Mr. Rogers replied that the permits will be available Monday. He said the FOIA officer takes requests on a first come/first serve basis, and she had a four to six month backlog. Debbie Britt is the officer, and his office has no control over the length of time she takes.

Deaf and Hard of Hearing Constituent Access to DCRA

Mr. Alberti asked how deaf and hard-of-hearing constituents could have easier access to DCRA, particularly to reporting illegal construction. Mr. Rogers reported that the DCRA website was being revamped. He said they have instituted a PIN-based system, whereby people can check on the status of their permits, etc. by entering a PIN number. They have brought in an outside contractor to streamline the system, and to work with TTY phones. They will also have an e-mail site for hard-of-hearing clients, and are hiring an interpreter to be on site full-time.

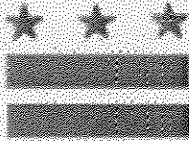
Joe Fengler

810 F Street NE

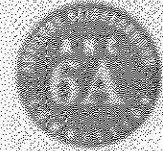
The building has an illegal third story, and the permits have no signatures, and are illegal, and the third story just doesn't look right. Mr. Crews said he has sent the Chief of the Illegal Construction Unit to look at the building, and he found a non-conforming structure that's using more than 60% of the lot occupancy. Mr. Fengler asked how to get them to remove illegal structure, which affects the neighbors. Mr. Crews responded that he hasn't much experience with the issue, and he's exploring whether DCRA has the right to tear it down. Mr. Rogers added that they do have the right to fine, and fine, and once they pay the fine, they can be fined again. Mr. Fengler said it should be made difficult and expensive to continue.

926 Maryland Avenue NE

Mr. Fengler wanted to know what is being done about 926 Maryland Avenue NE which he said is an illegal bed and breakfast. Mr. Crews said he has a letter ready to go to have them come in and discuss the issue. Mr. Fengler said that it is legal to have a B&B in an R-4 district but not more than two rooms and not owner occupied. Mr. Crews said it is a matter for the Board of Zoning Adjustment (BZA) and requires a variance. The applicant has to prove uniqueness, and if no-one objects he can get the variance. Mr. Fengler noted that 926 is being used as a rental space for parties and the owner is never there.



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Marc Borbely

FOIA Backlog

Mr. Borbely asked why there was a four-six month back-up on FOIA requests, when the law requires a three-week turnaround. Mr. Rogers said it was partly due to a lack of staff resources and partly due to an abundance of requests, largely from contractors looking for details on the properties they're working on. Mr. Borbely requested a copy of DCRA's annual FOIA report.

Code Enforcement

Mr. Borbely reported having a terrible time with 501 12th Street NE, and that it took many months to get inspections, and after they found many violations, there was no follow-up. Mr. Rogers reported that the agency is undergoing a "huge re-engineering," and there will be a new process, whereby a person has 30 days to fix a violation, and if it is not fixed, it will go to code enforcement, and they will get fined. The process used to take as long as eight months. Until now, he said, there has been no standard operating procedure. However, they are now training inspectors and have developed a standard operating procedure. Mr. Borbely asked Mr. Rogers to send a copy of the new Standard Operating procedures. Mr. Rogers agreed to do so.

Joe Fengler

AutoZone

Mr. Fengler said that the illegal mechanics are back in the AutoZone parking lots. Mr. Crews said he has inspectors checking twice a day. Mr. Fengler complained that the situation was back to inspections and fines, after the City made an investment in cleaning up the alley and it can all be undone. He asked at what point it goes beyond fines. Mr. Crews said that the installation of windshield wipers and light bulbs is allowed. Mr. Crews said that AutoZone owned the parking lot and had certain rights.

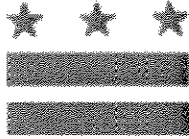
631 10th Street

Mr. Fengler said there is an illegal boardinghouse at 631 10th Street NE, and inquired as to what was happening with it. Mr. Crews said he has checked and it has no license. He checked with the Department of Mental Retardation and it doesn't belong to them. Mr. Fengler said it is across the street from Sherwood Rec Center and Prospect Goding School and it shouldn't be there.

