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ZONING COMMISSION
District of Columbia

CASE NO. 06-06
May 10, 2006 EXHIBIT NO. 18

Ms. Sharon Schellin
Secretary
Zoning Commission
441 4th Street, N.W., Suite 200
Washington, D.C. 20001

Re: Z.C. Case No. 06-06: Text Amendments—Charter Schools

Dear Ms. Schellin:

On behalf of the AppleTree Institute for Education Innovation (“AppleTree”), I write to comment on the Commission’s Notice of Emergency and Proposed Rulemaking dealing with Charter Schools. This written comment supplements testimony that will be given by AppleTree representatives at the Commission’s May 11 public hearing.

In particular, I write to object to the “emergency” designation that the Commission invoked at its February 13, 2006 meeting—a designation that has recently been cited by the Zoning Administrator as the basis for denying a building permit application submitted by AppleTree. The Commission did not permit public comment on the “emergency” designation, and it was clear then, and is even clearer now, that there was no “emergency” justifying immediate implementation of the proposed amendments. Rather, a key part of the “emergency” designation appears to have been designed for the sole purpose of denying a single permit: AppleTree’s.

Background

AppleTree is a D.C.-based, non-profit organization that is working to provide accelerated early language and literacy programs to the thousands of underserved preschoolers in Washington, D.C., to raise the trajectory of their future learning success. We have developed a high quality early literacy program that we believe will help close the achievement gap and break the cycle of poverty in Washington, D.C. Our vision is that students from all backgrounds should enter first grade able to read and ready to succeed. We already operate a public charter school in South West that serves pre-school and pre-kindergarten children, ages 3-4, and we have received approval from the District of Columbia Charter School Board to open another location for that school.

Last summer (after consulting with District officials about relevant zoning and construction restrictions), AppleTree purchased a property at 138 12th Street, N.E. The property

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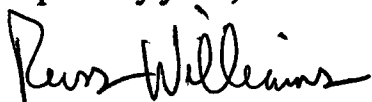
an “immediate” threat to “the public peace, health, safety, welfare, or morals.” Such vague, *post hoc* rationalizations do not satisfy the D.C. Code or the regulation governing emergency rulemaking notices, and thus could not survive judicial review.

In truth, the so-called “emergency” appears to have been manufactured by opponents of school choice to stop one project—AppleTree’s—from proceeding. For nearly a decade, charter schools had been considered public schools under the existing Zoning Regulations, which allowed them to locate as a matter of right in residential districts so long as they complied with the relevant height, area, and density regulations. No hint of a problem (much less a citywide emergency) existed until AppleTree began the process of seeking approval for its remodeling plans.

It is the essence of arbitrary and capricious government action to retrospectively change the rules of the game. The unsupportable “emergency” designation raises serious constitutional concerns. Legislation presumptively operates only prospectively in order to avoid upsetting settled expectations. *See, e.g., Landgraf v. USI Film Prods.*, 511 U.S. 244, 265-73 (1994). The “emergency” designation does away with that presumption, giving rise to potential claims against the District under the Takings and Due Process Clauses. *See, e.g., Shenk v. Zoning Comm’n*, 440 F.2d 295, 297 (D.C. Cir. 1971).

To the best of our knowledge, the “emergency” designation has affected only one pending application. In light of that impact, AppleTree would, if necessary, be fully prepared to challenge the rulemaking in court. But if the Commission does not decide to reject the emergency and proposed amendments on a permanent basis, the more efficient course for the Commission, the District Government at large, and the community, would be simply to lift the “emergency” designation, apply only prospectively any amendments that the Commission elects to adopt, and allow AppleTree’s application to be processed under the regulations that were in effect on its filing date.

Respectfully yours,



Russ Williams
Deputy Managing Director
AppleTree Institute for Education Innovation

cc: Andrew J. Saindon, Esq.
Alan Bergstein, Esq.

is zoned R-4 and is located on a block comprising mostly row houses, but the building that AppleTree owns has not been used for residential purposes since it was built more than 90 years ago.

We believe the building is well suited for our school, and we hope to renovate it soon so that it will be able to accommodate about 50 pre-school and pre-kindergarten students. (Our planned renovations would expand the back of the building so that it would be as deep as the shallowest of its two neighbors and would also add a third story not visible from the street.) In October, we began discussing our plans with members of the community. Between October 25, 2005 and early December we attended an ANC6a Zoning Committee meeting, a full ANC6a meeting and two meetings of the Capitol Hill Restoration Society's Historic Preservation Committee. On December 15, the D.C. Historic Preservation Review Board voted 9-1 to approve AppleTree's plans.

Meanwhile, however, acting at the request of ANC Commissioner Cody Rice, Zoning Administrator Bill Crews departed from nearly ten years of settled practice and determined that he was unsure whether charter schools are "public schools" under the Zoning Regulations. Up until that point, no such doubts had ever posed an obstacle for the *more than 50* charter schools operating in the district as "public schools"—sometimes with the express approval of prior Zoning Administrators or Acting Zoning Administrators. But a vocal group of AppleTree's neighbors had obviously inspired an effort to prevent us from using the Zoning Regulations as they existed when we bought our building, when we received approval from the Historic Preservation Review Board, and when we applied for a building permit.

A group purporting to represent AppleTree's neighbors even filed a lawsuit in Superior Court on February 2, arguing that the District Government could not issue a building permit to AppleTree until the Zoning Commission and the Board of Zoning Adjustment ruled on AppleTree's permit application and until the Zoning Commission had ruled on the emergency rulemaking. At that point, AppleTree had not applied for a building permit and the Office of Planning *had not even issued its setdown report*. Yet the papers in the lawsuit predicted that the Commission would issue the new rules on February 13, 2006.

AppleTree filed its building permit application on February 9. On February 13, the Commission considered the Office of Planning's Setdown Report and adopted portions of it on an emergency basis, including provisions that would dramatically increase the minimum-lot-area and minimum-lot-width requirements that generally apply to public schools in R-1 to R-5 zone districts.

Despite the rushed emergency designation, it took the Zoning Administrator several weeks longer than the presumptive 30 days to deny AppleTree's pending application, claiming that it did not comply with the new minimum-lot-area and minimum-lot-width requirements (as

well as a parking requirement) adopted as part of the emergency rulemaking. We intend to appeal that denial to the Board of Zoning Adjustment.¹

Discussion

We believe that other commenters will describe in detail why the proposed amendments are bad public policy that contravenes the letter and the spirit of the charter school laws passed by both Congress and the District of Columbia Council. AppleTree expects in particular that the submissions or testimony by the Friends of Choice in Urban Schools and the Center for Education Reform will explain the flaws in the proposed amendments and the deleterious impact they would have on public school education in the District.

Even if the Commission determines to adopt the proposed amendments, or some variant thereof, on a permanent basis, AppleTree respectfully submits that such amendments should be applied only *prospectively* to permit applications filed after their adoption. The balance of this submission will explain why this is so.

At the February 13 hearing, Mr. Bergstein of the Attorney General's office raised "the procedural question as to whether or not [the Commission] would want this emergency [amendment] to apply to or not apply to persons which have applied for building permits before DCRA, absent some saving language." 02/13/06 Tr. 18:13-17 (attached as Exhibit A). That question, which was well posed then, was never answered by the Commission on February 13. It should be answered before any of the proposed amendments are finally adopted. And the right answer is that the proposed amendments, if adopted, should *not* apply to any person or entity with a permit application on file *before* February 13, 2006.

The Zoning Commission should address this issue because the Zoning Administrator has taken the position that the "emergency" amendment made to the zoning regulations on February 13 "was effective immediately and applies to all pending applications on the date the text amendment was adopted." Letter from Bill Crews, Zoning Administrator, to Russ Williams, Managing Director, AppleTree, *Re: 138 12th Street, N.E.* (Apr. 28, 2006) (attached as Exhibit B). If the "emergency" designation was incorrectly applied, however, the amendments would not become effective until after final adoption and publication. D.C. Code § 2-505(a) (2001). And it is abundantly clear that there was no "emergency," within the meaning of the D.C. Administrative Procedure Act, on February 13 or thereafter.

