

C-TAB 17

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :
: :
CHARTER SCHOOLS - : Case No. 06-06
TEXT AMENDMENT :
: :
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Thursday,
May 11, 2006

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 06-06 by
the District of Columbia Zoning Commission convened
at 6:30 p.m. in the Office of Zoning Hearing Room at
441 4th Street, N.W., Washington, D.C., 20001, Carol
J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
GREGORY JEFFRIES	Commissioner
JOHN G. PARSONS	Commissioner (NPS)
MICHAEL G. TURNBULL	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Secretary
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OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
TRAVIS PARKER

D.C. OFFICE OF THE ATTORNEY GENERAL:

JACOB RITTING, ESQ.

The transcript constitutes the minutes
from the Public Hearing held on May 11, 2006.

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

6:38 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, May 11, 2006. My name is Carol Mitten and joining me this evening are Commissioners Michael Turnbull, Greg Jeffries, and John Parsons.

The subject of this evening's hearing is Zoning Commission Case No. 06-06. This is a request by the Office of Planning for a text amendment to Title 11 of the District of Columbia Municipal Regulations to change the definition of public schools to include charter schools, to amend the lot area, lot width, FAR, and lot occupancy permitted for public schools in Residence Zones, to allow collocation of school uses with other uses and sharing of recreational facilities, permit schools in Residence Zones not meeting the proposed requirements to be allowed as special exceptions, and to allow public schools in the SP, CR, and W Zone Districts, and to create standards for preschools.

Notice of today's hearing was published in the D.C. Register on March 17, 2006, and copies of that hearing announcement are available on the table

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1 by the door. This hearing will be conducted in
2 accordance with the provisions of 11 DCMR Section 3021
3 and those are the rules of procedure for rulemaking
4 cases.

5 The order of procedure will be as follows:
6 We'll take up any preliminary matters. Then we'll
7 have the presentation by the Office of Planning, we'll
8 hear from other Government agencies in attendance,
9 we'll have reports by the affected Advisory
10 Neighborhood Commissions, organizations and persons in
11 support, and then organizations and persons in
12 opposition.

13 The following time constraints will be
14 maintained in this hearing. Organizations will have
15 five minutes, and individuals will have three minutes.
16 I would like to remind everybody that only one person
17 will get the five minutes for any given organization.

18 The Commission intends to adhere to these
19 time limits as strictly as possible in order to hear
20 the case in a reasonable period of time. The
21 Commission reserves the right to change the time
22 limits for presentations if necessary and notes that
23 at no time shall be seated.

24 All persons appearing before the
25 Commission are to fill out two witness cards. Those

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1 cards are also on the table by the door. Upon coming
2 forward to speak to the Commission we ask you to take
3 a seat at the table. Well, actually, when you come
4 forward give the cards to the reporter first and then
5 take a seat at the table.

6 I would like to remind you that this
7 proceeding is being recorded by the court reporter and
8 is also being webcast live. Accordingly, we ask you
9 to refrain from making any disruptive noises in the
10 hearing room. When presenting information to the
11 Commission, please turn on and speak into the
12 microphone first stating your name and home address.
13 When you have finished speaking, please turn the
14 microphone off because it tends to pick up background
15 noise.

16 The decision of the Commission in this
17 case must be based exclusively on the public record.
18 To avoid any appearance of the contrary, the
19 Commission request that persons present not engage
20 members of the Commission in conversation during a
21 recess or at any other time. Mrs. Schellin and Mr.
22 Ritting will be available throughout the hearing to
23 answer any procedural questions that you might have.

24 I would ask everyone to turn off their
25 beepers and cell phones at this time so as not to

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1 disrupt the proceeding. And I would just like to say
2 a couple of things just by way of reminder. First, as
3 you listen to other people testify, because we have
4 quite a long witness list this evening -- and I would
5 ask you to sign up on the witness list if you haven't
6 done so already.

7 If you repeat what you have already heard,
8 please just say, "I would like to echo the comments of
9 so and so." We would like to eliminate as much
10 redundant testimony as possible. Anything that you
11 submit in writing the Commission will certainly read.

12 I would also like to say that the hearing
13 tonight is about proposed text amendment. It is not
14 about any particular location. I will cut off
15 testimony that is about any either actual pending
16 appeal or contemplated pending appeal of a decision of
17 the Zoning Administrator or anything pending with
18 DCRA. That is not the purpose of this hearing tonight
19 so I will cut off testimony that goes into that realm.

20 At this time, Mrs. Schellin, do we have
21 any preliminary matters?

22 MS. SCHELLIN: Nothing.

23 CHAIRPERSON MITTEN: Great. Then we would
24 like to turn to the Office of Planning, Mr. Parker.

25 MR. PARKER: Good evening, Madam Chairman,

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1 members of the Commission. My name is Travis Parker
2 with the Office of Planning. As discussed at the set-
3 down hearing, the proposed text amendment for you
4 tonight is the result of ambiguities in the current
5 Zoning Regulations regarding charter schools. The
6 main thrust of the proposed amendment is to recognize
7 charter schools as public schools for the purposes of
8 zoning.

9 Incumbent upon us in changing the
10 definition of public schools to include charter
11 schools is a recognition of the differences between
12 traditional and charter schools in an attempt to limit
13 the impacts of both on established residential
14 neighborhoods.

15 As discussed in both OP reports,
16 traditional public schools are generally located on
17 very large lots with open recreation space. Charter
18 schools don't necessarily fit into this mold. They
19 often don't have playgrounds, gyms, auditoriums, and
20 other accessories of traditional schools and, as such,
21 they can locate in buildings originally built for
22 other uses and on lots of much less size.

23 This difference resulted in the need to
24 design zoning standards for residential neighborhoods
25 to protect existing homes from the potential impacts

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1 of school uses. The original application had several
2 facets. In addition to amending the definition it
3 adds language to allow and encourage collocation of
4 schools with other uses.

5 It lays out, as shown in the table in the
6 OP report, minimum lot areas and lot widths for
7 schools and residential districts in addition to
8 clarifying lot occupancy and heights in certain
9 districts. These standards were designed so that (a)
10 every existing public school would meet the new
11 standards, and (b) new schools would meet minimum lot
12 areas and lot widths to prevent negative impacts of
13 small schools on small neighborhood lots.

14 The proposed lot area would encourage
15 schools to locate in slightly larger than normal
16 residential lots and discourage schools from locating
17 in traditional single residential lots in the middle
18 of established neighborhoods. The proposed lot width
19 has the further purpose of assuring a minimum area for
20 drop off and pick up of students. Traffic is
21 traditionally one of the major perceived impacts of
22 schools and this minimal standard is a minor step in
23 the absence of schools being able to provide onsite
24 drop off locations.

25 With the knowledge that there will be

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1 exceptions to any rule, the proposed language also
2 makes approval of any public school that can't meet
3 these minimal standards a special exception. This
4 removes the burden of a variance test and necessitates
5 only a fining of no adverse impacts on the
6 neighborhood.

7 Other proposed changes in the original
8 report included increased FAR for schools in the C1
9 zones, permitting of public schools in SP, CR and W
10 zones where they are not currently allowed, and
11 creating a parking standard for pre-elementary
12 schools.

13 There are several changes in the proposal
14 from what was presented to you at set-down. First,
15 Section 401.9 is recommended to clarify the lot width
16 requirement. Since this requirement stems from a need
17 for student drop off and pickup space, OP recommends
18 that the language be modified to allow school lots to
19 count all frontage on corner or through lots towards
20 the 120 foot minimum requirement.

21 The second change was presented in a
22 supplemental report and at Section 410.10. This
23 section clarifies that any split zone lot existing
24 prior to the new text will be able to use the lot area
25 and lot width standards of the less restrictive zone.

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1 Since the sit-down meeting OP has met with
2 Focus and other charter school affiliated groups with
3 the result that other changes have been also proposed
4 in this report. The lot area requirement has been
5 removed from our proposal for the R-5-C, D, and E
6 zones.

7 Currently there are no minimum lot areas
8 for any permitted use in the R-5 zones. These are
9 higher density zones designed for larger school
10 residential buildings and the impacts for public
11 schools will be felt less clearly than in lower
12 density zones.

13 In addition, the lot width requirement has
14 been lowered to 80 feet in all R-5 zones. While still
15 providing loading space for up to four vehicles, the
16 lower requirement in the zones reflects the higher
17 density and higher threshold for impacts on
18 surrounding properties.

19 Finally, for the purposes of FAR
20 calculation in commercial zones, it is recommended
21 that public schools be counted as residential floor
22 area. This would allow a public school to utilize the
23 entire building envelope in a mixed-use zone rather
24 than just that allowed for commercial uses.

25 One of the major comments of charter

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1 school groups has been that many charter schools start
2 out as small institutions with 40 to 60 students or
3 less that wouldn't have the resources to locate in
4 larger residential lots. The purpose of these
5 amendments is to address the location of exactly these
6 smallest schools that might otherwise locate in small
7 residential buildings in single-family neighborhoods.

8 To balance the limitations on location in
9 R-1 through R-4 zones, we have made many changes
10 earlier outlined. The change in the way the charter
11 schools count towards FAR in commercial zones, the
12 increase in allowable FAR in the C-1 zones, the
13 addition of schools to CR, SP, and W zones, the
14 removal of lot area requirements in the R-5-C through
15 E zones, and the lower lot width requirements for all
16 R-5 zones.

17 Moreover, if these changes still don't
18 provide a large enough pot of properties to choose
19 from, we have recommended making any public school
20 that doesn't meet these requirements approvable by
21 special exception.

22 One other area of change was examined by
23 OP and not included as recommended change. This
24 Commission had requested OP to look into the
25 possibility of removing public schools as a matter of

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1 right in the CM and M zones. OP notes the Commission
2 is in the process of reviewing the recently completed
3 industrial land use study. Any recommendation on
4 schools in these districts has been left out of this
5 text amendment as it would be more appropriate to
6 incorporate it in changes resulting from that study.

7 Finally, the chief of staff in the Mayor's
8 office has requested that the Zoning Commission leave
9 the record open after tonight's public hearing so
10 additional information may be submitted for the
11 smaller schools. I would be happy to answer any
12 questions.

13 CHAIRPERSON MITTEN: Thank you.

14 Questions for Mr. Parker? Any questions?
15 Okay. Thank you very much.

16 MR. PARSONS: Thank you.

17 CHAIRPERSON MITTEN: Are there any other
18 Government agencies represented here tonight? What
19 agency? I don't think -- are you a Government
20 employee? Okay. We'll get to you then in regular
21 testimony. Thank you.

22 All right. At this point we are going to
23 take the testimony from affected ANCs and I will call
24 forward folks that have signed up on the witness list.
25 You have to be representing -- in order to come

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1 forward at this time you have to be representing the
2 views of an ANC that has taken a formal vote and has
3 a resolution to that effect. If you are just
4 representing your single member district, we'll take
5 you up as an individual at the proper time.

6 We have a letter in the record from ANC-
7 3C. Is Sheila Hogan here representing 3C or anyone
8 representing ANC-3C? Okay. I know we have Mr. Rice
9 here representing ANC-6A. Is there anyone here from
10 ANC-2F? Mr. Reed had signed up, Charles Reed. Anyone
11 else representing an ANC?

12 That is a single member district. We'll
13 get to you in regular testimony.

14 Okay, Mr. Rice.

15 MR. RICE: Good evening. My name is Cody
16 Rice. I am a member of the Advisory Neighborhood
17 Commission 6A located in Northeast Capitol Hill and I
18 very much appreciate the opportunity to make this
19 statement.

20 ANC-6A has submitted a letter in support
21 of the proposal to clarify the status of public
22 charter schools under the Zoning Regulations and to
23 require special exceptions for public schools that do
24 not meet minimum site requirements in the residential
25 zones. I have been authorized to represent the ANC on

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1 this matter.

