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## OFFICE OF ZONING STAFF PRESENT:

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## OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER  
TRAVIS PARKER  
KAREN THOMAS

The transcript constitutes the  
minutes from the Public Hearing held on  
April 5, 2007.

## A G E N D A

Office of Planning Report . . . . .	4
ANC 6A . . . . .	5
Persons in Support	
Mr. Ward . . . . .	12
Persons in Opposition	
Mr. Williams . . . . .	16

1 P-R-O-C-E-E-D-I-N-G-S

2 6:51 p.m.

3 CHAIRPERSON MITTEN: We will now  
4 move on to Case Number 07-03 and have Mr.  
5 Parker make the Office of Planning report  
6 next.

7 MR. PARKER: Good evening, Madam  
8 Chairman, Members of the Commission.

9 Travis Parker with the Office of  
10 Planning.

11 I'm prepared to make a thorough  
12 and eloquent presentation of this if you'd  
13 like it, but I'm happy to stand on the record  
14 if you'd prefer to -- if you feel comfortable  
15 with the case.

16 CHAIRPERSON MITTEN: Okay. We'll  
17 see if anyone has any questions, but we always  
18 welcome your thorough and eloquent  
19 presentations, Mr. Parker.

20 Anyone have any questions for Mr.  
21 Parker on Case Number 07-03 which is the  
22 amendment to 402.1.

1                   Okay. Thank you.

2                   Are there any ANCs here present  
3                   that would like to give testimony in Case  
4                   Number 07-03? Come ahead.

5                   COMMISSIONER ALBERTI:           Good  
6                   evening.

7                   CHAIRPERSON MITTEN: Hi.

8                   COMMISSIONER ALBERTI: And thank  
9                   you for the opportunity to speak and speaking  
10                  on behalf of ANC 6A.

11                  CHAIRPERSON MITTEN: Please  
12                  identify yourself for the record.

13                  COMMISSIONER ALBERTI: Yes, I'm  
14                  Nick Alberti, Commissioner in ANC 6A.

15                  First of all, I'd like to say that  
16                  ANC 6A unanimously supports this text  
17                  amendment because it will eliminate a defect  
18                  in the current zoning law which allows  
19                  exemptions from compliance with required  
20                  minimum lot area and minimum width criteria of  
21                  401.3 even in the cases where there is a use  
22                  -- where the use of the property has changed.

1           Secondly, I'd like to strongly  
2           urge the Zoning Commission to adopt this  
3           amendment on an emergency basis. On February  
4           13th, the Zoning Commission considered a  
5           related text amendment. It was the charter  
6           schools text amendment which really generated  
7           this issue and at that time, the Commission  
8           determined that it was appropriate to set down  
9           that amendment on an emergency basis. We  
10          believe that the conditions warranting that  
11          action still exist and apply equally in this  
12          case.

13                 The pressures for charter school  
14          expansion have led -- and I'm going into the  
15          reasons why it should be an emergency -- set  
16          down as an emergency. The pressures for  
17          charter school expansion have led charter  
18          schools to look to inappropriate locations in  
19          residential neighborhoods and in R-4  
20          neighborhoods.

21                 In the short time since the Zoning  
22          Commission made its initial ruling on the

1 charter schools text amendment, we have  
2 already seen a test case involving the  
3 Appletree Institute in their matter-of-right  
4 claim to occupy an existing property on 12th  
5 Street and that property does not meet the lot  
6 area and lot width requirements set forth in  
7 401.3. That same non-profit has already  
8 applied to the Public Charter School Board for  
9 two additional sites other than the 12th  
10 Street site.

11 Delaying the affect of this  
12 amendment would leave issues surrounding the  
13 location of charter schools in residential  
14 districts unresolved and the standards for  
15 future projects ambiguous. If the existing  
16 law is not amended promptly, there is  
17 potential for school campuses to cause severe  
18 harm to the character of our residential  
19 neighborhoods.