¹ As AppleTree explained to the Zoning Administrator, and as it will explain to the BZA, in light of sections 401.1 and 2100.5 of the Zoning Regulations, its permit application does not fail to meet the terms of the Zoning Regulations, even with the emergency text amendments in effect. Nevertheless, AppleTree submits this comment and opposes the Commission's rulemaking out of an abundance of caution and a firm conviction that the rulemaking is, from a procedural standpoint, irreparably flawed and, from a substantive standpoint, bad public policy and inconsistent with the manifest intent of the Public Charter Schools Act.

A court reviewing the Commission's use of the "emergency" exception to bypass the ordinary requirements of notice-and-comment rulemaking will carefully scrutinize the record to ensure that an "emergency" actually existed and was adequately documented at the time. *See, e.g., Wheelchair Carriers Ass'n, Inc. v. District of Columbia*, Civ. Action No. 00-1586 (GK), 2002 U.S. Dist. LEXIS 4617 (D.D.C. Mar. 12, 2002) (holding that there was no "prospect of government-wide financial instability" and therefore no justification for emergency rule, which in turn required invalidation of final rule); *see also* D.C. Code § 2-505(c) (defining emergency as requiring "the *immediate* preservation of the public peace, health, safety, welfare, or morals") (emphasis added); D.C. Mun. Regs. tit. 1, § 311.4(e) (2004) (requiring notice of rulemaking to contain a "statement giving the justification for emergency rulemaking action which clearly explains why the action is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals"). Under that standard, the Commission's invocation of its "emergency" power on February 13 was clearly *ultra vires*.

The staff report on which the Commission acted on February 13 contained a single paragraph regarding the "emergency" nature of the proposed amendments. It recommended that the rule be made effective immediately because "[t]his text is needed to clean up an existing ambiguity regarding charter schools in the Zoning Regulations. . . . and clarify the guidelines for public school buildings." Office of Planning, Setdown Report at 7 (attached as Exhibit C). Of course, cleaning up the ambiguity applied only to the amendment to section 199.1 (expressly including charter schools within the definition of public schools), not to the attempts to change the sizes of the lots where charter schools would be allowed to locate, which could not be characterized as attempts to "clarify" the rules, because they were transparently intended to *change* the rules significantly.

At the Commission's February 13 hearing, no members of the public were permitted to comment on the "emergency" designation, even though it was not clear to several members of the Commission what the "emergency" was. *E.g.*, 02/13/06 Tr. 21:13-17 (Commissioner Parsons: "I'm not convinced I understand the emergency here. . . . What is the citywide emergency . . . ?"); *id.* at 37:9-11 (Commissioner Jeffries: "I'd like to feel that there's an emergency. And I'm not quite feeling it."). The staff again offered the ostensible rationale about "clarify[ing] the guidelines," *id.* at 17:3-6, which still meant *changing* the rules. They also suggested that schools needed to be given "as much advance notice" of potential changes as possible. *Id.* at 37:4. Still, this did not identify or explain the "immediate" threat to "the public peace, health, safety, welfare, or morals." D.C. Code § 2-505(c).

Similarly, the Notice of Emergency and Proposed Rulemaking purported to identify two rationales for the "emergency" adoption of the amendments on February 13: (1) that "immediate action is required to . . . permit these new Charter Schools to be constructed by the start of the next school year," and (2) that "the immediate proliferation of Charter Schools in residence districts has the potential for adverse impacts." 53 D.C. Reg. 2017, 2017 (Mar. 17, 2006). Again, the permission required by the first rationale would be contained in the modifications to section 199.1, not the additional changes the Commission adopted. Moreover, the Commission did not identify any evidence in support of (or reason to believe) its second rationale that there would be an "immediate proliferation of Charter Schools in residence districts." The suggestion in the notice of "adverse impacts" was so general as to be meaningless. It did not even give lip service to the notion that the unspecified "adverse impacts" were potentially so severe as to pose

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Exhibit A

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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PUBLIC MEETING
 1203TH MEETING SESSION (5TH OF 2006)
 EXCERPT: CASE 06-06

+ + + + +

MONDAY

FEBRUARY 13, 2006

The Special Public Meeting of the District of Columbia Zoning Commission convened in Room 220 South, at 441 4th Street, Northwest, Washington, D.C., 20001, at 6:30 p.m., Carol Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN

Chairperson

ANTHONY J. HOOD

GREGORY JEFFRIES

JOHN PARSONS

MICHAEL G. TURNBULL

Vice-Chairperson

Commissioner

Commissioner (NPS)

Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN

Acting Secretary (ZC)

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS

STEVE COCHRAN

ELLEN MCCARTHY

TRAVIS PARKER

JENNIFER STEINGASSER

KAREN THOMAS

Interim Director

OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

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ALAN BERGSTEIN, ESQ.
MARY NAGELHOUT, ESQ.
JACOB RITTIG, ESQ.

This transcript constitutes the minutes
from the special public meeting held on February 13,
2006.

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CALL TO ORDER:

Carol Mitten. 5

PRELIMINARY MATTERS:

Ms. Schellin (None) 5

CONSENT CALENDAR:

A. Z.C. Case No. 04-04A. 6

VOTE: 7

B. Z.C. Case No. 03-26A. 7

VOTE: 10

HEARING ACTION:

A. Z.C. Case No. 06-06

Travis Parker 10

VOTE. 39

B. Z.C. Case No. 06-05

Karen Thomas. 39

VOTE. 43

AMENDED VOTE. 45

C. Z.C. Case No. 06-07

Steven Mordfin. 45

VOTE. 59

D. Z.C. Case No. 05-02

Jennifer Steingasser. 60

PROPOSED ACTION:

A. Z.C. Case No. 05-36 60

B. Z.C. Case No. 05-18 89

C. Z.C. Case No. 05-21 94

VOTE. 103

D. Z.C. Case No. 05-24 104

VOTE. 127

FINAL ACTION:

A. Z.C. Case No. 05-12 128

VOTE. 128

B. Z.C. Case No. 03-12A. 129

VOTE. 133

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CORRESPONDENCE:

- A. Letter from ANC 2A. 133
- B. Letter from West End Citizens Association . .134
- C. Letters from Councilmember Graham and the
Gay and Lesbian Activists Alliance of
Washington. 134

OTHER BUSINESS:

- A. Election of Officers
VOTE. 135

ADJOURN:

- Carol Mitten. 136

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1 just strike the language that says discount to reflect
2 early payment. And then that would satisfy the Zoning
3 Administrator that they could, in the alternative, do
4 a lump sum payment.

5 CHAIRPERSON MITTEN: Okay. Well then I
6 would move that.

7 VICE-CHAIRPERSON HOOD: I'll second.

8 CHAIRPERSON MITTEN: Any further
9 discussion? All those in favor, please say aye.

10 ALL: Aye.

11 CHAIRPERSON MITTEN: Those opposed, please
12 say no. Ms. Schellin?

13 MS. SCHELLIN: Staff will record the vote
14 five to zero to zero, to approve the modification as
15 discussed on the dias in Case No. 03-26A; Commissioner
16 Mitten moving; Commissioner Hood Seconding;
17 Commissioners Jeffries, Parsons, and Turnbull in
18 favor.

19 CHAIRPERSON MITTEN: Thank you. All right
20 then, the next up is Hearing Action. And, as I said,
21 we'll take up the Case No. 06-06 first; which is a
22 proposed emergency text amendment regarding public
23 schools. Mr. Parker?

24 MR. PARKER: Good evening, Madam Chair and
25 members of the Commission. My name is Travis Parker

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1 with the Office of Planning.