2 The proposed text amendments address the
3 very valid concern that placing schools on small sites
4 will expose residential neighborhoods to traffic,
5 noise, and cumulative affects from similar facilities.
6 In particular, sites with limited or no setback from
7 nearby residential properties, limited street frontage
8 for student drop off and pickup, and limited space for
9 off-street parking are likely to impose an appropriate
10 and objectional conditions on surrounding residential
11 properties unless managed through special exception.

12 Traditionally public school placement has
13 been managed by the school system, the elected school
14 board, and the city council, all public input. As a
15 result, oversight of public school placement has been
16 adequate despite the matter of right zoning treatment.
17 However, the advent of charter schools has created a
18 new class of independent publicly funded schools for
19 which there is no explicit zoning regulation or public
20 process to govern site selection and placement.

21 The proposed text amendment creates
22 oversight to ensure the appropriate placement of
23 charter schools and other public schools. I know that
24 there are concerns about imposing a new special
25 exception requirement on public schools but this

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1 proposal is completely reasonable and balanced.

2 You must keep in mind that the existing
3 public schools including the 50 to 60 public charter
4 schools in the district all operate on sites that
5 would have allowed them to open without seeking
6 special exception even if this rule had been in place.
7 The proposal addresses the clear outliers who insist
8 that any residential property is fair game for a
9 school but allows them to make their case before the
10 BZA.

11 To add further context, I want to discuss
12 four other nonresidential uses that are already
13 controlled by special exception in the residential
14 zones; private schools, child development centers,
15 community centers, and home occupations. I bring
16 these to your attention to evaluate the reasonableness
17 of the proposed text amendment in the context of other
18 uses that are already controlled in residential areas.

19 First, with respect to private schools,
20 per Section 206 of the Zoning Regulations private
21 schools, whether they are large schools or small
22 schools, older schools or newer schools, they always
23 require a special exception in residential zones no
24 matter what their site looks like.

25 Private schools are independent

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1 educational entities like charter schools and, as
2 such, the opportunity for public input on their scale
3 and operations is limited except through the special
4 exception process. These schools must be located so
5 as not to be objectionable to a joining or nearby
6 property because of noise, traffic, number of
7 students, or other conditions and this process
8 effectively balances concerns related to private
9 school operation in residential zones.

10 Second, with respect to child development
11 centers this use encompasses child care centers,
12 preschools, nursery schools, and before and after
13 school programs. Like private schools child
14 development centers are allowed only by special
15 exception in the lower density resident zones per
16 Section 205.

17 Beginning in the R-4 zone this use is
18 permitted as a matter of right for up to 16 children
19 and this is smaller than one public school classroom.
20 Additional children may be added but they are added by
21 special exception. Again, these centers must be
22 located so as not to become objectionable with respect
23 to the same conditions of noise, traffic, visual
24 effects, and so forth.

25 Third, I would like you to consider

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1 community center buildings that are operated by local
2 community organizations or associations. This use of
3 permitted by special exception in residential zones
4 per Section 209. Like private schools and child
5 development centers, they must be located so as not to
6 become objectionable because of noise or traffic.

7 Fourth, and finally, consider home
8 occupations. Per Section 203 of the Zoning
9 Regulations home occupations are permitted as a matter
10 of right only if a number of conditions are met.
11 According to the zoning code the purpose of these
12 provisions is to ensure compatibility with the
13 residential neighborhood in which they are located.
14 Among others the following limits are considered
15 necessary to ensure a compatible use in a residential
16 area.

17 No more than one person who is not a
18 resident of the dwelling may be employed in the home
19 occupation, vehicular trips to the premises may not
20 exceed eight trips daily on a regular and continuing
21 basis, and the use may not produce a level of noise
22 that exceeds that normally associated with that
23 category of dwelling or the immediate neighborhood.

24 By comparison to these standards for
25 similar sorts of facilities, the proposed amendment

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1 for public schools seems quite reasonable. Schools
2 have one of more teachers per class in addition to
3 other staff and visitors, has students who are dropped
4 off and picked up by car, and creates substantial
5 noise as children play outside.

6 As the proposal recognizes, all of these
7 pressures on nearby residential properties can be
8 mitigated by a larger site with proper setback, off-
9 street parking, and adequate street frontage for drop
10 off and pickup.

11 To sum up, I have discussed a variety of
12 uses that are all valuable to the community and when
13 planned carefully contribute to the well-being and
14 quality of life of a residential neighborhood.
15 However, the opposite may also be true if these uses
16 are allowed without any planning or input on
17 potentially objectionable conditions.

18 This is equally the case for traditional
19 public schools and charter schools. If a site cannot
20 meet the requirements proposed by Office of Planning,
21 it seems very reasonable to deal with the potential
22 spill-over effects through the special exception
23 process.

24 The issue is not large schools or small
25 schools per se, but rather that schools on certain

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1 types of sites, the very smallest site with very
2 little setback from adjoining properties, may impact
3 neighboring properties adversely if allowed as a
4 matter of right. The proposed text amendment provides
5 a reasonable balance between the need for public
6 schools in the neighborhoods and the potential for
7 harm resulting from poor site selection.

8 ANC-6A believes that the proposed text
9 amendments will support the comprehensive plan by
10 maintaining the character of existing neighborhoods as
11 well as enhancing public safety. Allowing public
12 schools to be sited on any residential property as a
13 matter of right would eliminate formal opportunities
14 for public participation and community input to
15 alleviate adverse impacts through the special
16 exception process.

17 This process is an effective tool for
18 balancing all of the competing interests and for
19 involving the community in land-use decisions and,
20 therefore, we urge you to adopt the proposed text
21 amendments. Thank you for your consideration.

22 CHAIRPERSON MITTEN: Thank you, Mr. Rice.

23 Questions for Mr. Rice? Thank you very
24 much.

25 I've been told that Ms. Hogan has arrived

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1 for ANC-3C. You need to turn on the mic and you
2 probably haven't gotten to the witness cards yet but
3 I'll ask you to do that when you are done.

4 MS. HOGAN: Okay. Thank you. Yes, I'm
5 Sheila Hogan. I am the designee to testify on behalf
6 of ANC-3C. Thank you very much for the opportunity to
7 testify tonight.

8 ANC-3C is strongly opposed to the proposed
9 text amendment to Title 11 and is instead requesting
10 that all charter schools regardless of setbacks or
11 height or other obstructions proposing to locate in
12 residential neighborhoods be subject to the special
13 exception process.

14 Our ANC is generally supportive of charter
15 schools. In fact, we don't think there are enough in
16 Ward 3 but freedom from the traditional school
17 structure does encourage innovation and more
18 educational opportunities for our youth. But from a
19 land use viewpoint residents expect to have a right to
20 have a say in where public schools are located.

21 The proposed text amendment takes away
22 that voice. It disenfranchises our residents and
23 tells them that their concerns are not even to be
24 heard much less addressed because a charter school
25 status trumps their interests.

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1 Our ANC has experienced the diverse
2 affects of a complete lack of facility placement
3 review, oversight, or concern for neighborhood input
4 on the part of two charter schools in a residential
5 neighborhood in our ANC.

6 You will hear more details on effects such
7 as traffic, rats, vandalism, and other matters that
8 have affected our neighborhoods. There are some of
9 the neighbors who are speaking later tonight.

10 Our neighborhood's problems could be those
11 of any neighborhood in the city. They just illustrate
12 why charter schools should not be located as a matter
13 of right in any residential neighborhood without a
14 thorough public vetting as to whether that is
15 appropriate use for the proposed site.

16 Our ANC's proposal is to require the
17 charter schools to go through the special exception
18 process -- that charter schools go through the special
19 exception process is, at best, a compromise. The
20 ideal solution would be a full-fledged restructuring
21 of the public charter school application and
22 supervision process, the facility requirements for
23 charters which would promote and facilitate
24 collocation in under-utilized public school
25 facilities. I understand that there are some points

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1 to this current text amendment that start to address
2 that.

3 But that is obviously a discussion for a
4 different forum. We feel that our compromise request
5 for a special exception review of charter schools at
6 least acknowledges that there are real traffic and
7 safety concerns which need to be addressed at minimum
8 to ensure the safety of our kids and neighborhoods.

9 Defining charter schools to be public
10 schools for the purposes of zoning does not mean that
11 charter schools are treated like public schools.
12 Traditional public schools have strings attached.
13 There are public processes that provide residents with
14 a say as to where such schools are located, what
15 facilities are built, and what impacts need to be
16 mitigated and by what means.

17 The elected city council controls the
18 funding and the whole process is very public and very
19 political. These layers of public involvement simply
20 do not exist for charter schools. There is another
21 difference between traditional public schools and
22 charter schools and that is one of quantity. Even
23 when our city was actively building public schools it
24 would be unusual for more than one or two to open in
25 a given year, not the 20 or so charter schools which

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1 have been opening during some recent years.

2 There is currently no mechanism for
3 evaluating whether all these schools are locating
4 close to where the needs are, how they are impacting
5 our neighborhoods, whether they are making adequate
6 use of public transportation, or whether the
7 facilities are truly adequate to even accomplish the
8 educational missions that they espouse.

9 In conclusion, our land use rules never
10 contemplated the existence, much less the extent, of
11 charter schools in our city. Any intense land use in
12 a residential area is normally regulated and charter
13 schools should be no exception.

14 Thank you very much for allowing us to
15 testify.

16 CHAIRPERSON MITTEN: Thank you, Ms. Hogan.
17 Any questions?

18 MS. HOGAN: Do you have a copy of our
19 resolution?

20 CHAIRPERSON MITTEN: We do. It is Exhibit
21 10 in the record.

22 MS. HOGAN: Thank you very much.

23 CHAIRPERSON MITTEN: All right. Now I'm
24 going to move to the witness list and I will start
25 with, as I announced in our rules of procedure, that

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1 I will start with organizations and persons in support
2 and I'll start with those people who called in and
3 signed up first and we'll just work through.

4 When we get to the end of the list if
5 anyone else would like to testify we will pick you up
6 at that point in time. James Gatson, III, Richard
7 Neidich, David Powell, Karl Jentoft. I think we will
8 work with four since we only have three mics.

9 Mr. Gatson, you are up first. Push the
10 button. Yes, please.

11 MR. GATSON: Good evening. My name is
12 James Gatson, III. I am President of the Lamont
13 Community Action Group. Our neighborhood is located
14 in the Lamont Riggs section of Ward 4 and our
15 community based organization has been in existence
16 since 1965. It consist of approximately 175 single-
17 family homes and we have committed to approving the
18 quality of life for our residents.

19 The LCAG is in general support of the text
20 amendment case 06-06 and any additional legislation
21 that curtails the development of any future charter
22 schools without neighborhood or ANC approval of such
23 facilities. Our neighborhood has been inundated with
24 charter schools. Unfortunately, a portion of our
25 neighborhood has a light industrial designation and

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1 many of the businesses in our neighborhood are
2 relocating to Maryland and are selling their
3 properties to charter schools and charter school
4 companies.

5 Within a three-block radius of the Lamont
6 Community Action Group we currently have five public
7 charter schools, Kennett Institute, Barbara Jordon,
8 Ideal Academy, Young America Works, Roots Activity
9 Learning Center. Recent we learned that two
10 additional public charter schools are planned for the
11 same three-block radius in our neighborhood.

12 The Lamont Community Action Group insist
13 that some coordination occur between the
14 neighborhoods, the ANCs, and the D.C. Public Charter
15 School Board, and the D.C. Public Schools regarding
16 the placement of new and the relocation of charter
17 schools.

18 Our area has become completely saturated
19 with public charter schools and some of the complaints
20 from our Lamont Community Action Group neighbors are
21 inadequate teacher/staff parking which greatly impedes
22 residential parking for some of our retired citizens,
23 charter school traffic, speeding, running stop signs
24 and blatant disregard for posted traffic signs,
25 charter school noise and trash by disruptive children.