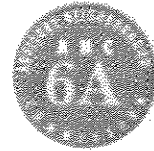
701 11th Street NE

Mr. Fengler reported that they stopped work on the project ten months ago and nothing has happened, and the grass is very long.

Mr. Alberti said that part of the reason for this session is to make the issues public, and get some action. Mr. Crews said that DCRA is down one position, and he has authorized some



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contract work to get some of these things cleaned up He is increasing overtime to get through the DCRA backlog. The permit office is now open Thursdays until 8 pm, and on Saturdays until noon. Mr. Fengler said that if you educate ten people, they'll educate ten people. Mr. Crews told the audience to report illegal activity. Stephanie Nixon reported that at 423 189th Street NE, there is construction going on after 7 pm, on legal holidays and on Sundays. Mr. Crews said that with the additional overtime, he can send people out to look. He told people to call 442-STOP to report illegal construction, or send e-mails to bill.crews@dc.gov.

4. Officers' Reports

Chair

Mr. Fengler reported that Cody Rice has officially resigned to take a job in Montreal. He said that a quorum is now four, and a two-thirds vote requires five.

He said that Miner School does not have someone to stay to keep the doors open. Mr. Borbely suggested the possibility of a remote bell.

He reported that the Office of Planning will be holding a series of hearings on the proposed Inclusionary Zoning proposal.

Treasurer

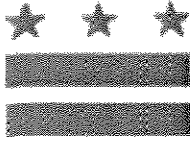
Mr. Alberti presented the Treasurer's Report. The report shows that the opening checking account balance was \$9,695.87, and that the savings account balance was \$4,155.95. There was an allotment check from the District of Columbia in the amount of \$5,694.42, for a total in the checking account of \$15,390.29. There was interest to the saving account of \$1.37 and \$1.41. There were disbursements of \$10 to Nick Alberti for parking (Check #1282); \$120 to Roberta Weiner for transcription of minutes (Check #1283); and \$50 for an order of checks, leaving a balance of \$15,210.29 in the checking account, and \$4,158.73 in the checking account. **Motion:** Mr. Alberti moved to approve the Treasurer's Report. It was approved without objection.

Motion: Mr. Alberti moved acceptance of the Quarterly Report for the 3rd Quarter of FY06. It was approved without objection.

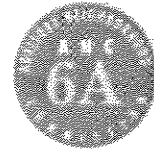
Mr. Alberti reported that the Office of the Attorney General said that grant approval process does not require that the grantee be present at the ANC meeting for approval of the grant.

Motion: Mr. Alberti moved approval of up to \$250 for rental of a post office box for the next year. It was approved without objection.

Motion: Mr. Alberti moved approval of \$30 for postage for ANC business. It was approved without objection.



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Mr. Alberti reported that he is responding to a request from the Auditor for complete documentation for two grants given in the first quarter: to Maury PTSA for its computer lab and to the Northeast Library for a puppet theater.

Motion: Mr. Alberti moved that \$600 be approved for copying for ANC materials, and that up to \$60 be approved for copying each Committee's materials and each SMD's materials for the next month. The motion was accepted without objection.

No other officers had reports.

5. Committee Reports

Alcoholic Beverage and Licensing Committee

Ms. Beatty reported that the license application for Woodward Liquors had been withdrawn, and she had received a letter from ABRA to that effect. She thanked Rafael Marshall for his hard work in his SMD.

She announced the resignation of Tim Carney as a member of the ABL Committee. **The resignation was accepted without objection.**

Motion: Ms. Beatty moved acceptance of her committee report, which was accepted without objection.

Economic Development and Zoning

The meeting was chaired by Nick Alberti.

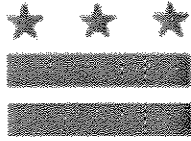
1104 East Capitol Street NE

This is a request to remodel the facade of the second floor rear addition to the property at 1104 East Capitol Street and enclose the space under the addition. The owner is seeking a special exception from BZA because the enlarged dwelling does not meet the lot occupancy requirements, the rear yard requirements and the nonconforming structure provisions for an R-4 district. The owner stated that her neighbors are supportive of the construction, and it would be an aesthetically pleasing structure. **Motion:** Mr. Alberti moved that the ANC accept the Committee's recommendation to send a letter of support be written to BZA in favor of granting the special exception. It was seconded by Ms. Beatty and approved without objection.