2 As you are aware, the Congress has passed
3 the Public Charter School Act, which amended the
4 definition in the City Code of Public Schools to
5 include charter schools. As of this date, the Zoning
6 Regulations haven't been amended to reflect that
7 change and this amendment would -- would do just that;
8 change the Zoning Regulations to reflect charter
9 schools as public schools in the District.

10 Inherent with that change is also language
11 necessary to address the similarities and differences
12 between charters and traditional public schools. As
13 you are aware, traditional public schools go to the
14 City Council for approval. And guidelines for schools
15 have traditionally come through that process.

16 In equating public schools to charter
17 schools, it's necessary to delineate development
18 guidelines for schools in the residential zones that
19 would otherwise come from Council oversight.

20 Further, this amendment would expand the
21 public schools, including charter schools, throughout
22 the District to include the CR, W, and SP districts,
23 and add clarifying language that results from these
24 changes.

25 OP has worked with the D.C. public schools

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1 and stake holders from there throughout the city over
2 the past couple of months, to address these issues.
3 And now, I'll briefly go over the specific changes
4 requested.

5 The first is amendment of Section 199 to
6 specifically include schools chartered by the D.C.
7 Board of Education and the D.C. Public Charter School
8 Board in the definition of public schools.

9 Second, we would change the matter of
10 right uses in R-1, under public schools, to encourage
11 co-location of public schools with other uses and the
12 sharing of recreation space, including gymnasiums,
13 playgrounds, fields, and etc.

14 The third change that we're proposing is
15 reflected in page 3 of the report, in the chart, and
16 deals with several areas of development regulations
17 for public schools. The minimum lot area and minimum
18 lot width would be amended in Section 401. The R1
19 districts would have a minimum lot area of 15,000
20 square feet and the R-2 through R-5 districts of 9,000
21 square feet.

22 The reason for the difference between the
23 two; the R-1 districts are currently the only
24 districts in the city that have no -- have no
25 possibility for side lot line joining or always have

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1 a side yard. Every district from the R2 up, has
2 duplexes or row house options. And so those-- there
3 is an inherent difference there between the districts.

4 As you'll note in the charts in the back
5 of the report, we have information on every school
6 that we've been able to locate; both public school and
7 charter school in the District, in regards to lot
8 area.

9 Every single D.C. public school in
10 existence now is greater than half an acre in size and
11 every charter school that's located in a residential
12 district is greater than 9,000 square feet in size.
13 So the effects of this change on existing schools
14 should be nearly nothing, as far as making schools not
15 conforming.

16 The minimum lot width proposed in
17 residential districts is 120 feet. This is an attempt
18 to address the drop off and pick up of students at
19 these schools. We didn't feel it was appropriate to
20 require schools to have drop off and pick up onsite
21 because it's not always possible. But, by providing
22 a minimum lot width of 120 feet, there is space in the
23 front of schools for up to six cars to stop and have
24 a school drop off loading zone.

25 Section 403, later in the chart, addresses

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1 maximum lot occupancy. Currently schools are limited
2 to 60 percent. All uses in the districts R1 through
3 R-5B are limited to 60 percent, but schools are
4 granted extra leeway above that when they meet certain
5 requirements found in Section 403.

6 We're recommending to keep that for the R
7 1 and the R-5 districts, but R-2, R-3, and R-4 would
8 cap that additional lot occupancy at 70 percent.

9 We're changing no -- nothing -- proposing
10 no changes to the FAR in Section 402 and only minor
11 changes to the maximum height in Section 400. You'll
12 note that currently schools are allowed greater
13 heights than the residential districts -- than the
14 residential uses in the districts in which they sit.
15 And, while they're allowed up to 60 in R-1 through R-
16 2, R-3 and R-4 are currently allowed 90 foot schools.

17 We're recommending that R-3 and R-4 be
18 lowered to a 60 foot maximum for public schools. It's
19 still higher than the 40 foot allowed for all other
20 buildings; and that the 90 foot and up be allowed for
21 R-5 Districts. You'll see in my report there that the
22 test for each of those changes is located below.

23 The fourth major change would change
24 Section 206 to allow any school that doesn't meet
25 those requirements to move forward as a special

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1 exception under similar standards as private schools
2 would. Therefore, lessening the requirements from a
3 variance and making it easier for schools to proceed
4 that don't meet all the guidelines of this section.

5 Section 5 addresses the G1 district and
6 raises the FAR to 1.8. Currently, the G1 district
7 has a 1.0 FAR with no exception for public schools.
8 You'll note that the R-5 and R-4 districts allow a
9 1.8, and the higher C districts allow higher. We felt
10 it was inappropriate for this district to step back
11 down to a 1.0 and we tried to bring it in line with
12 the R-4 and R-5 districts that tend to surround the G
13 1 district.

14 Changes six, seven, and eight allow public
15 schools in SP, CR, and W districts. Currently, public
16 schools are not addressed in the text of those
17 districts and not allowed as a matter of right. This
18 text amendment would clean that -- clean up that
19 oversight and allow public schools in every district in
20 the city.

21 The ninth proposed change is in the
22 Chapter 21, regarding parking. Currently, there are
23 no parking standards for pre-elementary schools. They
24 have traditionally fallen under the Child Development
25 Centers, but charter schools have not necessarily--

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1 do not necessarily fall under that definition. And
2 this would create a standard for pre-elementary
3 schools that would be in line with the standard for
4 elementary schools of two parking spaces for each
5 three students.

6 I don't know if you've received the
7 supplemental report, but the supplemental report calls
8 that a tenth change that would address split-zoned
9 lots. The lot area requirements, as you will note,
10 are for residential zones. We're proposing that any
11 existing lot that is split-zones, public schools be
12 allowed to follow the restrictions for the less
13 restrictive zone. So, if there's a commercial and a
14 residentially split zone, they would-- they would be
15 able to be a commercial lot for purposes of lot area
16 and lot width.

17 As I mentioned, we've worked closely with
18 the Department of Public -- D.C. Public Schools and
19 other community groups in outlining this. We feel that
20 we've created some standards that are -- are -- both
21 protect the residential neighborhoods and provide
22 flexibility in the development of schools in the
23 District.

24 And we recommend that this be -- this text
25 amendment be set down for emergency -- emergency

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1 action. Currently, there are over 50 charter schools
2 in the District and seven more charters are granted
3 each year. This language is needed to specifically
4 and immediately equate charter schools to D.C. public
5 schools and clarify the guidelines for public school
6 buildings.

7 Further, the text amendment would
8 immediately open up some zones of the city that do not
9 currently allow public schools. Delaying the
10 effective date of this amendment until the final order
11 would leave this issues unresolved and the standards
12 and timing of projects that would happen in the next
13 year ambiguous. So we recommend that the -- this text
14 amendment be set down and we recommend it as an
15 emergency amendment.

16 CHAIRPERSON MITTEN: Thank you. I just
17 have a general question before we get to some more
18 specific questions; which is, what -- you gave us a
19 list of charter schools on the back page of your
20 summary of locations and site areas and so on. Do any
21 of these charter schools have Certificates of
22 Occupancy?

23 MR. PARKER: It is my belief that all of
24 these are currently active. So they should all have
25 Certificates of Occupancy.

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1 CHAIRPERSON MITTEN: So, given that the
2 definition is one of the things that's at issue,
3 whatever -- whatever Certificate of Occupancy they
4 have is likely to be in error? Is that correct?

5 MR. PARKER: They were likely issued
6 Certificates of Occupancy as public schools. I've not
7 looked into the C of O's for these schools. If not,
8 they could -- when they made changes, they could be
9 issued C of O's as public schools.

10 CHAIRPERSON MITTEN: Okay. Mr. Bergstein,
11 do you see any issue that we need to be conscious of
12 when we act on this?

13 MR. BERGSTEIN: There's the procedural
14 question as to whether or not you would want this
15 emergency to apply to or not apply to persons which
16 have applied for building permits before DCRA, absent
17 some saving language.