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1 Some of our mature residents have become apprehensive
2 about leaving and enter their homes at the beginning
3 and ending of the charter school day due to some of
4 the same disorderly children.

5 Inadequate facilities for recess and other
6 recreational activities is one instance of a charter
7 school where children are actually playing in an
8 alley. Then, most importantly, the nonresponsive
9 school management and two residential concerns. Any
10 assistance that the Zoning Commission can do to
11 curtail these issues will be greatly appreciated.

12 Thank you. Respectfully submitted, James
13 Gatson, III, President of Lamont Community Action
14 Group.

15 CHAIRPERSON MITTEN: Thank you, Mr.
16 Gatson. I would ask everyone to just hold your seats
17 and then we'll do the whole panel and then if the
18 Commission has questions.

19 Mr. Neidich.

20 MR. NEIDICH: Madam Chairperson and
21 Commission members, my name is Richard Neidich. I
22 live at 929 M Street, N.W. in the District of
23 Columbia. I have lived at that address for eight
24 years having moved from Capitol Hill after residing
25 there 15 years.

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1 My presentation tonight is as a
2 representative of the 25-year-old Blagdon Alley-Naylor
3 Court Association and as a resident of the Blagdon
4 Alley-Naylor Court Historic District. We are
5 generally in support of the proposed amendments and we
6 want to thank the Commission and the Office of
7 Planning for providing this opportunity for this brief
8 presentation.

9 My current residence, as when I lived in
10 Capitol Hill, was located in a registered historic
11 district and, therefore, I feel that I have more than
12 a passing experience with the issues of density and
13 parking in historic districts.

14 As you are aware, Blagdon Alley-Naylor
15 Court Historic District is located near Massachusetts
16 Avenue and the D.C. Convention Center. This historic
17 district was created in 1990 in anticipation of
18 today's development pressures and many matter-of-right
19 residential buildings that could be built given the
20 neighborhood's open space and closeness to downtown
21 business district.

22 This increased residential density along
23 with the traffic associated with the D.C. Convention
24 Center has caused our residents to become quite active
25 in the area of parking issues and parking enforcement.

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1 Title 11 District of Columbia Municipal Regulations
2 Chapter 21, Off-Street Parking Requirements, Section
3 2100.5 states "No additional parking spaces shall be
4 required for a historic landmark or a building or
5 structure located in an historic district that is
6 certified by the State Historic Preservation Officer
7 as contributing to the character of that historic
8 district."

9 Therefore, we request as part of the
10 inclusion of the charter schools as part of the zoning
11 associated with public schools make the following
12 additional condition upon the location of charter
13 public schools to the stated chapter that I
14 referenced. Specifically, we request that the
15 provisions of Section 2100.5 do not apply to charter
16 public schools.

17 To be brief, the waiving of the parking
18 space requirements for schools in historic districts
19 making the parking problems of those historic
20 districts even more difficult and acute than already
21 presented to the residents considering the historic
22 nature of the neighborhood and the very limited amount
23 of open space and off-street parking.

24 We respect new development in our
25 neighborhood and we have been successful in having

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1 developers exceed their parking space provisions in
2 our area primarily to the economic advantage of having
3 more parking and high demand with a subsequent return
4 on investment.

5 With respect to the creation of public
6 charter schools, these economic returns do not exist
7 and, therefore, we are concerned that public schools
8 and charter schools will bring parking needs, not
9 solutions. The need for school staff and students to
10 park near the school location all day and the twice
11 daily demands of a school to support the arrival and
12 departure of students only makes a bad situation
13 significantly worse.

14 We the residents of Blagdon Alley-Naylor
15 Court received at the March 23, 2006 meeting of our
16 ANC-2F unanimous approval in a resolution requesting
17 the Commission to consider parking, among other
18 issues, in formulating the regulation of charter
19 schools.

20 There is a current proposal to locate a
21 400-student charter school in our neighborhood. This
22 will make a bad situation and the lack of parking even
23 worse. Our neighborhood is not the only one with
24 these issues. Other high-density historic districts
25 have similar congestion and parking problems.

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1 Therefore, we strongly encourage the
2 inclusion of this provision as one more method by
3 which we, the residents, can have some influence over
4 our neighborhoods to preserve their historic nature
5 and the quality of life we have as citizens of the
6 District of Columbia. Thank you.

7 CHAIRPERSON MITTEN: Thank you.

8 Mr. Powell.

9 MR. POWELL: Madam Chairman and members of
10 the Commission, good evening. My name is Dave Powell.
11 I live at 111 12th Street, N.E. I have been a
12 resident of Capitol Hill for 15 years. I am here
13 representing the Capitol Hill Restoration Society.

14 As you know, the Capitol Hill Restoration
15 Society is the oldest and largest civic association in
16 Capitol Hill representing about 1,000 members. The
17 society was founded in 1955 to protect the historic
18 fabric of the neighborhood. I am a former society
19 board member and long-time member of the society
20 zoning committee.

21 Gary Peterson, the chair of the zoning
22 committee, has forwarded a letter to the Director of
23 the Office of Zoning summarizing our position
24 regarding a charter school text amendment. The
25 society zoning committee voted unanimously to support

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1 the proposed text amendment. We also suggested two
2 modifications.

3 The first has to do with a test for
4 special exceptions. We believe that the language
5 under Section 3104 as too general for public schools.
6 As you know, the language involves harmony with a
7 general purpose and intent of the zoning regs and
8 maps. We would prefer language similar to that found
9 in Section 223.2 be made applicable to public and, by
10 definition, charter schools.

11 As you know, this language requires that
12 there be no adverse effect on the use or enjoyment of
13 any abutting dwellings or property. More
14 specifically, light and air, privacy of use and
15 enjoyment, and no substantial visual intrusion upon
16 the character, scale, and pattern of houses.

17 Our second concern is what happens to a
18 building that is no longer used by a particular
19 charter school or public school. We suggest that the
20 special exception be restricted to the applicant and
21 that a new public or charter school apply for a new
22 special exception.

23 With these modifications we believe that
24 the proposed text amendments are consistent with the
25 comprehensive plan and will both serve the affected

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1 communities and public and charter schools. Thank
2 you.

3 CHAIRPERSON MITTEN: Thank you.

4 Mr. Jentoft.

5 MR. JENTOFT: Good evening, Commissioners
6 and staff. My name is Karl Jentoft. I am the CEO of
7 the Neighborhood Development Company. I have had
8 experience with public charter schools as a developer
9 and we are building a public charter school right now
10 for the ABC public charter school and as a public
11 charter school founder.

12 I just wanted to say that I am in general
13 in support of the regulations that have been proposed.
14 I think that in general they are good public policy
15 and will make it easier for charter schools to locate
16 throughout the District. Specifically, I think that
17 clearly defining public charter schools as public
18 schools is a step forward and will prevent
19 misunderstandings and confusion.

20 I think that opening up C-1 zones to have
21 1.8 FAR will help invigorate some of the C-1 zones
22 that are currently dilapidated right now and provide
23 another alternative use that could be economically
24 viable for some of the small store fronts located near
25 or in residential neighborhoods that are viable

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1 currently.

2 Finally, I think that including public
3 charter schools as a residential use in the mixed-used
4 zones such as C-2-A and C-2-B enables public charter
5 schools to go in and build to the same kind of
6 density. It makes those kind of zones more
7 economically viable to locate.

8 I do have a couple concern, though, that
9 I think still need to be addressed in terms of public
10 policy. As we look at locating public charter
11 schools, there is a tradeoff always between the public
12 good of educating students who live and reside in the
13 District with all public charter school students and
14 the people who live in these neighborhoods.

15 There are other examples of institutions
16 that have by right in residential zones such as
17 churches which serve a public good and embassies also
18 are allowed without special exceptions.

19 For public charter schools the current
20 zoning puts some pretty drastic minimum lot size on
21 both the lot size and the lot width that I think for
22 most large schools work fine but I am worried about
23 the public policy and its impact on small schools.

24 People are talking tonight about the
25 impact that schools will have with traffic and with

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1 neighbors and noise but there is a direct correlation
2 between the size of the school and the impact that it
3 has in the neighborhood. There are a number of small
4 public charter schools that are opening up to
5 specifically serve young early childhood schools that
6 are appropriately located in residential
7 neighborhoods. Most public charter schools serve, at
8 least about 50 percent on average, of students in the
9 local neighborhood.

10 As we look at this, I mean, I think we
11 need to look at some flexibility to allow small public
12 charter schools to locate on smaller lots because I
13 know people are talking about the potential of closed
14 D.C. buildings that could be used to help locate
15 public charter schools but those wouldn't help small
16 schools either because if you have a school that is
17 untenable that is a 100,000-square-foot school that is
18 economically untenable for DCPS, it is not going to
19 work for a 30 or 40-person public charter school.

20 My suggestion would be I think the Office
21 of Planning can go back and look at what kind of
22 potential solutions could be thought of to help ease
23 the burdens that would be put on small schools through
24 this legislation. I think the legislation is a big
25 step forward and will help clarify things across the

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1 city for schools looking to locate.

2 CHAIRPERSON MITTEN: Thank you.

3 Questions for the panel? Any questions?

4 I would just maybe mention to Mr. Neidich that I think
5 shortly from the Office of Planning we will be having
6 a report with some suggested clarifications of the
7 section that you made reference to, 2100.5. As you
8 may know, there are other sections subsequent to that
9 that would seem to inform that the interpretation of
10 that section. I know there have been different
11 interpretations, and we hope to clarify that soon.

12 Thank you. Thank you all for your
13 testimony.

14 George Keyes. George Keyes, Dean Rosen,
15 Frazer Walton, Veronica Ragland, Elizabeth Nelson.
16 Are you Ms. Nelson? Oh, you're Ms. Nelson. Okay.
17 Great. I think we have our four then.

18 Mr. Rosen, why don't you start.

19 M R . R O S E N :

20 Thank you and thank you for hearing my
21 testimony. I am here on behalf of the Northeast
22 Neighbors for Responsible Growth. We are a community
23 organization that formed just this past year to try to
24 preserve the historic value and character of our
25 neighborhood.

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1 We are here to strongly urge the
2 Commission to adopt the proposed text amendments. We
3 think the amendments are balanced, very reasonable,
4 and very straightforward and that they embody one very
5 straightforward and basic principle and that is that
6 public schools, private schools, and public charter
7 schools all must respect the neighborhoods in which
8 they seek to locate, or to expand their operations.

9 They must all follow a process and that
10 process must include some level of community input to
11 ensure that the character of neighborhoods in which
12 they are seeking to locate is preserved, the safety of
13 families in the neighborhoods is respected, and the
14 parking and traffic and other impacts is considered.

15 This basic principle of input is
16 especially important where schools are attempting to
17 locate or to expand on a relatively small piece of
18 property in a predominately residential neighborhood
19 such as the one that our neighbors live in. Our
20 neighborhood on Capitol Hill would be severely
21 impacted should any school, public, private, or public
22 charter seek to locate in the middle of a block of one
23 of our residential areas where rowhouses that adjoin
24 each other.

25 For example, 12th Street, 10th Street,

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1 Tennessee, the neighborhood right around us is
2 bordered by one-way streets that are streaming with
3 traffic, in the morning in particular and in the
4 evening at rush hour so we are very concerned about
5 any school that would come in and locate without that
6 kind of community involvement making a very difficult
7 situation with traffic and congestion even more
8 unbearable.

9 Yet, until these amendments were put in
10 place on an emergency basis, any charter school that
11 would seek to locate in our neighborhood could come in
12 and claim that they were doing this by right. In
13 fact, there have been circumstances where public
14 schools have come in.