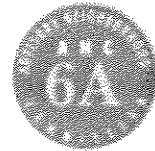
Appletree School

Mr. Alberti reported that DCRA did not approve Appletree's zoning permits, and Appletree is appealing the ruling on five points.

- a. The charter school proposal is not subject to the minimum lot area and minimum lot width requirements established by the Zoning Commission (ZC) February 13th emergency rule making.



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- b. DCRA's requirement for ten parking spaces is not valid because no additional parking can be required for a historic structure.
- c. The ZC's February 13 emergency rule making, on which DCRA relied, is invalid because there is not emergency.
- d. The ZC's emergency rule making expired after 120 days. On June 13, the ZC erroneously extended the rule making beyond 120 days.
- e. Assuming the rule making expires after 120 days, the new rules were not in force when DCRA ruled on Appletree's building permit application.

The Committee determined that it did not have the legal expertise to address items 4 and 5, but it recommended that the ANC write a letter opposing the appeal on the first three points:

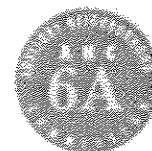
1. The Committee thought that Appletree had misinterpreted the zoning law by arguing that because the structure existed before May 12, 1958, the minimum lot area and minimum lot width requirements do not apply. It appears that Appletree believes that the school is permitted as a matter of right because the building's structure is grandfathered under zoning regulations. It is the committee's position that the charter school, which is a nonconforming use under the ZC emergency rules, is not permitted because the most recent use of the structure (a private club) is a conforming use. §2002.3 of the zoning regulations prohibit nonconforming uses. If the non conforming use as charter schools is permitted then any extension of the structure (as proposed by Appletree) is prohibited by §2002.3.
2. The committee thought that Appletree had misinterpreted the zoning law parking requirements. Appletree holds that because the building was built before May 12, 1958, it is not subject to parking requirements. The current building is 4300 sq. ft. and zoning regulations require seven parking spaces of a structure of that size. With the proposed additions to the building, the site would require a total of ten spacers. It is the committee's position that because the most recent use of the property provided space for at least seven legal spaces in the rear of the property, Appletree is required to provide at least seven parking spaces. But Appletree has proposed plans for only three parking spaces. As a result, Appletree can only make the site a nonconforming property with respect to parking regulations by obtaining the necessary zoning relief (special exception or variance) from the BZA.
3. It is the committee's position that the prior zoning regulations did not allow charter schools as a matter of right in an R-4 district. Because a number of charter schools needed to make decisions about where they would open for the start of the school year, the zoning commission was justified in promulgating the emergency zoning regulations.

Motion: Mr. Alberti moved that the ANC approve the committee's recommendation that the ANC send a letter to the BZA stating that the Appletree appeal lacks merit on the grounds outlined above. It was passed without objection.

Large Electrical Boxes



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There is a t 1125 G Street NE, a newly constructed townhouse, a five foot electrical box erected in public space between the sidewalk and the front of the dwelling, which blocks the sightline down the street. According to the DDOT website, electrical installations on public space require a public space permit. Drew Ronnenberg is currently trying to determine if the property has the required permit. **Motion:** Mr. Alberti moved that the ANC accept the committee's recommendation that if it is determined that 1125 G Street NE does not have a permit for the electrical box, then the ANC write a letter to DDOT asking for action to move the box out of public space. It was seconded by Mr. Fengler and passed without objection.

Motion: Mr. Alberti moved acceptance of the Planning and Economic Development Committee report. It was accepted without objection.

Community Outreach

Motion: Mr. Fengler moved that Astri Klievedal be named as a member of the Community Outreach Committee. Her nomination was accepted without objection.

Motion: Mr. Fengler moved that the ANC support the Community Outreach committee recommendation to send thank you notes to organizations that support the activities of the ANC. The recommendation was accepted without objection.

Motion: Mr. Fengler moved that the Community Outreach Committee report be accepted. It was accepted without objection.

Public Safety Committee

Motion: Mr. Fengler moved that the report of the Public Safety Committee be accepted. It was accepted without objection.