18 CHAIRPERSON MITTEN: I'm actually focusing
19 on the existing charter schools and their Certificates
20 of Occupancy.

21 MR. BERGSTEIN: If -- if the -- there was
22 a case that came out about a year ago that's called
23 Chagnon, that said that if a use is defined, that the
24 Zoning Administrator doesn't have the authority to
25 issue C of O's for a use that's like that, unless it

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1 meets every part of the definition.

2 And indeed, the reason why the Zoning
3 Commission is taking up the question of adult daycare
4 is because the effect of that ruling was, in essence,
5 to invalidate all the existing C of O's for those
6 uses.

7 So there is an issue that, unless the
8 Zoning Commission creates a new definition for public
9 schools, the existing C of O's for any charter school
10 that has a public school -- particularly those that
11 were issued after Chagnon, would be suspect.

12 CHAIRPERSON MITTEN: So any charter school
13 that now has a Certificate of Occupancy for a public
14 school, this would actually make those correct, as
15 opposed to --

16 MR. BERGSTEIN: That is correct. The use
17 would then be correct.

18 CHAIRPERSON MITTEN: Okay. Thank you.
19 Questions for Mr. Parker? Mr. Hood?

20 VICE-CHAIRPERSON HOOD: Yes. Mr. Parker,
21 help me understand. And I notice in what's being
22 proposed, when it talks about the G-M-1 zone and
23 public charter schools, I think you were saying that
24 if it's in the C-M-1 zone and there's a proposal, then
25 it would go as a special exception?

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1 MR. PARKER: No. Not at all.

2 VICE-CHAIRPERSON HOOD: Okay.

3 MR. PARKER: Schools are currently allowed
4 in C-M-1 zone, and would follow the restrictions of
5 that zone. And we're not proposing any change to
6 that.

7 VICE-CHAIRPERSON HOOD: Okay. So schools
8 are currently allowed in the G-M-1 zone?

9 MR. PARKER: It's the CR, SP, and W zones
10 that don't currently allow schools. And this would
11 allow them in those zones subject to the requirements
12 of those zones. We're not proposing any changes to
13 the requirements of those zones.

14 VICE-CHAIRPERSON HOOD: Right. I
15 understand that. But I'm just trying to look back to,
16 like the Chair was talking about, some things that
17 already exist. Schools are already allowed-- I'm
18 trying to make sure I understand. Schools are already
19 allowed in the C-M-1 zone?

20 MR. PARKER: Yes.

21 VICE-CHAIRPERSON HOOD: I will go on
22 record to say we really need to revisit that. Because
23 when you have a school, whether it's public charter or
24 public school, and I'm not second guessing anyone,
25 next to a trash transfer station, there's a problem.

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1 There's a problem.

2 When I went to school, I didn't go to
3 school next to trash. I really didn't. And I think
4 -- I don't know if this is the proper time, but I'll
5 put it out there. We need to really revisit that.
6 And I'm looking at some of these schools that are in
7 the C-M zones. I know one in particular. I think
8 that it's a serious problem for this city to have
9 those kids going to school next to a trash transfer
10 station.

11 CHAIRPERSON MITTEN: Anyone else?
12 Questions for Mr. Parker? Mr. Parsons.

13 COMMISSIONER PARSONS: I'm not yet
14 convinced I understand the emergency here. You
15 mentioned that there was -- I think you mentioned
16 seven applications a year that are being dealt with.
17 What is the citywide emergency that causes us -- I
18 mean, we don't do emergencies very often. And we do
19 it in the context of something is wrong citywide here
20 and we need to declare an emergency.

21 MS. STEINGASSER: If I may, Mr. Parsons.
22 When we started to circulate these regulations we were
23 -- everyone who was involved with the public -- with
24 the public school charter process began to tell us of
25 one school after another that was going to be

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1 adversely impacted; one school after another that was
2 in the process of either designing a school,
3 purchasing land, teaming up with another school to
4 purchase land; was under constructions; was getting
5 ready to file for permits.

6 We felt it was in the best interest of all
7 of those schools to know what the regulations were
8 going to be as soon as possible. So, if they needed
9 to get a special exception, they could immediately
10 begin to work in that direction.

11 If they needed to change course and look
12 at other land alternatives, they would know that as
13 soon as possible. And that they wouldn't be delayed
14 for the standard set down; four month public hearing;
15 proposed action; costing them what could reasonably be
16 presumed to be a full education year.

17 They would be -- if they got to the end of
18 the text amendment; they found out they needed a
19 special exception, then they'd have to get in line for
20 that.

21 So we felt it was in the best interest of
22 the schools and the education process to let that be
23 known as soon as possible.

24 MS. MCCARTHY: In addition, the whole
25 origin of the Office of Planning boking at this was

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1 an indication by the Zoning Administrator that he had
2 applications either before him or expected them and
3 felt that the definition as it was currently
4 constituted did not include charter schools as public
5 schools. So he wanted a determination made by the
6 Zoning Commission.

7 The Commission then asked the Office of
8 Planning to weigh in with a proposal. So, at this
9 point, the Zoning Administrator feels that the zoning
10 regulations would not permit him to consider charter
11 schools to be public schools, even though there's
12 clear legislative history that would indicates that
13 that was the intention. But until section-- until
14 the Section 199 definition is revised, charter schools
15 could not technically be approved. So we-- we felt
16 we needed to act quickly and not wait for the 60 day
17 period, basically, for a set down, in order for the
18 definitional issue to be resolved.

19 COMMISSIONER PARSONS: Thank you. That's
20 very helpful. Thank you.

21 CHAIRPERSON MITTEN: Anyome else? I just
22 had a couple of technical points. In 201.1K, where we
23 would potentially allow the schools that shared
24 certain recreation space to basically each count them
25 towards their minimum lot area, would that be if they

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1 were located on either the same lot or immediately
2 adjacent lots? Or -- what's the degree of proximity
3 required?

4 MR. PARKER: Well, that's the intent. I
5 think it's adjacency. And we could -- we could
6 certainly clarify that language.

7 CHAIRPERSON MITTEN: And then, in terms of
8 adjacency, just to follow through on that, in 401.8
9 you're suggesting that for public schools the minimum
10 lot area may include adjacent parcels under the same
11 ownership that are separated only by an alley. So
12 would shared facilities that were separated by an
13 alley also be counted towards the minimum lot area if
14 they weren't, in fact, in the same ownership?

15 MR. PARKER: Not by -- not by this
16 language, but yes, we could certainly --

17 CHAIRPERSON MITTEN: I'm just wondering
18 what you intended.

19 MR. PARKER: -- modify that. Well, the
20 intent for this was two parcels, for example the
21 school and, you know, the recreation facility on
22 opposite sides of an alley, under the ownership of the
23 school. But, we could certainly play with the
24 language to include shared facilities on opposite
25 sides of an alley.

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1 CHAIRPERSON MITTEN: Okay. And then, just
2 because, you know, I think it's come up from time to
3 time when we're trying to measure something that maybe
4 is not -- I mean, I can measure a gymnasium fairly
5 easily because it's got four walls. I can't measure
6 a field quite so easily. I can't necessarily measure
7 a playground.

8 So anything you could add about how those
9 would be measured so that we don't just drift into the
10 landscaping and stuff I think would be helpful.

11 In 206.2, on your page 4; 206.2 deals with
12 a private school, whereas above you had introduced the
13 notion of a public school that doesn't meet the
14 requirements of Chapter 4, do you also want public
15 school added to 206.2?

16 MR. PARKER: You're right. We should put
17 public and private schools.

18 CHAIRPERSON MITTEN: Okay. And then I
19 just had sort of a general question, because it
20 occurred to me as I was reading the parking
21 requirements. When we talk about parking, we make the
22 distinctions for parking by the age groups of the
23 children that are attending the school. Everything
24 else is delineated on public/private.