15 I think because of this lack of process,
16 because of this lack of incentive have tried to do
17 that without reaching out to the neighbors. We very
18 simply and very straightforwardly urge you to adopt
19 the proposed amendments to put public, private, and
20 public charter schools on more or less a level playing
21 field that ensures community involvement.

22 I want to say as one of many neighbors
23 trying to raise a family, I have two young children,
24 I have chosen to live and work and pay taxes in D.C.
25 in the historic district and I want more school

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1 options, not fewer school options.

2 It is important to me and it is important
3 to the rest of the neighborhood that is part of the
4 northeast neighbors that all schools, again public,
5 private, public charter schools, respect the rights
6 and the input and the interest of the residential
7 neighbors who would be impacted by the location. We
8 think that the text amendments before you seek to do
9 just that. Thank you.

10 CHAIRPERSON MITTEN: Thank you, Mr. Rosen.

11 Mr. Walton. I need you to turn on that
12 microphone for me. Thank you.

13 MR. WALTON: Thank you. My name is Frazer
14 Walton and I'm President of the Kingman Park Civic
15 Association. The Civic Association represents a
16 community that is out near RFK Stadium. I would first
17 like to say that I would like to thank the Commission
18 of the Zoning Board for your outstanding work.

19 I would like to thank the Office of
20 Planning for presenting you with these amendments. I
21 think that this legislation may be some of the most
22 important legislation that has come through this city
23 probably in the last 20 years. I make that
24 representation because for quite a long while the
25 District of Columbia has had a very poor track record

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1 the last 25 years in educating and graduating
2 students. Prior to that time it had an excellent
3 record.

4 One of the best public school systems in
5 America prior to that time so something happened. You
6 see the return now of these charter schools that we
7 are speaking of. I didn't know much about charter
8 schools so I really didn't take a real position on
9 them but after what I have seen in the last several
10 years, I am beginning to very much dislike charter
11 schools.

12 The methods in which the charter schools
13 go about locating in the neighborhoods, the lack of
14 concern for the neighborhoods themselves, the fact
15 that they seem to be driven, most of them.

16 I can't say all but it seems like a large
17 number are driven by profit motive and not for
18 purposes of educating students. And with these
19 regulations I think it will go a long way with
20 controlling the way in which they are placed in our
21 community with controlling the way in which they are
22 placed in our community.

23 They have ignored the comprehensive plans
24 of the communities.

25 Specifically, I'm going to spend the rest of my

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1 time talking about Kingman Park. There has been a
2 proposal that was initiated by the Mayor of the city.

3 CHAIRPERSON MITTEN: I would ask you not
4 to speak specifically about any given proposal. If
5 you can keep it as generic as possible. Mr. Rosen
6 described his community in general so if you could do
7 that.

8 MR. WALTON: I'll do that. You are in
9 charge. As much as I hate it but I will do it.

10 CHAIRPERSON MITTEN: Thank you. When I
11 come to your community, I will respect your gavel
12 then. Okay?

13 MR. WALTON: Yes, ma'am. With respects to
14 the number of these schools, one of the big problems
15 that you will see occurring throughout the city is the
16 storage of charter school buses in the neighborhoods.
17 In our neighborhood, and I won't mention the name of
18 the school because you told me not to, we have a bus,
19 a large bus.

20 If you go to 21st and Oklahoma Avenue you
21 can see the bus tonight. It is parked outside. The
22 charter school is not in our neighborhood. Then on
23 Ridge Road Southeast this same school has a bus parked
24 so that is a big issue that has to be addressed, where
25 are they going to put these buses that go with these

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1 schools.

2 Another issue that is becoming a very
3 serious problem is the location of these schools, as
4 several speakers have indicated, and their affect on
5 the current children in the neighborhoods. They are
6 bringing in schools where they are drawing children
7 from all over the city. They are fighting with the
8 children in the current neighborhoods. The police
9 department has indicated that is a massive problem
10 that is existing.

11 I think the Metropolitan Police should be
12 brought into this because they need to give guidance
13 in the issuance of permits or exceptions or variances
14 or whatever the Zoning Board would do in these
15 circumstances because that is a very major impact on
16 the public safety of our seniors, of our young people,
17 and on the confusion that placing these schools
18 without regulation into the neighborhoods will have on
19 the neighborhoods.

20 Another major problem is the regulations
21 need to be stronger in my opinion. I support your
22 regulations but I think they need to be stronger in
23 terms of what will go into the construction of these
24 schools, how massive the construction will be, how
25 many students they should be allowed to have living or

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1 residing or attending school in these communities.
2 This should be a public process. There should be
3 hearings not only before the Zoning Board but before
4 all the other boards, the historic complexion of these
5 communities. We are in an historic community. There
6 is a comprehensive plan --

7 CHAIRPERSON MITTEN: I need your closing
8 thought. You are out of time.

9 MR. WALTON: Yes, ma'am. And with that I
10 will just say I respect what you all are doing and I
11 support it. Thank you.

12 CHAIRPERSON MITTEN: Thank you.

13 Ms. Ragland.

14 MS. RAGLAND: Good evening. My name is
15 Veronica Ragland and I represent ANC-7D-01. I support
16 Mr. Walton and his statements in terms of the effect
17 of charter schools on our area in Kingman Park. I
18 just wanted to add that one of the things that we are
19 concerned about is the number of schools that are
20 being placed in the neighborhood.

21 I live in a neighborhood where there are
22 approximately eight to 10 schools already that exist,
23 eight to 10 public schools that already exist, and
24 there are other proposed charter schools in the area
25 which will take up our green space. I think that the

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1 Commission itself needs to look at the green space
2 that is available to the neighborhoods. If the
3 neighborhood is being crowded with concrete buildings
4 and schools and traffic, then I think there has to be
5 some limits put on the number of schools that go into
6 a neighborhood.

7 I support Mr. Walton in saying that the
8 quality of life for our neighborhoods will be changed
9 if the Zoning Commission is not vigilant in looking at
10 how this will affect the quality of life of the
11 neighborhood.

12 Finally, I want to say that many of the
13 charter schools that I have heard have gone around
14 District laws to get what they want. They have
15 approached other officials to intervene on their
16 behalf to get special permission, special exemptions
17 so that they are allowed to exist.

18 I think that the Zoning Commission needs
19 to be firm about how these charter schools are
20 established and to make sure that they adhere to the
21 law and that they are not allowed to accept or be
22 permitted to have exemptions so that they can continue
23 to make profits using public funds. Thank you.

24 CHAIRPERSON MITTEN: Thank you.

25 And Ms. Nelson.

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1 MS. NELSON: Good evening. My name is
2 Elizabeth Nelson. I am the Chair of the North Lincoln
3 Park Neighborhood Association which operates on
4 Capitol Hill in the area just north and east of
5 Lincoln Park.

6 Thank you for allowing me to make this
7 statement in support of the proposed text amendments
8 which clarify the status of public charter schools
9 under the Zoning Regulations which set minimum site
10 requirements for both public and public charter
11 schools in the residential zones.

12 One of the primary reasons for selecting
13 a home in an R-4 zone is for the quiet residential
14 character of the neighborhood. The neighbors I
15 represent want to choose their homes with the clear
16 expectation of the types of uses permitted for nearby
17 properties. Lack of clarity in the current
18 regulations leaves us subject to the inappropriate
19 incursion of large noise, litter, and traffic
20 generating institutions.

21 The proposed text amendments would rectify
22 that situation.

23 The siting of a DCPS facility is
24 determined by central administration and vetted by the
25 city council and the Board of Education, elected

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1 officials answerable to their constituents.
2 Opportunities for public comment are built into the
3 system. The siting of a private school or a child
4 development center is addressed explicitly in the
5 current regulations which are designed to ensure that
6 they do not present a hardship to the surrounding
7 community.

8 But the siting of charter schools is not
9 clearly addressed in the current zoning laws, no doubt
10 because they did not exist at the time the regulations
11 were written. Also, parking was a less important
12 consideration at that time for all schools public or
13 private because far fewer children were driven to
14 school.

15 Very young children did not attend and
16 most children enrolled in a school within a few blocks
17 of their homes. If a DCPS school becomes a poor
18 neighbor, residents can seek relief through their
19 council member or their school board representative
20 who are elected and answerable to their constituents.

21 Also, we know where the DCPS operated
22 schools are likely to be and can act accordingly. But
23 charter schools are popping up in unpredictable
24 locations and, like private schools, are answerable to
25 no one. Once they are in place, their neighbors must

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1 rely entirely on their good will. I makes no sense at
2 all that these institutions that exist largely outside
3 the control of the citizenry are regulated less
4 stringently than those that are within our purview.

5 I don't see how anyone can reasonably
6 object to having uniform regulations for all schools,
7 private, public, or public charter. I urge you to
8 adopt the proposed text amendments. Thank you.

9 CHAIRPERSON MITTEN: Thank you.

10 Questions for the panel? Any questions?

11 There's a couple of issues that you all
12 have raised that I would like call out to the Office
13 of Planning maybe for some further comment in a
14 written submission. One is the issue of school bus
15 parking. The other is the issue of over
16 concentration.

17 Some of the issues that are mentioned are
18 more management oriented and we have tried to stay
19 strictly focused on the land use issues but thank you
20 all for your testimony this evening.

21 Janet Quigley. Is there anyone else who
22 would like to testify in support? Anyone else who
23 would like to testify in support, now is the time to
24 come forward.

25 Okay. Ms. Quigley, you are on your own

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1 there.

2 MS. QUIGLEY: Good evening. Hi. My name
3 is Janet Quigley. I have lived on Capitol Hill and
4 Massachusetts Avenue for 10 years now. I am speaking
5 for Stanton Park Neighborhood Association. It is a
6 group that represents the area from 2nd to 10th Street
7 and H to East Capitol Street. We promote quality of
8 life for residential -- residential quality of life is
9 our main interest.

10 We have submitted a letter to the
11 Commission and we support the proposed amendments. We
12 also support the concerns already expressed by ANC-6A
13 so I won't go back over those but I will mention the
14 two other points in our letter.

15 One was that to the extent that charter
16 schools are going to be considered partners in the
17 community, neighbors in the community, we would
18 suggest that they be held to the same standards and
19 processes as the residents in the community.
20 Particularly the height and lot occupancy requirements
21 we would suggest should be the same for charter
22 schools as the residential neighbors.

23 The other items was visitor parking. It
24 is mentioned in Section 206 that there should be
25 visitor parking and we would suggest that be clarified

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1 or codified in the Section 2101, the one with the
2 table, to specifically say how much visitor parking
3 there should be.

4 Thank you. We support the amendments and
5 thank you for the opportunity.

6 CHAIRPERSON MITTEN: Thank you.

7 Any questions for Ms. Quigley? Okay.
8 Thank you. Actually, when I was reading the report
9 from Stanton Park, for high schools if there are
10 assembly spaces, as they noted, we do have an
11 additional regulation and this would be, again,
12 something if you could look into further that if there
13 are assembly spaces in non-high school public schools,
14 how would we address parking in those instances.

15 All right. Now we are ready to move to
16 organizations and person in opposition. Robert Cane,
17 Dr. Larry Riccio, Robert Brannum. I don't see Larry
18 Riccio here. Bruce Joseph, Jack McCarthy.

19 Mr. Cane, why don't you go ahead.

20 MR. CANE: Good evening, Commissioners and
21 staff. My name is Robert Cane and I am Executive
22 Director of Focus, a nonprofit group here in the
23 District that provides advocacy and other forms of
24 support to the District's public charter schools. I
25 am here to ask you not to add anymore than absolutely

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1 necessary to the principle burden that those who start
2 and run our charter schools must carry the extreme
3 shortage of available space in which to put their
4 schools.