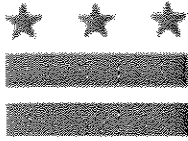
Schools and Libraries Committee

Mr. Borbely reported that a developer is planning to build a development across from Eastern High School, and that he appears to be willing to invest in the school facilities. He presented the committee's recommendation that the ANC write a letter to the developer expressing support for an investment at Eastern. Mr. Alberti, who attended a recent community meeting on the development, suggested that the ANC work with ANC 6B in proceeding with this, as the new development will be in 6B. Mr. Fengler agreed to coordinate efforts between 6A and 6B on this. Mr. Alberti said there is no rush on this, as the development is still in its early stages.

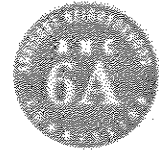
Motion: Mr. Fengler moved that the ANC accept the report of the Schools and Libraries Committee. The motion was accepted without objection.

Transportation Committee

Lance Brown discussed sending a letter to DDOT on the issue of double parking on H Street, but no draft of the letter was available, and it was suggested that it be put off until October when a draft would be available.



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Motion: Mr. Fengler moved to accept the Committee report. The motion was accepted without objection.

6. Single Member District Reports

Mr. Marshall reported that he had the local candidates at his SMD meeting.

Mr. Alberti reported that the ANC has appealed a conversion at 411 Ames Place NE to a two unit building, which has no plans for parking.

Mr. Fengler reported that he is looking into the question of residents selling parking spaces in newly constructed buildings. He also spoke about the new development at 1700 East Capitol Street, which will be zoned at R-5, up from R-4, and will have 40 to 49 units, plus penthouses, and he is working with ANC 6B to work with the developer on a proposal for involvement in Eastern High School.

Ms. Beatty reported that construction has begun on Lovejoy Park.

Mr. Borbely reported that Commander Groomes attended a meeting in his SMD. He also said that the Beautification Day at Miner Elementary had been a great success. He introduced the candidates for his seat

7. New Business

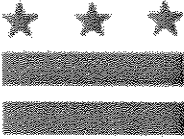
New Committee Chair for Economic Development Committee

Motion: Mr. Fengler nominated Drew Ronneberg to chair the Economic Development Committee until January 1, 2007. The nomination was accepted without objection.

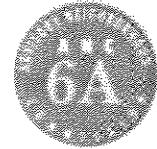
Allocation of Funds for ABL Activities

Motion: Ms. Beatty moved that the ANC retain the services of Ram Uppuluri as counsel for the single sale moratorium hearing and approve funding of between \$3000 and \$5000 for his services. Mr. Alberti said that a more global discussion was needed of funding for counsel and that for now less money should be requested. **Motion:** Mr. Fengler moved that \$3000 should be struck and replaced with \$2500, and that \$5000 be struck and replaced with \$3500. The amendment, and the original motion, both passed without objection.

Motion: Ms. Beatty moved that \$1,150 be paid to resident Micah Salb for preparing and filing the moratorium petition. Mr. Borbely said that the ANC should be using volunteer legal services where possible, to take advantage of the number of attorneys who live in the community. Mr. Marshall asked how one holds a volunteer accountable. Ms. Mack said that \$1,150 is not a lot of money for legal services. The motion passed 5-1, with Mr. Borbely voting no.



District of Columbia Government
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington DC 20013



MPD Cameras

Motion: Mr. Fengler moved that the ANC write a letter to Commander Groomes recommending that cameras be placed at 8th and G Streets, 15th and C Streets, 15th and Gales Place, 16th and Gales Place. Other recommendations included 15th and East Capitol, and 18th and D. The motion passed without objection. Ms. Beatty volunteered to write the letter.

635 H Street NE

Mr. Fengler raised the issue of a new development being planned for the top of 635 H Street NE, extending back to G Street. The project is the first to which the H Street Overlay guidelines will apply, and the developer is applying for variances that would override the overlay, including a reduction in the 14' ceiling height for retail on H Street. **Motion:** Mr. Fengler moved that ANC 6A apply for standing at the BZA, opposing the special exception for the height reduction and stressing the long and careful planning that went into developing the Zoning Overlay. The ANC will also join in ANC 6C's request for a postponement of the BZA hearing. The motion passed without objection.

The meeting was adjourned at 8:55 pm.