25 So I didn't know if you guys had given any

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1 thought to is public/private really the proper
2 delineation? Because we don't do it for parking. Or
3 is it -- or should we be making -- slicing this a
4 different way?

5 MR. PARKER: In terms of 206?

6 CHAIRPERSON MITTEN: In terms of -- well,
7 just the way we handle schools everywhere except
8 Chapter 21. We handle them one way, by age groups,
9 for parking purposes. And we handle them by who runs
10 them for every other purpose. And I didn't know-- I
11 didn't know if you'd thought about it.

12 MR. PARKER: It hadn't really come up.

13 MS. STEINGASSER: Some of the comments we
14 have gotten back have asked us to revisit parking
15 standards for the schools, pointing out that, in many
16 cases high school kids can't actually drive to school
17 until they're 18, so there's not really-- the
18 standards may not be as applicable as they used to be.

19 So, we'll be happy to take a look at that
20 and look at it terms of -- of the use versus the age
21 group issue.

22 CHAIRPERSON MITTEN: And I just didn't
23 know if it was relevant in other context besides just
24 parking. Is the age of the student body relevant when
25 you're talking about, you know, lot occupancy and--

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1 MS. STEINGASSER: Well, we tried-- we
2 tried to stay away from anything that actually got to
3 dictating program. And that's why we're silent on
4 whether there -- a school should have fields or a
5 gymnasium. Because, especially when we're bring the
6 charter and public -- traditional public schools
7 together under one definition, the charter schools by
8 their very nature are alternative education to the
9 public traditional system.

10 So, we tried to stay away from things that
11 would kind of require program dictation to the schools
12 themselves in how they're used. We went with this on
13 the parking standard because it is the standard format
14 that's in -- that's in the current regs. We didn't
15 look -- we looked to change as little as we could in
16 this case. And revisit as little as we could. But
17 we'll -- we'll be happy to look at that again.

18 Like I said, we have gotten comments from
19 others that the parking standards may be a bit
20 archaic.

21 CHAIRPERSON MITTEN: Okay. Anyone else?

22 MS. MCCARTHY: I could also see that part
23 of why we determined the lot width that we determined
24 was to allow car -- the appropriate widths for a car
25 drop off and pick up. And we know from experience

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1 with the private school special exceptions that it's
2 because pre-school and smaller children take a lot
3 more time to get out of the car seats and get their
4 lunch boxes and various things together, as opposed to
5 older children, that maybe we should look as well as
6 to whether we could provide differently for pick up
7 and drop off for older children and require less --
8 less space for that.

9 CHAIRPERSON MITTEN: Okay. Thank you.
10 Any other questions?

11 COMMISSIONER JEFFRIES: Yes. Madam Chair,
12 I'm just -- I think there's a lot of -- a lot to chew
13 on here. There's a lot of information. And I went
14 through it and, you know, I just felt like I need to
15 absorb it a little bit longer. You know, I'm
16 wondering if there's a place in between sort of set
17 down and emergency basis. I -- I -- and I don't know
18 if we can get there.

19 I mean, I understand that the dilemma
20 around, you know, the text amendments and your notice
21 and so forth and so on. But, you know, I mean, I just
22 feel that there's a number of issues here. And I'm
23 just trying to figure if there's some other way in
24 which we can do this without setting down and then,
25 right away, it becomes --

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1 CHAIRPERSON MITTEN: There's -- I guess
2 there's a couple of -- there's a couple of thing
3 available to us. One is, we do it all as an emergency
4 and we -- which is the first request from the Office
5 of Planning. And the second request is that we
6 authorize the issuance of a Notice of Proposed Rule
7 Making, based on what's here, rather than having a
8 supplemental report written.

9 The -- so -- so, we can do that. We can
10 parse it -- you know, we can parcel it out. And, you
11 know, for instance, the definition is I would say the
12 most crucial part because of what's pending out there.
13 And we can marry that with an immediate advertisement,
14 which would then accomplish at least part of what Ms.
15 Steingasser was saying, which is we're putting people
16 on notice that these are going to be the rules.

17 It's not quite the same. It doesn't have
18 the same teeth as doing all of it as an emergency, but
19 it certainly puts everyone on notice and gives the
20 Zoning Administrator a clear indication of the
21 direction that we intend to go.

22 And the other would just be to set down
23 the case as a normal case and not do anything on an
24 emergency. Or we can immediately advertise. So,
25 there's like four versions -- four variations. Mr.

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1 Turnbull?

2 COMMISSIONER TURNBULL: I think I would--
3 I kind of like the idea of at least defining the
4 charter school. I think that's something that sounds
5 like it needs to be done, and to call it a public
6 school. And let's get that off the table. But-- and
7 then, again, revisit some of these other things or
8 spend some more time on them, or whatever.

9 But it sounds like that's something that
10 they're looking -- the Administrator's looking for us
11 to deal with. I would go along with that.

12 CHAIRPERSON MITTEN: Okay. Let me-- let
13 me say it. And then, if you want to move it, then--
14 so that we would -- we would act on an emergency basis
15 to adopt the definition that the Office of Planning
16 has -- has suggested. So we would amend Section 199.1
17 in the definition of public school. And then we would
18 issue a Notice of Proposed Rule Making for that
19 definition and the balance of the amendments proposed
20 by the Office of Planning. Would you move that?

21 COMMISSIONER TURNBULL: I would.

22 CHAIRPERSON MITTEN: Okay.

23 COMMISSIONER JEFFRIES: I'll second.

24 CHAIRPERSON MITTEN: Okay. Any further
25 discussion on that? And I just want to be clear that

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1 we're adding in No. 10, which has to do with the split
2 zone lots.

3 VICE-CHAIRPERSON HOOD: Let me make sure
4 I understand. The only thing we're doing is the
5 definition. We're doing that as an emergency?

6 CHAIRPERSON MITTEN: Yes.

7 VICE-CHAIRPERSON HOOD: And everything
8 else we're doing comes upon our normal set down rules?

9 CHAIRPERSON MITTEN: Well, we wouldn't
10 wait for a supplemental report before the
11 advertisement.

12 VICE-CHAIRPERSON HOOD: But we will set it
13 down

14 CHAIRPERSON MITTEN: Yes.

15 VICE-CHAIRPERSON HOOD: But we're going to
16 set it down. So it's still --

17 CHAIRPERSON MITTEN: Correct.

18 VICE-CHAIRPERSON HOOD: -- everything will
19 still come up under the set down rules?

20 CHAIRPERSON MITTEN: Yes.

21 VICE-CHAIRPERSON HOOD: Okay.

22 CHAIRPERSON MITTEN: Although the set down
23 rule doesn't apply to a text amendment.

24 VICE-CHAIRPERSON HOOD: Okay. So, in
25 other words, this is still lingering on.

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1 CHAIRPERSON MITTEN: Well it's-- they're
2 -- they're -- the -- the Zoning Administrator can only
3 enforce on the definition; not the balance of it--
4 not the balance of the amendments being proposed.

5 VICE-CHAIRPERSON HOOD: Okay. Because I
6 -- I think the initial request was that we set
7 everything down to the emergency. Right?

8 CHAIRPERSON MITTEN: Correct.

9 VICE-CHAIRPERSON HOOD: So, obviously,
10 unless I missed something; so -- so that initial
11 request has not won a waiver. But I think that the--
12 I'm just wondering what harm are we doing? Because I
13 do -- I do agree with my colleagues. Because I have
14 some issues with some stuff that's -- that's in --
15 that's probably been in here. But I'm just curious,
16 are we creating more of a problem by not putting that
17 in as an emergency? That's just a question.