5 As you know, under D.C. law charter
6 schools are public schools. They are tuition free,
7 publicly funded, publicly accountable, have open
8 admissions, may not discriminate, and must provide
9 special education services. Starting from two schools
10 with a combined enrollment of 160 students in 1996,
11 today charter schools enroll 17,500 students on 65
12 campuses, 24 percent of all public school students in
13 D.C. In other words, charter schools are wildly
14 popular with the citizens of the District.

15 The phenomenal growth of the District's
16 charter schools has occurred in spite of an ongoing
17 facilities crisis. Although D.C.'s hot commercial
18 real estate market plays a role, this crisis has been
19 created and sustained largely by the D.C. government.

20 When the first charter schools opened in
21 1996 there were 60 surplus DCPS school buildings
22 standing empty around the District all under the
23 jurisdiction of the Mayor. At the same time the
24 school system was occupying by its own estimates
25 around 3 million square feet of excess space.

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1 In the 10 years since then charter schools
2 in spite of a legal preference to lease or buy surplus
3 and excess space have been able to gain access to only
4 13 of the surplus buildings and on the order of 25,000
5 square feet of unused DCPS space.

6 Meanwhile, DCPS's under utilized space has
7 grown to approximately 6 million square feet.

8 Several DCPS schools stand empty and 53
9 occupied schools have 200 or more empty seats.

10 I have provided you with some figure here on the
11 various averages of empty seats around the District
12 that are controlled by DCPS.

13 Some of you may have heard that DCPS is
14 now promising to give us significant amounts of excess
15 square footage but this is far, far from a done deal
16 and, furthermore, DCPS does not recognize the charter
17 schools' legally mandated right of first offer on this
18 property.

19 This means that charter schools are likely
20 to get the short end of the stick once again. Locked
21 out of most public school buildings, the charter
22 schools have been forced into the commercial market
23 often paying high rent for space that lacks normal
24 school amenities like libraries, playgrounds, and
25 gymnasias.

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1 Many have found space in commercial zones
2 often on busy streets. A few have located in
3 residential areas, generally in churches or community
4 centers. A number of new charter schools have had to
5 postpone their openings by a year because they could
6 find no suitable space at all.

7 Now, as if all this weren't bad enough,
8 the zoning administrator in response to complaints
9 from a few neighbors of a small charter preschool
10 seeking to locate in a commercial building on a
11 residential block in Ward 6 somehow convinced the
12 Mayor's Office of Planning to recommend to you that
13 you adopt revised public charter school zoning
14 regulations on an emergency basis.

15 I am calling these public charter school
16 regulations, not public school regulations, because in
17 practical terms these will never ever apply to DCPS.
18 DCPS is shrinking, not growing, and it is hard to
19 imagine any future in which DCPS will be looking for
20 sites to settle their new school zone.

21 The charter schools sometimes need -- if
22 they have 35 students they need a 5,000 square foot
23 lot and they can't afford a 15,000 square foot lot.
24 DCPS even if it were to have new buildings is not
25 going to have small schools of this nature. These are

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1 really public charter school regulations.

2 OP, I think -- I was here when you adopted
3 these emergency regulations and OP told you this was
4 necessary from the benefit of the charter schools but,
5 in fact, three charter schools have already had
6 trouble because of these emergency regulations.

7 One was denied a building permit on the
8 basis of the emergency regs, one had put down earnest
9 money on an R-5 property on Georgia Avenue with only
10 100 feet of street frontage and dropped its purchase
11 because it needed to occupy a new building before the
12 BZA process would run its course.

13 You can read, if you have time, this last
14 example.

15 If adopted on a permanent basis, these
16 regulations would have the effect of making it next to
17 impossible for small schools to find space. What we
18 ask you to do is we will be having people testify here
19 about the actual sizes that would be appropriate in
20 the residential zones and they are smaller than the
21 ones that are currently being recommended. We would
22 ask you to take their testimony very seriously. Thank
23 you.

24 CHAIRPERSON MITTEN: Thank you.

25 Mr. Brannum.

1 I think that the controls that are in here
2 for the charter schools is good but I don't think it
3 should be done as a defined public school. It should
4 be done separately for charter schools. You have
5 zoning regulations for public schools because public
6 schools are a government agency and there are rules
7 and regulations of law that are under the council,
8 under the Board of Education and elected officials.

9 Public charter schools are independent.
10 They are profit making entities. Charter schools are
11 not charitable organizations. They are profiting
12 corporations. If they didn't make money, they
13 wouldn't be given a charter because when you charter
14 them, you look at their finances and see how well they
15 can operate. If they don't make money, that means
16 they can't pay.

17 CHAIRPERSON MITTEN: I need your closing
18 thought. You are out of time.

19 MR. BRANNUM: The regulation for charter
20 schools needs to be separate from public schools.

21 CHAIRPERSON MITTEN: Thank you.

22 Mr. Joseph.

23 MR. JOSEPH: Good evening, Madam Chairman,
24 and members of the Commission. My name is Bruce
25 Joseph of Woodly Road, N.W., in ANC-3C. I have been

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1 a resident of that area for 18 years and in N.W. for
2 23.

3 I am appearing here today on behalf of
4 Neighborhood Input, a group of residents of an area
5 bounded by Wisconsin, Massachusetts, and Idaho Avenues
6 in Ward 3. Thank you for the opportunity to speak
7 about an issue that will become increasingly important
8 for all residential districts in the city.

9 First, let me say we are not against
10 charter schools. We want kids to learn and we support
11 the expansion of educational opportunity. We are,
12 however, opposed to the proposed text amendment to the
13 Zoning Regulations because we don't believe that they
14 go far enough. The amendment would create an enormous
15 loophole in zoning law.

16 It would permit charter schools unlike any
17 other schools in the District to locate in residential
18 districts with no consideration of their affect on the
19 community, no requirement of neighborhood input, and
20 no obligation to avoid adverse impact essentially as
21 long as the lot is big enough. That is bad policy.

22 Our neighborhood has experienced the
23 problem first hand as a location in our neighborhood
24 has become a charter school mill renting its
25 facilities to three different schools in three years

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1 with nō neighborhood input and no process to address
2 concerns.

3 We awoke one morning in 2004 to find a
4 200-student high school located just around the
5 corner. There had been no discussion with the
6 community, just a poorly publicized meeting to
7 announce a done deal. We were assured that this would
8 be a one-time, one-year response to a facility
9 emergency facing the school so many in the
10 neighborhood actually supported the idea, even though
11 there are already 10 schools within an eight-block
12 radius educating more than 3,500 students.

13 Unfortunately in return we were met with
14 additional traffic, noise, vandalism, loitering, and
15 drug use. We expected these to be only short-term
16 problems, however, as that is what we had been
17 promised.

18 In late June of 2005, though, we were
19 stunned to learn that the location suddenly announced
20 it was entering into a three-year \$1 million lease
21 with a brand new charter school. Again, the
22 announcement was made without neighborhood
23 consultation.

24 This year the school was an elementary
25 school so the biggest problems were significant

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1 increases in traffic, the proliferation of trash and
2 the accompanying rats, and noise mostly affecting the
3 adjacent properties caused by an absence of suitable
4 play areas. That school has decided that the location
5 was not suitable for next year so it's not renewing.

6 Instead we will be graced with yet a third
7 school, this time a new middle school. Each year we
8 have heard assurances from the school that they will
9 accommodate neighborhood concerns but absence a
10 binding obligation to respect the neighborhood we have
11 seen absolutely no follow through.

12 As the Washington Post reported last
13 September, when a school is within a few blocks of
14 your home, your quality of life is affected. We have
15 seen the truth of that statement first hand.
16 Remember, in the words of Section 200.1, "The R-1
17 District is designed to protect quiet residential
18 areas."

19 As our ANC-3C representative, Ms. Hogan,
20 testified, the proposed amendment is at odds with how
21 the city regulates other kinds of schools. Under
22 existing Zoning Regulations private building owners
23 are not permitted to become commercial landlords.
24 Private schools are subject to full zoning review.
25 Public schools are subject to the full political

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1 process.

2 The problem is compounded, as others as
3 said here tonight, by the enormous economic incentives
4 for the property owners to ignore community concerns.
5 A million dollars with this one case, for example, is
6 a huge incentive. Likewise, schools desperate for a
7 venue are willing to accept substandard conditions
8 such as lack of a playground, cafeteria, or crossing
9 guards. Concerns about traffic congestion, noise, and
10 neighborhood securities are far down the list.

11 The goal of the proposed amendment, I have
12 heard, is to ensure the charter schools are designed
13 not to have an adverse impact on residential
14 neighborhoods. Unfortunately, it doesn't go far
15 enough. It gives charter schools a free pass with no
16 neighborhood input and no obligation to avoid adverse
17 impact as long as the lot is big enough.

18 Charter schools must be subject to a
19 review process that addresses neighborhood concerns
20 and reflects the views of the local ANC. There are
21 two N.W. current editorials that say precisely that
22 from late last year and will include those with our
23 written statement.

24 I was struck by the fact that many of the
25 proponents of the text amendment express similar

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1 concerns. The main difference appears to be the
2 available lot sizes in their neighborhoods. That is
3 not an adequate basis for distinction.

4 Our ANC-3C has adopted a resolution that
5 you have calling for a special exception. Such a
6 process will ensure that neighborhood concerns are
7 addressed and the properties that are used will be
8 suitable for a school. We urge you to accept the
9 recommendation of our ANC.

10 Such a recommendation will foster links
11 between the schools and their new communities and
12 ultimately it will increase public support for the
13 charter school movement. Thank you.

14 CHAIRPERSON MITTEN: Thank you.

15 Mr. McCarthy, are you claiming the five-
16 minutes for Appletree?

17 MR. MCCARTHY: No.

18 CHAIRPERSON MITTEN: Okay. I'll put you
19 down for three then.

20 MR. MCCARTHY: Good evening. My name is
21 Jack McCarthy and I am Managing Director of Appletree
22 Institute for Education Innovation. There are four
23 reasons why the Zoning Commission was wrong to set
24 down amendment to the zoning ordinances on an
25 emergency basis on February 13, 2006. I respectfully

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1 urge the Zoning Commission to reverse that decision in
2 the interest of the children of the District of
3 Columbia and the many kinds of schools that are
4 working to improve their educational outcomes.

5 First, there was not then, and is not now,
6 any emergency that requires the Commission to enact
7 these kind of changes without hearing from the public
8 and examining the full impact of the changes to the
9 zoning rules and how these changes affect D.C.
10 families and children, as well as those who are
11 educating them.

12 There are processes in place for proposing
13 and making rules changes. These so-called emergency
14 rules were recommended without any meaningful input
15 from the affected parties or the residents of the
16 District of Columbia. The proposed changes had only
17 a very limited circulation to just a few selected
18 individuals for a very limited time.

19 The Office of Planning did not even
20 consult the District's facilities master plan, the
21 D.C. Office of Charter Schools Financing and Support,
22 or the D.C. Early Care and Education Administration
23 before making their recommendations.

24 Given this context, it is easy to see that
25 these numerous changes which were set down on an

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1 emergency basis so that they would take affect
2 immediately were a clear abuse of the rulemaking
3 process that should be corrected by this Commission
4 rather than by the courts or by the Congress.

5 Second, your decision to change the rule
6 suddenly affected a number of parties who were relying
7 on the existing rules when making their plans and
8 proposals which is contrary to any sense of fairness
9 or to the rule of law. The Office of Planning knew
10 that there were public charter schools, including
11 ours, and other charter schools that were in the
12 process of seeking construction permits.

13 Even though one or more of the
14 Commissioners raised this concern at that Zoning
15 Commission meeting held on February 13, 2006, the
16 Office of Planning staff minimized that and neglected
17 to provide you with a list of projects that would be
18 adversely affected by your action that day.

19 Third, your decision on February 13, 2006, thwarts the
20 D.C. School Reform Act of 1996 which was enacted to
21 stimulate the creation of public charter schools to
22 address a real emergency in this city.