20 And lastly, I'd like to point out  
21 that this text amendment presents a partial  
22 solution to a larger problem in the Zoning

1 Code and that is the grandfathering  
2 exceptions, those that deal with properties  
3 prior to 1958, those exemptions fail to  
4 specifically address changes of use.

5 The case that came just earlier  
6 was another example of that and there are many  
7 others I believe in the Zoning Code.

8 These exemptions were intended to  
9 protect existing use not to provide carte  
10 blanche for any and all future uses. We  
11 recommend that the Zoning Commission and the  
12 Office of Planning conduct a complete review  
13 of the Zoning Code to identify other  
14 exemptions for these pre-1958 buildings and  
15 properties that should be eliminated when  
16 significant use is occurring.

17 Thank you for the opportunity to  
18 speak.

19 CHAIRPERSON MITTEN: Thank you,  
20 Commissioner Alberti.

21 Any questions for, Mr. Alberti?

22 Any questions?



1                   Okay. Thank you.

2                   COMMISSIONER ALBERTI: Thank you.

3                   CHAIRPERSON MITTEN: Mr. Parker,  
4 I'm going to ask you for the benefit of my  
5 colleagues, rather than have me testify, can  
6 you put Mr. Alberti's comments in context for  
7 the Commission?

8                   MR. PARKER: Comments in terms of  
9 the --

10                  CHAIRPERSON MITTEN: The appeal  
11 case that came before the BZA that led to  
12 this.

13                  MR. PARKER: The appeal case which  
14 I believe was heard in January or maybe  
15 decided in January determined in part that  
16 Section 401 does not just grant the right to  
17 expand a pre-'58 building that's on a  
18 nonconforming lot, but grants an unstated  
19 right to also change the use of that building  
20 to something that would otherwise require a  
21 variance.

22                  In that particular case, a school

1 was attempting to locate on a lot that did not  
2 meet the width and I believe area requirements  
3 for a school and it was determined by the  
4 Board that because it was allowable for that  
5 building to be expanded under Section 401.1,  
6 therefore, there was no need for that use  
7 change to be granted a variance and OP  
8 believes that this is an incorrect  
9 interpretation in that it would open the door  
10 for any nonconforming lot in the R-4 or any R  
11 District to be converted to any other use  
12 regardless of what the lot area and width  
13 requirements for that use would otherwise be.

14 CHAIRPERSON MITTEN: Thank you.  
15 So, the reason that we have this text  
16 amendment before us is to rather than leave it  
17 open to interpretation is to clarify it. So,  
18 that's the background for it and then the  
19 Appletree -- it was the appeal of the  
20 Appletree denial of a building permit that was  
21 in part the basis for -- it was the Zoning  
22 Administrator's interpretation of whether or

1 not the width and lot occupancy limitations  
2 related to public schools should apply.

3 So, I just wanted you to have that  
4 context and I think what we'll do is we'll  
5 just for the moment not address specifically  
6 the emergency request, but on Monday, since  
7 we're having a meeting on Monday, to the  
8 extent that the Commission wants to take that  
9 up, we can do that then. Okay.

10 VICE-CHAIRPERSON HOOD: So, what  
11 happened with the appeal?

12 CHAIRPERSON MITTEN: The appeal  
13 was -- let's see. I just want to say this  
14 right because that was a grant -- deny of the  
15 appeal. The denial of the building permit was  
16 the --

17 VICE-CHAIRPERSON HOOD: Appeal.

18 CHAIRPERSON MITTEN: The denial of  
19 the permit was appealed and the appeal was  
20 granted.

21 VICE-CHAIRPERSON HOOD: Oh. Okay.

22 MR. BERGSTEIN: Yes, but just to

1 clear things up, the order granting the appeal  
2 has not yet been issued and, therefore, the  
3 affect of the ruling is not in place.

4 CHAIRPERSON MITTEN: Okay. All  
5 right. Just wanted to have the Commission  
6 more aware of the whole thing. All right.

7 So, any other ANCs who'd like to  
8 testify?

9 Then those who would like to  
10 testify in support of Case Number 07-03.

11 MR. WARD: Good evening, Madam  
12 Chairman and Members of the Board. Thank you  
13 for allowing me to testify this evening.