18 CHAIRPERSON MITTEN: Well, we can ask the
19 Office of Planning.

20 VICE-CHAIRPERSON HOOD: Okay. Through you
21 to the Office of Planning.

22 CHAIRPERSON MITTEN: Okay.

23 MS. STEINGASSER: I'll venture out. The
24 proposal we've brought to you today is an attempt to
25 balance the rights of the public schools, whether

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1 they're charter or traditional, with the potential
2 adverse impacts to neighborhoods. And, based on the
3 fact that some people -- half the group thinks we've
4 gone too far and the other half thinks we haven't gone
5 far enough, we think we've struck that balance.

6 The potential to setting down just the
7 definition as an emergency and leaving the rest of the
8 text in a standard rule making context is that all--
9 all the -- all schools now are a matter of right, with
10 no -- with the most minimal restrictions that are
11 currently on the zoning regs.

12 Where that's of concern to us is in the R
13 2, R-3, and R-4 zone districts. Those allow buy right
14 adjoining buildings. So a -- somebody can build right
15 up to your property wall attached to your building and
16 operate a school of some sort with the most minimal --
17 and it's not even the most minimal.

18 Under the current regs, public schools of
19 any type have excessive lot occupancy. They can go up
20 to 100 percent lot occupancy in these zones, provided
21 that it's only two stories. They can -- they have an
22 excessive FAR and height that is not in character with
23 the residential zone of those three categories.

24 That's why we've focused on the R2, R-3,
25 and R-4 zones. Those are zones that have the smallest

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1 lots; the most minimal areas and street frontage, and
2 the greatest potential for adverse impact of
3 complimentary land uses. I mean, we agree that that's
4 -- you know, there's a density issue; schools need to
5 be where there's families. But, when you get into
6 lots that are only 4,000 square feet, that's two row
7 house lots. That's a pretty darn small lot.

8 And the impact of being able to have a 90
9 foot building in an R-4 zone where residents can only
10 be 50 feet, and you can double your FAR, it's-- it's
11 a potential for a very great neighborhood impact.

12 So, that's why we kind of focused our most
13 stringent regulations on that rule. So, if you move
14 forward with the motion, as you've written, you've
15 allowed the maximum buy right opportunities with the
16 least amount of restrictions. So it kind of-- the
17 balance is now a little bit --

18 CHAIRPERSON MITTEN: I think I have a--
19 I think I have a solution. We'll see if it-- if it
20 takes. Mr. Turnbull, would you accept this as
21 friendly amendment, which is just that we add -- we
22 just take two of the -- of the suggestions that -- the
23 suggested amendments. So, the first one would be the
24 definition. The second would be what is articulated
25 as Number 3, by the Office of Planning, which is amend

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1 sections 400, 401, and 403 as noted in the chart. And
2 then the balance -- as in the chart and in the
3 subsequent text amendments that follow it for 400.10,
4 400.11, 401.8, and 403.1. And then we'll allow the
5 more housekeeping things to catch up. Would you
6 accept that as a friendly amendment?

7 COMMISSIONER TURNBULL: Yes. I think
8 you're key concern is the 120 foot width that you're
9 looking for in the future?

10 MS. STEINGASSER: I guess our key concern
11 is the fact that schools can be twice as dense as
12 their residential neighbors, and can attach to the
13 buildings.

14 COMMISSIONER TURNBULL: Okay.

15 MS. STEINGASSER: Yes. So it does-- it's
16 the lot size and the -- the street width and the
17 height. So that, it -- it's the physical structure
18 itself and the potential for that -- that impact on
19 the neighborhoods.

20 COMMISSIONER TURNBULL: I would-- I would
21 move to include that then.

22 CHAIRPERSON MITTEN: Okay. And who was
23 the second? Mr. Jeffries? Do you accept that?

24 COMMISSIONER JEFFRIES: Well, just a quick
25 question. So this is in terms of what you fear could

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1 happen in the R-1, R-2 zones. This is imminent? I
2 mean, we -- we can see this happening next month or
3 two?

4 MS. STEINGASSER: Imminent? I -- I don't
5 know if there's schools out there looking at this
6 category. But, under the proposed -- under the
7 original motion, it could be allowed as a matter of
8 right.

9 COMMISSIONER JEFFRIES: Okay. That's what
10 I'm -- yes. I guess what I'm saying in terms of the
11 window of time -- I mean, I -- I'm getting a sense,
12 based on emergency, that, you know, there's a line of
13 people sort of, you know, waiting; schools to go in
14 and build these -- monstrosities in R-1, R-2. And --
15 but you're -- am I missing something here? I mean--

16 MS. STEINGASSER: No. And I -- I wouldn't
17 call them monstrosities. It's -- it's just -- it's a
18 -- it's a scale difference.

19 COMMISSIONER JEFFRIES: Right. Right.
20 Right.

21 MS. STEINGASSER: I don't know where they
22 are. I know when we sent them out to the Association
23 for Public Charter Schools and -- and some other
24 charter groups, they responded that this is going to
25 impact a lot of schools that are out there; especially

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1 the smaller incubator schools that are looking at the
2 smaller pieces of land and the smaller-- because of
3 the -- because of the economics. And so that's our
4 concern is that they be given as much advance notice,
5 as well.

6 COMMISSIONER JEFFRIES: Okay. I-- I'm
7 fine. I will second this. I just have a general
8 comment. You know, when I see the word emergency, you
9 know, I'd like to feel that there's an emergency. And
10 I'm not quite feeling it. But -- but I -- I'm willing
11 to move the evening along here.

12 CHAIRPERSON MITTEN: I think there's a
13 couple of things -- if I could, just on the notion of
14 emergency. One of the emergencies that I recall was
15 when we did electronic facility regulations. And that
16 was because all of a sudden there were -- there were
17 a whole bunch of these uses that we'd never even heard
18 of before and we had to learn about. And they were--
19 had the potential to change the character of the whole
20 district. And that was -- and that was one kind of
21 sort of -- there was one kind of adverse impact that
22 would have resulted from that.

23 I think this issue, because as we all well
24 know, these are -- these are very sensitive issues, so
25 it might not be the potential for, in terms of land

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1 use potential, might not be there. But the potential
2 for impact to people, you know, and their lives is
3 great. It's a different kind of impact. But I don't
4 think it's any less than what we've experienced in
5 other cases.

6 COMMISSIONER JEFFRIES: Just -- we --we
7 dealt with, I believe, you know, occupancy issues
8 around Katrina and the students.

9 CHAIRPERSON MITTEN: Yes.

10 COMMISSIONER JEFFRIES: I mean, that what
11 clearly what I saw as an emergency. I clearly
12 understand the whole notion and the nuance of-- of,
13 you know, that in accumulation, something could, in
14 fact, be. But I -- I just, you know, I just don't
15 want to set a precedent that -- that, you know, we're
16 just constantly doing emergencies here.

17 CHAIRPERSON MITTEN: Right. Even though
18 we have two before us tonight. But, okay. So, just
19 to -- just to recap. We -- the motion is to take
20 emergency action with respect to the definition of
21 public school and the proposed amendments to Sections
22 400, 401, and 403. And then to set down the entire
23 text that the Office of Planning has proposed, with a
24 few little minor changes that we had suggested, and
25 authorize immediate publication of the Notice of

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1 Proposed Rule Making and Notice of Public Hearing.
2 And we have a -- Mr. Turnbull made that motion. Mr
3 Jeffries seconded that motion. Is there any further
4 discussion?

5 All those in favor, please say aye.

6 ALL: Aye.

7 CHAIRPERSON MITTEN: Those opposed, please
8 say no. Ms. Schellin.

9 MS. SCHELLIN: Staff will record the vote
10 five to zero to zero to set down the emergency action
11 -- I'm sorry, to set down Case No. 06-06 and to take
12 emergency action as discussed. Commissioner Turnbull
13 making the motion; Commissioner Jeffries seconding;
14 Commissioners Mitten, Hood, and Parsons in favor.

15 CHAIRPERSON MITTEN: Thank you. Now we
16 will go to Case No. 06-05. And this is a text
17 amendment; a proposed text amendment to-- this is our
18 second emergency -- to Section 401; which is something
19 that has become near and dear to my heart. Ms.
20 Thomas.