23
24 Please recognize one out of every four
25 D.C. families choose a public charter school despite

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1 the sorry history of how these charter schools have
2 been denied access to adequate and sufficient school
3 facilities by the District of Columbia Public Schools,
4 as Mr. Cane testified before, and by the District
5 government.

6 Your recent action undermines recent
7 policy initiatives --

8 CHAIRPERSON MITTEN: I need your closing
9 thought.

10 MR. MCCARTHY: Okay. Basically, it
11 undermines Congress' efforts to try to increase access
12 to quality education for people who live in the
13 neighborhoods of Washington, D.C. Thank you.

14 CHAIRPERSON MITTEN: Thank you.

15 Questions for this panel? Any questions?

16 Thank you all for your testimony. We will
17 leave the record open for a period of time for people
18 to make written submissions.

19 Russ Williams, T. Robinson Ahlstrom,
20 Wendell Butler, Eve Brooks, Salona Goode, Elizabeth
21 Lazaro. Elizabeth Lazaro. I need you to turn your
22 cards in if you haven't done that already.

23 Mr. Williams.

24 MR. WILLIAMS: Good evening. Thank you.

25 My name is Russ Williams. I am the Executive Director

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1 of the Appletree Early Learning Public Charter School.
2 I am here to testify in opposition of the proposed
3 text amendments regarding public charter schools. I
4 filed a written comment yesterday and have three
5 points I would like to make briefly this evening.

6 Mr. McCarthy just sort of talked about the
7 emergency nature of the set-down when you considered
8 these amendments. I just have a small bit to add, not
9 much to add on that point. We are concerned about the
10 process because it was clear to us there was no
11 emergency within the meaning of the D.C.
12 Administrative Procedure Act on February 13th or
13 thereafter.

14 Under Section 2-5-5C of the D.C. Code
15 Municipal Regulations the notice of emergency
16 rulemaking must clearly explain why the emergency
17 action is necessary for the immediate preservation of
18 the public peace, health, safety, welfare, or morals.

19 At the Commission's February 13th hearing
20 no members of the public were permitted to comment on
21 the emergency designation even though Commissioner
22 Parsons said at the time, "I am not convinced I
23 understand the emergency here. What is the city-wide
24 emergency?" Commissioner Jeffries said, "I would like
25 to feel that there is an emergency and I'm not quite

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1 feeling it." Those quotes are from the transcript of
2 that particular hearing.

3 More than a month later the Notice of
4 Emergency and Proposed Rulemaking appeared. It said
5 that the immediate proliferation of charter schools in
6 residential districts has a potential for adverse
7 impacts. It did not identify any reason to believe
8 that immediate proliferation was a serious possibility
9 and it is hard to believe that treating charter
10 schools as public schools would have had that affect
11 since they had been treated that way without
12 controversy for many years in the city.

13 Surprisingly, the notice did not even give
14 lip service to the notion that the unspecified adverse
15 impacts from immediate proliferation were so severe as
16 to pose an immediate threat to the public peace,
17 health, safety, welfare, or morals. I am not a lawyer
18 but I do not believe such vague post-talk
19 rationalizations could survive judicial review.

20 For nearly a decade before the
21 Commission's emergency rulemaking charter schools were
22 considered public schools under the existing zoning
23 regulations which allowed them to locate as a matter
24 of right in residential districts as long as they
25 complied with the relevant height, area, and density

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1 regulations.

2 Second, I would like to echo a point made
3 by Vice Chairman Hood during the February 13th
4 meeting. I'm sorry he's not here, but he said, "When
5 you have a school whether it is a public charter or
6 public school, and I'm not second guessing anyone,
7 next to a trash transfer station, there is a problem
8 and we really need to revisit that."

9 Vice Chairman Hood, we agree with you 100
10 percent on this point. We believe families of young
11 children would like to send their children to schools
12 located within the neighborhoods where they live. We
13 also believe that most parents would prefer to not
14 send their children to schools located in strip malls
15 and located next to trash transfer stations and other
16 industrial businesses.

17 I'm just going to make a side point. You
18 know, they are talking about all this clustering of
19 schools in certain communities. I mean, part of what
20 is going to happen with this is you are going to be
21 clustering schools in certain neighborhoods and
22 certain commercial districts and if that is the
23 message we are sending the families going forward, so
24 be it, but it doesn't strike me as a very family-
25 friendly notion.

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1 The final point I would like to raise is
2 one of the reasons we are here today, that being the
3 philosophy of those opposed to schools locating in
4 neighborhoods and the politicians who represent them.
5 In a case that I am involved with we have been
6 vilified from day one by the folks we are dealing
7 with.

8 Numerous repeated invitations to sit down
9 at a table and have a conversation, to hold a civil
10 discussion, have been repeatedly rebuffed. Virtually
11 everything we do is being misrepresented. They
12 presume to understand our intent and broadcast
13 inaccurate statements regarding our positions or
14 activities every chance they get.

15 CHAIRPERSON MITTEN: Mr. Williams, that is
16 not relevant to this proceeding. Could you just deal
17 with the land use issues, please?

18 MR. WILLIAMS: Sure, sure, sure. Well, I
19 mean, the point I was going to make is just regarding
20 coalition, building the accommodation of opposing
21 views through broad compromise and respect for
22 established precedence, you know. I hope the lack of
23 regard for process does not extend to the members of
24 the Zoning Commission. I urge you to not adopt these
25 emergency rulemaking on a permanent basis. Thank you

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1 very much.

2 CHAIRPERSON MITTEN: Thank you.

3 Mr. Ahlstrom. I need you to turn that mic
4 on. Push the button in the base. There you go.

5 MR. AHLSTROM: There we go. Madam
6 Chairman, thank you for this opportunity. I am T.
7 Robinson Ahlstrom and I live here in the District and
8 I am Headmaster of the Washington Latin School. I
9 actually wish to amend my own comments and to make
10 them more brief and then submit paper copy to you in
11 a day.

12 CHAIRPERSON MITTEN: That would be fine.

13 MR. AHLSTROM: And I do that because some
14 of the arguments on both sides of this, I think, are
15 compelling. I actually do believe that the neighbors
16 have a legitimate right and interest to participate in
17 the process of siting a school. Even though I rise in
18 opposition to this particular amendment, I think that
19 the neighbors' case and the ANC's case is a good case.
20 There needs to be a process, there needs to be a
21 partnership for everybody's sake.

22 Having said that, I do speak in opposition
23 to the proposed changes of the zoning laws of the
24 District of Columbia. On December 5, 1804, the City
25 Council of the District of Columbia passed an act to

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1 establish and endow permanent institutions for the
2 education of youth of the City of Washington.

3 At its first meeting the trustees of the
4 new school board elected as the first school board
5 president our third president Thomas Jefferson. From
6 that day until this for more than 200 years the
7 District's public schools have as a matter of right
8 been able to establish themselves in any of the
9 District's residential neighborhoods.

10 During the past decade that historic
11 matter of right has extended to the District's newest
12 public schools, those chartered by DCPS and the D.C.
13 Public Charter School Board. The proposed zoning
14 restrictions that are before this Committee represent
15 a fundamental shift in the District's long-standing
16 policy of unrestricted support for free public
17 education.

18 If passed would these proposed amendments
19 bring about a public good? That is yet to be seen.
20 If implemented, would they inflict a real harm on
21 educational entrepreneurs, idealists, and, more
22 importantly, thousands of parents who are committed to
23 building better schools for their children. There is
24 no question; they would impose a real hardship given
25 the current environment both with the D.C. Public

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1 Schools reticence to utilize properties for education
2 and the overall real estate climate.

3 To change a policy that has been in place
4 for two centuries, there must be a good cause. To
5 restrict rights of parents to have the school of their
6 choice for their children and their neighborhood,
7 there must be some compelling reason. I would concur
8 that if there is a crisis, and there is, it is
9 educational, not environmental.

10 So just what is the rational for this
11 limitation of hitherto assumed rights and liberties?
12 Is it merely to save the neighborhoods? And, if so,
13 to save them from what? From schools? From children?
14 It occurs to me these are the very things that make
15 neighborhoods vital. Let us be honest with one
16 another. Some of us were born at night but none of us
17 were born last night. The proposed zoning changes are
18 not merely designed to protect neighborhoods. They
19 are in some measure designed to protect the GOP, the
20 Grand Old Public, from competition.

21 In Detroit in the 1970s there were auto
22 executives and union leaders who believe with
23 protective tariffs and bumper stickers that read "Buy
24 American" they could slow down the sale of Toyotas and
25 encourage a few folks to buy Chevys. The strategy did

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1 not work then. It will not work now. Eventually they
2 had to build better cars and eventually we have to
3 build better schools. Competition and choice are what
4 America is all about. The days of one-size-fits-all
5 schools is over and none too soon and it will never
6 return.

7 Dr. Janey, who I count to be a good
8 friend, knows that. He is a fine educator who has
9 opened his office to new people and new ideas. He has
10 tried to reach out to charters and to institute
11 innovation even though predictably reactionary forces
12 have attempted to undermine many of his best efforts.
13 I am learning in D.C. no good deed will go unpunished.

14 New York City Schools Chancellor Joel
15 Klein knows that. Speaking before the New York State
16 Assembly very recently he said, "Charters can
17 stimulate innovation and we need to create an
18 environment in which charter schools can be supported
19 and thrive." It is that environment in which charter
20 schools can be supported and thrive that is threatened
21 by this proposed change.

22 What is particularly troubling to me is
23 that for many of those who encourage this change, the
24 very intent of the amendment is to undermine that
25 environment of innovation and choice.

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1 CHAIRPERSON MITTEN: I need your closing
2 thought.

3 MR. AHLSTROM: Very good. In a city where
4 it is the most expensive school district in the world
5 -- not in the country, in the world, it is the lowest
6 performing district in the country. It has been this
7 way now for a generation. Thirty-seven percent of the
8 adults in Washington, D.C. are functionally
9 illiterate, the highest of any city in North America.
10 That is the crisis. That is why we need school choice
11 now and tomorrow as well. Thank you.

12 CHAIRPERSON MITTEN: Thank you.

13 (Applause.)

14 CHAIRPERSON MITTEN: I would ask in the
15 future that there be no demonstrations in the hearing
16 room.

17 Mr. Butler.

18 MR. BUTLER: Hello, Ms. Mitten and Mr.
19 Parsons and other panel members. My name is Wendell
20 Butler and I am the Chief Operating Officer of the
21 Community Academy of Public Charter Schools. We are
22 wrapping up our 8th year of operations which makes us
23 one of the oldest and one of the larger charter
24 schools. In fact, we are the second largest. We
25 educate about 1,000 children in grades PK through 8th.

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1 Our experience has given us some insight
2 into why it's necessary to have schools in residential
3 areas. Remember the famed bank robber Willie Sutton
4 when he was asked why he robbed banks? His answer was
5 the epitome of logic, "Because that's where the money
6 is." Well, that same logic ought to be applied to
7 considering why schools ought to be located in a
8 residential area, because that is where the children
9 are.

10 Three of our four campuses are located in
11 residential areas. Although we accept and enroll
12 children from all parts of the city, we found that the
13 majority of our children come from the surrounding
14 neighborhood. The school, in fact, becomes an anchor
15 for the neighborhood and our experience has been that
16 opening a charter school often acts as a catalyst for
17 improving the neighborhood.

18 Truthfully, our school is well established
19 and we have been fortunate through much of your help
20 to secure facilities that we have needed to expand,
21 although sometimes with difficulty. It is not likely
22 to be significantly affected by this effort. Those
23 most likely to be shut out are smaller charter
24 schools, either those just getting started or boutique
25 schools with a more narrow focus.