14 My name is Chris Ward and I'm  
15 representing the Northeast Neighbors for  
16 Responsible Growth, a civic organization  
17 formed from the North Lincoln Park  
18 Neighborhood of Capitol Hill.

19 We were formed in response to the  
20 efforts of the Appletree Institute that you  
21 just mentioned to locate a large charter  
22 school at an inappropriate location in our

1 community.

2 We're aware that when the Zoning  
3 Commission passed the original text amendment  
4 on school locations in September of 2006 that  
5 you intended to protect all the city's  
6 neighborhoods, permit appropriate sitings of  
7 schools and we're very grateful for the work  
8 you and the Office of Planning have done on  
9 that issue.

10 None of us foresaw that Section  
11 401.1 of the Code could be misapplied to allow  
12 any organization to establish a school in a  
13 nonconforming property to circumvent the  
14 intent of those regulations.

15 Today, every traditional public  
16 and charter school in the city does comply  
17 with this regulations but that could change  
18 before the text amendment you're considering  
19 tonight is placed into affect. That's why I  
20 join ANC 6A in asking that you move to set it  
21 down on an emergency basis.

22 Let me explain a couple of points

1 for background. On March 19 of this year at  
2 the Public Charter School Board meeting Board  
3 Chairman Thomas Knight had told our group  
4 president Herb Failing that the Public Charter  
5 School Board issues permissions for charter  
6 schools to locate without public hearing and  
7 without public notice. This was reported in  
8 both The Washington Post and The Voice of the  
9 Hill.

10 We should point out the Public  
11 Charter School Board has held board meetings  
12 for more than ten years with no transcripts.  
13 Their documents are not public record. They  
14 claim to be exempt from Sunshine Laws and  
15 Freedom Of Information Act. ANC 6A has asked  
16 for clarification of this from the Office of  
17 the Attorney General.

18 What this really means for our  
19 community or any other community in Washington  
20 is that any charter school could be given  
21 permission needed to obtain a building permit  
22 without anyone being notified. That's our

1 concern.

2 Consequently, before the action is  
3 set down, any school could approach the Zoning  
4 Administrator for a permit for a nonconforming  
5 building if it was built before the date we've  
6 discussed, 1958.

7 Without this text amendment in  
8 place, the Zoning Administrator has not clear  
9 guideline on which to act leaving the city  
10 open to litigation we believe.

11 We respectfully request that the  
12 Zoning Commission provide clear guidance to  
13 the Administrator of the intent of the  
14 original text amendment on school siting and  
15 close this window allowing expectations --  
16 exceptions, excuse me, for nonconforming  
17 buildings by setting down the amendment on an  
18 emergency basis.

19 Thank you very much for allowing  
20 me to testify.

21 CHAIRPERSON MITTEN: Thank you,  
22 Mr. Ward. Any questions for Mr. Ward?

1 Questions? Thank you very much.

2 MR. WARD: Thank you.

3 CHAIRPERSON MITTEN: All right.

4 Mr. Williams, did you want to testify again or  
5 just --

6 MR. WILLIAMS: No, as I signed in,  
7 I said I was opposed as drafted. You have the  
8 rest of my suggestions.

9 CHAIRPERSON MITTEN: Okay.

10 MR. WILLIAMS: Thank you.

11 CHAIRPERSON MITTEN: Terrific.  
12 And anyone else who'd like to testify in  
13 opposition in Case Number 07-03? Anyone who'd  
14 like to testify in opposition?

15 Okay. Then I think we'll leave  
16 the record open in this case for two weeks as  
17 well and so, the record will close at 3:00  
18 p.m. on April 19th.

19 And unless there's anything else  
20 from my colleagues, then I thank you all for  
21 your participation here this evening and be  
22 sure and tune in on your computer if you don't



1 want to come down to our meeting on Monday for  
2 various and sundry decisions that we'll make.

3 Thank you.

4 (Whereupon, at 7:03 p.m., the  
5 hearing was concluded.)  
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