21 MS. THOMAS: Good evening Madam Chairman
22 and members of the Commission. I'm Karen Thomas with
23 the Office of Planning. And we are requesting set
24 down on an emergency basis for the amendment of
25 Section 410 to address an inconsistency in the

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Exhibit B

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**

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April 28, 2006

Mr. Russ Williams
Managing Director
Apple Tree Institute for Education Innovation
400 7th Street, S.E.
Washington, D.C. 20003

Re: 138 12th Street, N.E.

Dear Mr. Williams:

The Department of Consumer and Regulatory Affairs (DCRA) has reviewed your Application for Construction Permits on Private Property, regarding 138 12th Street, N.E. (File Job #3758-A), which was received on February 9, 2006.

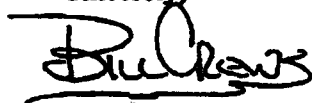
This letter serves to notify you that the above-referenced application does not meet applicable District of Columbia Zoning Regulations and therefore can not be approved. More specifically, the proposed use as a public charter school fails to meet the District of Columbia's R-4 residential zone district requirements for:

1. minimum lot area (9,000 square feet required),
2. minimum width of lot (120 feet required), and
3. minimum parking spaces (10 spaces required).

Our decision not to approve the submitted application is based on the District of Columbia Zoning Commission's adoption of an Emergency Text Amendment defining charter schools as public schools, and changing various requirements for public schools to locate in the R-4 Residential District as matter of right on February 13, 2006, and the District of Columbia Zoning Regulations codified at Title 11 of the District of Columbia Municipal Regulations (DCMR). The Zoning Commission's Emergency Text Amendment was effective immediately and applies to all pending applications on the date the text amendment was adopted.

Please be advised that decisions of the Zoning Administrator may be appealed to the Board of Zoning Adjustment, in accordance with DCMR Chapter 31.

Sincerely,



Bill Crews
Zoning Administrator

Exhibit C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

MEMORANDUM

TO: Zoning Commission for the District of Columbia

FROM: Ellen M. McCarthy
Director

DATE: February 3, 2006

SUBJECT: Report for **Setdown** for Emergency Text Amendments to change public school regulations, initiated by the Office of Planning.

This report serves as the Prehearing Filing required by 11 DCMR § 3013 as a prerequisite to the advertisement of this proposed text amendment.

RECOMMENDATION

The Office of Planning recommends the following action **on an emergency basis** and that the matter be set down for hearing:

That the Zoning Commission adopt following text amendments

- a. The amended definition of public school;
- b. Amendment to the matter-of-right public school standards;
- c. Amendments to §§ 400, 401, & 403;
- d. Amendment to §206 to include public schools;
- e. Inclusion of public schools as a matter-of-right in the SP, CR, & W districts; and
- f. Amendments to the parking requirements for pre-elementary schools.

The Office of Planning also requests that the Commission authorize the issuance of a Notice of Proposed Rulemaking for the text and that the Commission allow the immediate advertisement of the text, without waiting for the submission of a supplemental report. This will allow for full consideration of the proposed rule within the 120-day length of the emergency.

The Office of Planning has coordinated this proposal with the District of Columbia Public Schools.

BACKGROUND

Charter schools in the District are granted charters by one of two bodies, either the District of Columbia Board of Education or the District of Columbia Public Charter School Board. The United States Congress has mandated that the District of Columbia treat charter schools the same as public schools for the purposes of the Zoning

Regulations. This requirement causes the need for modifications to the Zoning Regulations based on the differences between traditional public schools and charter schools.

Traditional public schools must be approved by the City Council for funding and have therefore been lightly monitored by zoning. They are static uses that, once approved, do not change location without further Council approval. Conversely, charter schools require only a charter from one of the two chartering bodies and no public hearing. Further, once a charter school has received its charter, it is not tied to a particular site and may move to any building in any zone district in the city where public schools are allowed. This can cause friction in small sites in residential neighborhoods where access is limited or the affects of a school would be more acute.

This emergency text amendment is designed to address several aspects of public/charter schools in the zoning regulations. First, it defines public schools to include public charter schools. Second, it allows collocation of school uses with other uses and sharing of recreational facilities. Third, it amends the lot area, lot width, FAR, and lot occupancy of public schools in residential zones to provide consistent standards that ensure neighborhood compatibility. Fourth, any schools in residential zones not meeting the requirements are proposed to be allowed as special exceptions. Fifth, it amends the regulations to allow public schools in the SP, CR, and W zones. Finally, this text amendment creates standards for preschools where none currently exist.

PROPOSAL

Proposed Text

1. Amend first sentence of definition of "Public School" §199.1 as follows:

A building or use within a building operated and maintained or chartered by the District of Columbia Board of Education or the District of Columbia Public Charter School Board for educational purposes and other such community uses as deemed necessary and desirable.

2. Amend §201.1(k) to change matter of right uses in R-1 as follows:

- (k) Public school, subject to the provisions of chapter 21 of this title; Public schools may collocate with other permitted schools or uses provided all applicable requirements of this title are met. Public schools may share common on-site recreation space including gymnasiums, playgrounds, and fields, and these shared recreational spaces may count toward the minimum lot area; On-site office use must be ancillary and necessary to the operation of the particular school.**

3. Amend §§ 400, 401 and 403 as noted below as "Proposed" for Public Schools¹

Res Zone	Minimum Lot Area (§ 401) ²		Minimum Lot Width (§401)		Maximum FAR (§402)- no change proposed	Maximum Lot Occupancy (§403)		Maximum Height (§400.10-11) ³	
	Existing	Proposed	Existing	Proposed		Existing	Proposed	Existing (res max)	Proposed
R-1-A	7,500 sf	15,000 sf	75'	120'	0.9	60% *	60% *	60' (40')	60'
R-1-B	5,000 sf	15,000 sf	50'	120'	0.9	60%*	60%*	60' (40')	60'
R-2	4,000 sf	9,000 sf	40'	120'	0.9	60%*	70% max	60' (40')	60'
R-3	4,000 sf	9,000 sf	40'	120'	1.8	60%*	70% max	90' (40')	60'
R-4	4,000 sf	9,000 sf	40'	120'	1.8	60%*	70% max	90' (40')	60'
R-5-A	None	9,000 sf	None	120'	1.8	60%*	60%*	90' (40')	90'
R-5-B	None	9,000 sf	None	120'	1.8	60%*	60%*	90' (50')	90'
R-5-C	None	9,000 sf	None	120'	3.0	75% *	75% *	90' (60')	90'
R-5-D/E	None	9,000 sf	None	120'	3.0	75% *	75% *	90' (90')	90'

* Currently §403.3 allows for public schools to exceed lot occupancy subject to limitations on height and pedestrian access. Proposed there would be a maximum of 70% in the R-2, R-3 and R-4 zones

1 = Any public school that does not meet the proposed limitations of 401, 402 or 403 may request relief through the special exception process.

2 = Minimum lot area may include adjacent parcels that are separated only by a public alley.

3 = (res max) = the maximum height permitted for a residential structure in these residential zones

Amendments include:

400.10 In an R-1, R-2, R-3, and R-4 District, a public school building or structure may be erected to a height not exceeding sixty feet (60 ft).

400.11 In an R-3, R-4, R-5-A, R-5-B, and R-5-C District, a public school building or structure may be erected to a height not exceeding ninety feet (90 ft).

The table in 401.3 would be amended to Add a public school category to every residential zone district with the above noted lot area and lot width.

401.8 For public schools minimum lot area may include adjacent parcels under the same ownership that are separated only by a public alley.