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1 Many of them serve the early childhood
2 segment, for example. So why am I here? Despite the
3 steady growth in the popularity of charter schools,
4 there remains a hardened core of individuals who see
5 charter schools as an outside threat to the
6 traditional public schools and continue to work to
7 thwart their development. These proposed zoning
8 changes look suspiciously like a back-door attempt to
9 do just that.

10 We are pleased to see that there have been
11 some changes in the original set-down, particularly
12 the revised definition of public charter schools or
13 public schools. I am going to skip ahead and say that
14 I don't want to suggest that there aren't challenges
15 to schools in a residential area. Traffic and parking
16 are always a concern. But such difficulties can be
17 worked out through regulation and negotiation.

18 It is in our own best interest for a
19 charter school to be a good neighbor. We have found
20 that reasonable solutions can be worked out by
21 addressing concerns honestly and fairly. Charter
22 schools have gained traction and are now an integral
23 part of the District's educational system. They have
24 done it usually with only grudging support from the
25 city and DCPS, particularly in the areas of facilities

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1 and access to excess DCPS space.

2 Just when it appears that the city may
3 start adopting a more sensible approach, we face this
4 flanking attack. The strategy of charter school
5 opponents seems to be if we can't beat them, then
6 we'll confine them. We strongly urge you to reject
7 those provisions of the regulations which will hinder
8 the ability to provide children in the District with
9 educational opportunities that they deserve. Thank
10 you.

11 CHAIRPERSON MITTEN: Thank you.

12 Ms. Lazaro.

13 MS. LAZARO: Yes. Good evening, Madam
14 Chair and the Hearing Board. My name is Elizabeth
15 Lazaro and I am here in opposition of the proposed
16 amendments to D.C. Zoning Regulations in terms of the
17 smaller PCS or, as the gentleman mentioned earlier,
18 boutique type of preschools.

19 I am a parent. I am very interested in
20 looking for schools that have a smaller classroom
21 style and smaller number of students. That is what I
22 look for so I may look for a school for my child that
23 may only have 16, maybe 14 kids in a class. Those
24 particular type of facilities may not be very large.

25 They may not demand a lot of space. I

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1 find the smaller spaces much more conducive to
2 interaction. I did have my son in a very large public
3 school and it took 10 minutes to get to the
4 principal's office so I didn't really find that
5 functional

6 I would like to let you know that I have
7 lived here in D.C. for the past 30 years. I have
8 lived in Northeast on 11th Street specifically. I
9 drive that way all the time. I rarely encounter
10 congestion or traffic in that neighborhood driving
11 north and south. As a matter of fact, I usually take
12 those streets to beat the congestion of traffic that
13 you find on Pennsylvania and Benning Road.

14 I fear basically that today's discussion
15 is not in the spirit of community which is shared
16 interest, or in the interest of our children. It is
17 not in the spirit of safety or in education. I have
18 heard a lot of comments today and, I have to be
19 honest, I don't hear it. This proposed amendment is
20 an affront on community and free choice and education.

21 I fear the good intentions that this
22 amendment may have originally been put forward to
23 purport may in turn foster invisible gated communities
24 and that is my greatest fear, especially in the
25 Capitol Hill and intercity areas that are now deemed

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1 historical.

2 Yes, communities can thrive but if the
3 Board here doesn't go after that balance of self
4 interest and shared interest, our communities will be
5 allowed to separate off and discontinue their
6 involvement with the larger community.

7 CHAIRPERSON MITTEN: I need your closing
8 thought.

9 MS. LAZARO: Okay. I want to thank you
10 for allowing me to come and I pray that you look after
11 the best interest of our children.

12 CHAIRPERSON MITTEN: Thank you.

13 Questions for the panel? Any questions?

14 Mr. Williams, I actually want to ask you
15 a question. Because of your experience and what you
16 were expressing earlier about the desire to have an
17 opportunity for dialogue, one of the things that I
18 think has brought us all here is we hear both ends of
19 the spectrum.

20 We have the spectrum of complete
21 unfettered opportunity for locating in a community and
22 then we have at the other end of the spectrum that
23 every charter school should have to seek community
24 support and go through some kind of public vetting
25 process.

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1 What I am hearing from certain people in
2 their testimony is that I happen to be very familiar
3 with Mr. Butler's schools and they have a natural
4 affinity for reaching out to their neighbors. They
5 are not forced to do it. But what we are hearing is
6 that there are some charter schools that are not
7 operating in the larger communities' best interests
8 and are not interested in that relationship.

9 If the approach we are taking here, which
10 is to focus on those instances where there is most
11 likely to be adverse impacts because it is more
12 constrained physically, if that is not the right
13 approach but we are trying to deal with those schools
14 that are not willing to engage in a productive
15 dialogue with the community, what would you have the
16 Commission do for the public in those instances?

17 MR. WILLIAMS: Thank you. Again, I don't
18 want to talk about our specific case but I will point
19 out that we have been to like a half a dozen plus
20 community meetings. We hired a community liaison, for
21 example, and we have offered numerous times to meet
22 but it usually is met with -- at one point we had an
23 agreement to meet and then they rescinded. There is an
24 independent person that works in the community who can
25 verify this. Sometimes you hear maybe, "Well, they

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1 are not reaching out. They are not talking to us."

2 CHAIRPERSON MITTEN: I'm not focusing on
3 those areas.

4 MR. WILLIAMS: Right. I understand you
5 are saying what would you have them do or what would
6 you have the process be.

7 CHAIRPERSON MITTEN: How would the
8 community be protected in the instances where they are
9 not operating as many of the schools that we are
10 hearing about in the larger community's best interest?

11 MR. WILLIAMS: The point that I guess we
12 haven't made is we are comfortable if you all make
13 like some changes to the zoning things over time but
14 we would prefer that there was a process and that it
15 was public and that it was sort of published and
16 people could participate. Then a process for public
17 involvement in terms of in the siting of charter
18 schools can be developed with inputs from the
19 neighborhoods and inputs from the charter schools.

20 The start of my testimony was saying by
21 doing this on an emergency basis there was no dialogue
22 and there was no process and there was no opportunity
23 for you all to kind of hash through some of those
24 things and say, "Here would be a way that we can do
25 this when there might be adverse impacts." Or, "Here

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1 would be the process in these types of situations and
2 here would be the process in these types of
3 situations." I think there are a finite number of
4 situations.

5 CHAIRPERSON MITTEN: I understand you have
6 an issue with the emergency but that is what we are
7 here for now. I am asking folks because I have been
8 warned that -- I have been alerted, not warned, that
9 we are going to hear more about the siting of these
10 small charter schools.

11 Well, if this isn't the right approach,
12 tell us what is. Just don't tell us that this isn't
13 going to work but if you can make constructive
14 suggestions, that is better for the Commission because
15 clearly there are issues.

16 MR. WILLIAMS: I think what we would like
17 is for the emergency designation to be taken away and
18 for planning to be asked to go back and create like a
19 two or three-month process that involves charter
20 schools and the neighborhoods that are interested in
21 these issues and to have a conversation and to kind of
22 collaboratively come up with a process because there
23 is interest on the school's part as well in terms of
24 reaching out to the neighbors and having these
25 conversations but because there is no "formal process"

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1 and even if you show up to certain meetings and things
2 and you listen, there is still a feeling that they
3 don't have any input or they don't have any say so
4 perhaps if there is some sort of process that planning
5 can go back and kind of reset thinking.

6 I think just revisions in terms of there
7 may be some big school -- you know, there is just a
8 lot here that was done in a very quick manner and it
9 strikes me that there is a lot more thinking that
10 needs to go into this before it is actually set down.
11 That is probably part of it, getting everyone together
12 at the table.

13 CHAIRPERSON MITTEN: Thank you. All
14 right. Thanks to the panel.

15 Ellen Oppper-Weiner, Donald Hense, Sara
16 Richardson, Marnie Nair. Marnie Nair. Joe Bruno.

17 Ms. Oppper-Weiner, why don't you go ahead.

18 MS. OPPPER-WEINER: Good evening, Chairman
19 Mitten, members of the Commission and staff. My name
20 is Ellen Oppper-Weiner and I am here to testify in
21 opposition to some of the proposed text amendments to
22 11 DCMR regarding charter schools.

23 I would like to say that although it is
24 not in my written testimony that I am an attorney and
25 I do believe that these regulations need to be

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1 clarified frankly. It is always much easier for all
2 parties concerned if everything is clear. Obviously
3 there is some omissions here.

4 However, I do want to raise some concerns
5 about the procedure that was used here. In terms of
6 the emergency I will just back up what everybody said
7 without going into it, although I did consult Websters
8 which said that emergency is a sudden, generally
9 unexpected occurrence demanding immediate action.

10 My confusion came that charter schools
11 have been in effect for 10 years. There has been no
12 effort on the part of the city until very recently to
13 change the definition that was clearly incorrect of
14 what a public school is in the regulations.

15 In addition, there are schools that were
16 in the process of making application that were well
17 known to the city and nothing was done until it seemed
18 very suddenly out of the blue. I believe the
19 emergency action taken by the Zoning Commission on
20 February 13, 2006, sets a very bad precedent.

21 The Zoning Commission's action was taken
22 hastily without public notice and comment, and without
23 consideration of how the parties directly affected by
24 the emergency rules were impacted which is contrary to
25 the Zoning Commission's own rulemaking procedures.

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1 11 DCMR Section 3000.9 specifically states
2 that the Commission may for good cause shown waive any
3 of the provisions of this chapter if in the judgement
4 of the Commission the waiver will not prejudice, and
5 I emphasize that, will not prejudice the rights of any
6 party and is not otherwise prohibited by law.

7 In this case there were applicant's who
8 had applied for permits whose rights were negatively
9 prejudiced by this particular action. Thus, without
10 good cause shown, the Zoning Commission bypassed its
11 own rulemaking procedures which resulted in
12 prejudicing the rights of at least one and perhaps
13 others.

14 The Zoning Commission, however, could have
15 decided under 11 DCMR Section 3000.9 to give proper
16 notice and permit public comment at its meeting from
17 any and all of the affected parties. However, the
18 Zoning Commission instead chose to proceed in a one-
19 sided manner and only heard from the Office of
20 Planning on February 13, 2006, with regard to the
21 Office of Planning's proposed emergency set-down.

22 CHAIRPERSON MITTEN: I need your closing
23 thought. I'm sorry.

24 MS. OPPER-WEINER: I would be happy to
25 give you my closing thought. I would like to raise a

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1 concern about the lot area and lot width which are
2 required under the proposed Zoning Regulations.
3 Clearly there will no possibility for small schools
4 located in residential neighborhoods.

5 As a matter of fact, I can't understand
6 why the Office of Planning would propose to increase
7 the size of public schools and residential
8 neighborhoods. It seems to me it will have the
9 opposite effect and will actually increase the size
10 and density and, therefore, the potential negative
11 impacts on D.C.'s residential neighborhoods.

12 CHAIRPERSON MITTEN: We'll read the rest
13 of it. That will have to be your closing thought.

14 MS. OPPER-WEINER: Yes.

15 CHAIRPERSON MITTEN: Thank you.

16 MS. OPPER-WEINER: You'll read the rest of
17 it.

18 CHAIRPERSON MITTEN: Yes, we will.
19 Absolutely.

20 MS. OPPER-WEINER: I will be happy to
21 answer any questions you may have.

22 CHAIRPERSON MITTEN: Thank you.

23 Mr. Hense. I need you to turn on the mic.

24 MR. HENSE: My name is Donald Hense. I am
25 Board Chair of Friendship Public Charter School, a

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1 nonprofit organization in the District of Columbia.
2 We operate the largest public charter school in
3 America on five campuses in the District of Columbia.
4 We have spent in excess of \$50 million renovating
5 vacant buildings to provide an education to our
6 children and we have a waiting list of more than 1,000
7 students.

8 In general I have the following feedback
9 with regards to the recommendations. They are based
10 on the faulty premise that there is no opportunity for
11 public participation in the approval process for
12 public charter schools. Public charter schools are
13 precisely that, public institutions.

14 The chartering authorities are required
15 during the charter review and approval process in
16 accordance with the D.C. School Reform Act to convene
17 public hearings that are duly noticed. The public has
18 the opportunity to hear each charter school's plan
19 prior to opening and to express opposition if they
20 believe it necessary.

21 The recommendations are also based on the
22 premise that charter schools are subject to move which
23 is untrue given that our goal is to enter into long-
24 term facility agreements or purchases to ensure the
25 stability of our enrollment.

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1 Madam Chair, clearly if parents are, in
2 fact, enrolling their children in schools that are
3 near dumpsters. The public school system is bad and
4 I would find it very difficult for this Commission to
5 limit the opportunities of people who live and pay
6 taxes in this city when there are no viable options.

7 These recommendations also say they would
8 place additional limitation on charter school
9 development to such an extent that this initiative
10 completely contradicts the general commitment that the
11 District of Columbia has made to support students and
12 public charter schools in an equitable fashion.

13 Public charter schools students like D.C.
14 public school students are the sons and daughters of
15 D.C. taxpaying residents who deserve to have the same
16 right to quality educational opportunities and quality
17 educational facilities.

18 Finally, implicit in this report is the
19 faulty assumption that public charter schools have
20 elected to pursue facilities outside of those
21 educational facilities in existence and under the
22 control of the Board of Education which oversees D.C.
23 public schools.

24 Clearly you remember Mr. Cane's earlier
25 testimony. There are more than 6 million square feet

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1 of vacant public school buildings that we have already
2 paid taxes on. I have lived here for 33 years. I
3 have owned a home for 30 years. I pay taxes to.
4 Thank you.

5 CHAIRPERSON MITTEN: Thank you, Mr. Hense.

6 Ms. Richardson.

7 MS. RICHARDSON: Good evening. Thank you
8 for allowing me the opportunity to testify at
9 tonight's hearing. My name is Sara Richardson and I
10 am the Chief Financial Officer of Two Rivers Public
11 Charter School, a charter public school in its second
12 year of operation in Ward 6.

13 I am also a Ward 6 resident who lives
14 across the street from a public school building. I
15 can offer both perspectives as a homeowner and as
16 someone in charge of facility issues for a public
17 school. I feel it is an important civic duty to share
18 city space with public schools.

19 I have personally led the facility
20 location effort for Two Rivers for more than three
21 years since nearly a year before the school opened.
22 It is extremely difficult to secure any kind of space
23 in the city in any zoning. It takes months of
24 negotiations with owners and landlords, months of
25 negotiations with bankers and lawyers, and lots of

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1 luck to overcome the competitive real estate
2 environment in the city.

3 After, and many times during, securing a
4 facility another set of challenges happened. In order
5 to make the building safe and appropriate for
6 educating children, architectural and construction
7 work needs to be planned, permits need to be secured,
8 and certificates of occupancy need to be granted.

9 I have worked on more than two dozen
10 failed facility deals all over the city each of which
11 require that kind of effort. It is costly, time
12 consuming, and fraught with delays that imperil the
13 existence of the school. A few months delay makes a
14 difference, literally the difference of life and death
15 for a school. The only helpful part of the facility
16 search has been matter-of-right zoning.

17 Matter of right zonings meant that an
18 already stressful process does not become completely
19 impossible. Weakening or doing away with matter-of-
20 right zoning can completely derail a delicate process
21 and leave hundreds of children without an educational
22 home.

23 Those hundreds of public school students
24 are children of parents who live in D.C. as well and
25 they are homeowners or renters here. I am speaking on

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1 their behalf and ask that matter of right zoning for
2 public schools including public charter schools
3 continue. Thank you.

4 CHAIRPERSON MITTEN: Thank you.

5 Mr. Bruno.

6 MR. BRUNO: Madam Chair and Members of the
7 Zoning Commission, I am Joe Bruno, President of
8 Building Hope, a Charter School Facilities Fund.
9 First, I would like to express appreciation to the
10 Office of Planning for the proposed zoning regulatory
11 amendments that assist charter public schools.

12 Significantly, charter public schools have
13 been clearly defined as public schools for the
14 purposes of zoning. This is an important recognition
15 that gives charter public schools the same status,
16 recognition, rights and privileges as traditional
17 District public schools.

18 There are, however, some unwelcome
19 proposals that would do great damage to the future of
20 charter public schools in the District of Columbia.
21 As President of Building Hope, it is my primary
22 responsibility to provide facility funding for quality
23 charter public school programs. In the formation of
24 a charter public school, a visionary, energetic and
25 dedicated group of school administrators, parents and

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1 community leaders come together to develop a unique
2 program that seeks to meet the needs of children in
3 the District of Columbia.

4 Some schools focus on the arts, others on
5 technology, still others focus on a classical learning
6 program. Each school strives to offer parents of the
7 District a quality choice for their children. As they
8 are being chartered, and many times after the charter
9 has been granted, new charter public schools
10 experience difficulties in finding suitable
11 instructional space.

12 For practical purposes, some schools begin
13 in an "incubator facilities." Such a facility houses
14 a "start-up" public charter school in its first few
15 years of existence. These start-up schools begin with
16 a small number of students and increase enrollment
17 each year by adding classes and grades. Once it grows
18 to a suitable number of students, they look to be
19 housed in a larger, permanent facility elsewhere.

20 As noted by Robert Cane in previous
21 testimony, since public school space is not really
22 available, charter public schools have often sought
23 nonpublic space both in commercial and residential
24 zones.

25 The proposed amendments pose no challenge

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1 to charter schools in commercial zones. In fact, the
2 proposed amendments allow public charter schools to
3 locate by right with sufficient off-street parking in
4 the special purpose areas, commercial residential
5 areas, and the waterfront areas. However, many
6 schools find commercial zone offerings to be less than
7 ideal, given their location and building types.

8 So, these schools look to residential
9 zones, in a large part because the school stakeholders
10 want to educate children in a neighborhood
11 environment. For many years, and in many
12 neighborhoods, the presence of a school infuses life
13 and energy into the locale.

14 Rather than being seen as only a traffic
15 liability, a residential neighborhood school should be
16 seen as an asset, and a reminder that education is the
17 foundation for the bright future of any community.
18 And, it is in a neighborhood setting that children can
19 learn to become good neighbors.

20 The proposed amendments changing the
21 residential zone requirements will cripple small, new
22 charter public schools as they seek to find space.
23 These amendments likewise would hurt schools seeking
24 an "incubator" facility. The current suggested
25 minimum lot size has dramatically increased for public

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1 schools in the R-1-A and R-1-B zones to 15,000 square
2 feet.

3 For example, on the size of this lot you
4 could build a 12,000 square foot school. However, for
5 50 kids you only need 5,000 square feet so it becomes
6 economically not possible to put up a 12,000 square
7 building for a 5,000 square foot needed facility.

8 Thus, the current requirements impose a
9 financial burden on a small school particularly
10 seeking to locate in these zones. With these
11 regulations, small charter public schools would have
12 to acquire more than twice the space at twice the cost
13 than is actually needed for their school. These
14 schools are not for profit.

15 Charter public schools pride themselves on
16 fiscal responsibility and prudent use of public and
17 private funding. The acquisition of a larger needed
18 lot and building by small schools is neither
19 responsible nor prudent. In about all cases this is
20 not even feasible.

21 Another potentially crippling amendment
22 relates to the new minimum width size for zones R-1
23 through R-4. The proposed 120 foot street frontage
24 would allow for five or six cars to drop off children
25 simultaneously. This requirement is designed to

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1 minimize the impact of school traffic and residential
2 areas.

3 However, most parcels of land in zones R-1
4 through R-4 do not have 120 feet of street frontage,
5 but rather have a narrow street frontage. We believe
6 that this requirement is not necessary and that the
7 existing minimum lot widths should be retained. If a
8 public charter school of 50 or so children were to be
9 located in an R-1 through R-4 zone, many students
10 would be using public transportation or would walk to
11 school. The school administrators, in their desire to
12 be good neighbors, could well enact student drop-off
13 and pick-up policies that would prevent traffic jams
14 in the neighborhood.

15 We in the charter public school movement
16 want to respect the needs of all the stakeholders when
17 it comes to public school zoning practices. We
18 understand that neighborhood residents do not want
19 their streets to become a traffic nightmare on every
20 school day.

21 However, we believe that the presence of
22 small schools in residential zones will enhance
23 neighborhoods without creating disruptive traffic
24 issues. By maintaining both the existing minimum lot
25 area and minimum lot width for public schools in zones

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1 R-1 through R-4, the Zoning Commission will be acting
2 in the best interests of public education without
3 creating an undue burden on our District neighbors.

4 In addition, you should know that in terms
5 of the financial feasibility, we must take out a 30-
6 year mortgage and we must have a successful
7 generations of children in these neighborhoods. Thank
8 you very much.

9 CHAIRPERSON MITTEN: Thank you.

10 Questions for the panel? Any questions?
11 Thank you all for your testimony.

12 Matt Oakes, Thomas Nida, Tiffany Corley.
13 Tiffany Corley, Michael Musante. Okay. Here is one
14 I'm not going to get. Persis A-P-P-I-A-G-Y-E-I.
15 Okay. Jerome Johnson. Here is another one I'm not
16 going to get, Y-A-X-U-E. That's the first name.
17 C-A-O - Ritter. Ms. Ritter or Mr. Ritter. Okay.
18 Those are probably just thrown in to mess me up.
19 Karen Wright. Karen Wright. Shirley Evans Cooley.
20 There we go.

21 Mr. Oakes, why don't you go first.

22 MR. OAKES: My name is Matt Oakes. I live
23 at 233 14th Place N.E.

24 CHAIRPERSON MITTEN: Could you pull the
25 mic a little bit closer to you?

1 MR. OAKES: Sure.

2 CHAIRPERSON MITTEN: Thank you.

3 MR. OAKES: I think there is a real value
4 in having small charter schools in our neighborhoods.
5 I think there is a value in having our kids go to
6 school nearby. To some extent I think there is a
7 value in those schools being a part of the community.
8 That said, I also think there is value in having
9 public support and public input in the whole process.
10 I am afraid the proposed regulations don't really get
11 us where we need to be in terms of that balance.

12 The reason I think that is because any
13 time you locate a school, or really anything, in a
14 location that brings in traffic and brings in more
15 people, there is a group of people who are located
16 around that building or around that entity that have
17 an ingrained motivation to oppose it because it brings
18 in traffic so people who are affected by the traffic
19 bear that cost and they don't necessarily bear the
20 benefit so there is an inherent opposition group.

21 And in the case of public charter schools,
22 there is an inherent support group and I think that
23 support group is the group of parents whose kids will
24 be going to that school. But with the school that
25 hasn't yet been opened the student body hasn't yet

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1 been selected and that inherent support group hasn't
2 yet been chosen, can't mobilize.

3 The proposed new special exception
4 requirement I think increases cost for the charter
5 schools and also gives you a situation where there is
6 an inherent opposed group and the group of people who
7 would naturally support those schools aren't
8 necessarily motivated to give their voice.

9 I think that may skew the location of
10 these schools away from neighborhoods where people
11 have the time and money to oppose them and push them
12 toward areas where it is easier to locate these
13 commercial areas evidently, or in areas where people
14 are less inclined to oppose them which leads to
15 exactly the clustering problem that we have had so
16 far. I am afraid it will get worse. That's all I
17 have.

18 CHAIRPERSON MITTEN: Okay. Thank you, Mr.
19 Oakes.

20 Mr. Nida.

21 MR. NIDA: Good evening. My name is Tom
22 Nida. I'm the Chair for the D.C. Public Charter
23 School Board. I wanted to come before you tonight
24 just to make a couple of comments and maybe clarify a
25 few points.

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