403.1 A public school building may occupy the lot upon which it is located in excess of the permitted percentage of lot occupancy prescribed in §403.2; provided, that the portion of the building excluding closed courts exceeding the lot coverage shall not exceed twenty feet (20 ft.) in height or two (2) stories; and provided further, that direct pedestrian access not less than ten feet (10 ft) in width from at least two (2) public rights-of-way shall be provided to each roof area used for these purposes. The roof area shall be used only for open space, recreation areas, or other athletic and field equipment areas in lieu of similarly used space normally located at ground level. In the R-2, R-3, and R-4 zones, the total lot occupancy should not exceed 70 percent.

4. Amend §206 to include Public Schools as a Special Exception in the R Districts as follows:

206 PUBLIC AND PRIVATE SCHOOLS AND STAFF RESIDENCES (R-1)

206.1 Use as a public school that does not meet the requirements of chapter 4 of this title or as a private school, but not including a trade school, and residences for teachers and staff of a private school, shall be permitted as a special exception in an R-1 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

206.2 The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

206.3 Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

5. Add §771.10 to allow for public school use in the C-1 zone up to a maximum FAR of 1.8

771.10 In a C-1 District, the maximum floor area ratio requirements may be increased for specific public school buildings or structures, but shall not exceed the floor area ratio 1.8

6. Add §501.1(i) to matter of right uses in SP-1 as follows:

(i) Public School, subject to the provisions of chapter 21 of this title.

7. Add §601.1(u) to matter of right uses in CR as follows:

(u) Public School, subject to the provisions of chapter 21 of this title.

8. Add §901.1(v) to matter of right uses in W districts as follows:

(v) Public School, subject to the provisions of chapter 21 of this title.

9. Amend 2101.1 "Parking for Schools" to add a standard for pre-elementary and pre-kindergarten schools as follows:

SCHOOLS	
<u>Pre-elementary schools and pre-kindergarten schools or facilities:</u>	<u>2 for each 3 teachers and other employees</u>

ANALYSIS

1 Amend first sentence of definition of "Public School" §199.1

This amendment accomplishes two purposes. It expands the definition of public school to include D.C. charter schools and to include schools collocated with other uses. This language is necessary to ensure that charter schools are considered public schools in terms of the Zoning Regulations. The collocation of schools with other uses, such as churches, allows for a more efficient use of land and allows the opportunity to locate schools with other large uses in residential zones where adequately sized lots might not otherwise be available.

2 Amend §201.1(k) to change matter of right uses in R-1

This language further addresses the collocation issue, specifically permitting it. It also addresses sharing of recreation space including gymnasiums, playgrounds, and fields. This provision allows opportunities for efficiency in land use where there are existing recreational facilities that may be underutilized. Finally, this change includes language that would limit office space in the school to offices ancillary to the school use.

3. Amend §§ 400, 401 and 403 for Public Schools

This section proposes minimum limits for lot area and lot width as well as maximum limits for height and lot occupancy. The proposal is for a minimum lot area of 15,000 square feet in the R-1 districts and 9,000 square feet in the R-2 through R-5 districts. R-1 districts allow only single family detached homes as

residential uses. The larger lot size in these districts should help to maintain the open, detached character of existing residential neighborhoods and provides space for the activity and impacts associated with schools. The R-2 through R-5 districts all allow some type of attached residential structures on various lot sizes. The 9,000 square foot minimum lot size in these districts recognizes the smaller lot sizes and greater densities in these zones while still requiring adequate space for a public school use.

The attached charts show land area for D.C. public schools and current D.C. public charter schools. Significantly, the proposed lot areas are greatly exceeded by every existing D.C. public school and all but one existing D.C. charter school.

This section also calls for minimum lot width of 120' for public schools in residential districts. This regulation is an attempt to address the need of public schools for areas to load and unload children from buses or cars. While it would be generally preferable for this activity to be located on the site rather than in the street, the survey of existing schools showed that a large percentage of schools would be made non-conforming by a requirement for onsite student drop-off and pick-up. The compromise solution requires 120' of lot width, or street frontage to allow space that would ideally be marked for loading during school hours. 120' offers room for five to six cars to stop at once for drop-off/pick up.

The proposed text would also lower the maximum allowable height for schools in the R-3 and R-4 zones from 90 feet to 60 feet. In the R-1 through R-4 zones the maximum height for any structure other than a public school is 40 feet. The proposed change would ensure closer compatibility of future school buildings with the surrounding area and provide a more consistent change between the R-5 zones and lower zones in terms of height.

Currently, Section 403.3 allows public schools to exceed lot occupancy subject to limitations on height and pedestrian access. The proposed text amendment would amend Section 403.3 to limit that additional lot occupancy in the R-2, R-3, and R-4 zones to 70%. Currently, 70% is the maximum allowed for single family homes in these zones R-3 and above that go through the Section 223 special exception process.

4 Amend §206 to include Public Schools as a Special Exception in the R Districts

This amendment would simply add "a public school that does not meet the requirements of chapter four of this title" to the special exception standards for private schools. This amendment allows the option to develop schools that do not meet the new or existing requirements through a special exception.

5. Add §771.10 to allow for public school use in the C-1 zone up to a maximum FAR of 1.8

C-1 sites in the District tend to be individual properties or small areas in residential neighborhoods. Currently, the C-1 zone limits all development to an FAR of 1.0. This tends to be lower than the allowed FAR of surrounding zoning districts which for schools is usually 1.8. Raising the maximum FAR in the C-1 zone for public schools would allow use of these sites at similar density to what would be allowed in the surrounding neighborhood while still less than would be allowed in larger commercial areas.

6. Add §501.1(i) to matter of right uses in SP districts

7. Add §601.1(u) to matter of right uses in CR district

8. Add §901.1(v) to matter of right uses in W districts

Public schools are not currently permitted in the SP, CR, or W zone districts. These amendments would clean up what appears to be an oversight and effectively allow public schools to locate in any zone district in the city.

9. Amend 2101.1 "Parking for Schools" to add a standard for pre-elementary and pre-kindergarten schools

The existing parking regulations of chapter 21 do not specifically address pre-elementary schools. Since schools of this type would have similar parking needs as elementary schools, the parking standards for elementary schools have been used as the suggested standard for preschool uses. The requirement would be two parking spaces for every three teachers or other employees.

COMPREHENSIVE PLAN

The text amendment is not inconsistent with any of the Comprehensive Plan themes, goals, objectives and policies. No policies specifically address the placement or impacts of public schools. The major themes of the Plan tend to promote maintaining or improving the character of neighborhoods as well as enhancing public safety. The proposed changes further the goals of both of these themes and not inconsistent with any specific areas of the Plan.

EMERGENCY ACTION

The Office of Planning recommends that this text amendment be effective immediately upon setdown. This text is needed to clean up an existing ambiguity regarding charter schools in the Zoning Regulations. There are currently over fifty charter schools in the district and several more are granted charters each year. This language is needed to specifically equate charter schools to D.C. public schools and clarify the guidelines for public school buildings. Further, the text amendment would immediately open up some zones of the city that currently do not allow public schools. Delaying the effective date of this amendment until the final order would leave the issues resolved here in limbo and the standards and timing ambiguous for projects to happen later this year.

AGENCY COMMENT

OP has been in contact with DCPS throughout the process. DCPS has provided attached information regarding the lot areas and enrollment of existing schools. They have also

reviewed the proposed changes. While no written report has been submitted, verbal discussions have indicated no objections to the proposals.

COMMUNITY COMMENT

OP has worked closely with charter school groups including FOCUS and interested stakeholders. Comments were solicited throughout the month of January. We have tried to address a multitude of issues and ideas in this proposal and believe that we have reached a proposal that accomplishes the cities goals for public schools while offering the widest possible latitude for matter-of-right public school uses and balance impacts on adjoining residential neighbors.

CONCLUSION

The proposed text amendments are not inconsistent with the Comprehensive Plan goals and objectives and will serve an function in allowing charter schools the same opportunities as public schools in our city. The Office of Planning recommends that the proposed amendments to 11 DCMR (ZONING) be set down and advertised for hearing.

Attachments

EM/tp