

CASE NO. 06-06

EXHIBIT NO. 39

Before the District of Columbia
Zoning Commission

Hearing on Case Number 06-06 (Charter Schools—Text Amendment)
May 11, 2006

Statement of Bruce G. Joseph on Behalf of Neighborhood Input AGAINST the Proposed
Text Amendment and Seeking a General Requirement of a Special Exception for Charter
Schools Locating in Residential Districts

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My name is Bruce Joseph of Woodley Road, N.W., in ANC 3C. I offer this statement on behalf of "Neighborhood Input," a group of residents of an area bounded by Wisconsin, Massachusetts, and Idaho Avenues in Ward Three. I appreciate the opportunity to present our views about an issue that will be increasingly important for all residential districts in the city, regardless of where they are located. This written statement supplements the oral statement I presented at the May 11 hearing.

We oppose the proposed text amendment to the Zoning Regulations in its current form. The proposed amendment draws an arbitrary and irrational distinction based on lot size and would not provide adequate oversight and supervision of charter school land use decisions, which can have a profound and disruptive effect on residential neighborhoods. Indeed, the proposed text amendment would create an enormous loophole in zoning law that is not available to any other kind of school, public or private. It would permit charter schools, unlike any other schools in the District, to locate in residential districts with no consideration of their effect on the community, no requirement of neighborhood input, and no obligation to avoid adverse impact, essentially as long as the lot size is big enough. That is bad zoning policy.

It is easy to demonstrate that the proposed regulation is arbitrary. A 35-student charter school on a 10,000 square foot lot (which would require a special exception under the proposed

text amendment) is likely to be a far more appropriate and less disruptive land use than a 175-student charter school on a lot of 15,000 square feet (which could locate as of right). We have experienced the latter situation first hand, and can assure the Commission such a school is a highly intensive land use that is disruptive and that is not appropriate as a matter of right in a residential district.

I hasten to add that our group is not opposed to charter schools in any way. We want kids to learn and support the expansion of educational opportunity. But charter schools, like other schools, must be responsive and responsible to the neighborhoods in which they locate. They are not entitled to a free pass. Responsiveness and responsibility can only be accomplished by recognizing that charter schools must obtain a special exception before locating or expanding in a residential district, regardless of lot size (unless, possibly, they are co-located with an existing public school or in a pre-existing public school facility). If anything, the need for supervision is particularly great in the case of charter schools, which are often for-profit entities, which may be driven to minimize costs as they attempt to survive, and which seek property from private landlords driven by the lure of windfall income. In such cases, neighborhood interests are most likely to fall through the cracks.

We share the concerns of the great majority of witnesses, from all parts of the city, who testified at the public hearing both in support *and* against the proposed text amendment. We believe the message from throughout the city was clear—charter school land use decisions must be subject to the kind of oversight and supervision that can only be obtained from a special exception requirement. Indeed the primary distinction between proponents and opponents of the proposed amendment appeared to be whether their neighborhood contains available facilities on lots larger than 15,000 square feet. Neighborhoods without such facilities voiced support for the

proposed text amendment, because they would be protected from inappropriate land uses through the special exception process. Neighborhoods with one or more available 15,000 square foot lots, such as ours, opposed the proposed text amendment. That is not a rational distinction, particularly given the large variation in charter school size.

Our Neighborhood's Experience with Unsupervised Charter School Land Use

Our neighborhood has experienced the problem of unsupervised charter school land use first hand. Christ Church of Washington, at Idaho and Massachusetts Avenues, has discovered this source of windfall income and has become a charter school mill, renting its facilities to three different schools in three years with no neighborhood input and no process to address community concerns.

We awoke one morning in 2004 to find a 200-student high school around the corner. There had been no discussion with the community. Just a poorly publicized meeting to announce a done deal.

The church assured us that this would be a one-time, one-year response to a facility emergency facing the school. As a result, many in the neighborhood supported the idea, even though there were already ten schools within an eight-block radius, educating more than 3,500 students. Unfortunately, in return, we were met with additional traffic, noise, vandalism, loitering and drug use. We expected these to be only short-term problems, so we tolerated them.

In late June of 2005, we were stunned when the church suddenly announced that it was entering into a three-year, one million dollar lease with a brand new charter school. Again, the church announced this move without consulting its neighbors. This year, the school was an elementary school with roughly 150 students, so the biggest problems were significant increases in traffic, the proliferation of trash and the accompanying rats, and noise mostly affecting the

adjacent properties. That school has decided that the location was not suitable for next year. Instead, we will be graced with yet a third school, this time a new middle school, which intends to teach more than 150 students on the site. Each year we have heard assurances from the school, but absent a binding obligation to respect the neighborhood, we have seen no follow-through.

As the Washington Post reported last September, “When a school is within a few blocks of your home, your quality of life is affected.” We have seen the truth of that statement first hand. Remember, in the words of section 200.1, “the R-1 District is designed to protect quiet residential areas.”

Defects in the Proposed Text Amendment

The proposed text amendment’s treatment of lots larger than 15,000 square feet is inconsistent with how the city regulates all other kinds of schools. Under the existing Zoning Regulations, public school buildings, operated and maintained by the Board of Education, may host public schools as a matter of right. But private building owners are not permitted to become commercial landlords. Private schools are subject to full zoning review and extensive community input. Public schools are subject to the full political process. Our ANC 3C representative, Sheila Hogan, provided greater detail in her testimony, which we fully support.

The problem is compounded by the strong economic incentives for the property owner to ignore community concerns—a million dollars is a big incentive. Likewise, schools desperate for a venue are willing to accept sub-standard conditions, such as lack of a playground, cafeteria, or crossing guards. Concerns about traffic congestion, noise and neighborhood security are far down their list.

Director Ellen McCarthy was quoted during the week of the hearing as saying the goal of the proposed amendment is to ensure that new charter schools “are designed not to have an adverse impact on residential neighborhoods.” Unfortunately, for neighborhoods with any lots larger than 15,000 square feet, it would have exactly the opposite effect, giving charter schools a free pass, with no neighborhood input and no obligation to avoid adverse impact.

Charter schools must be subject to a review process that addresses vital neighborhood concerns and reflects the views of local ANCs. The Northwest Current, in two recent editorials supported this position. It argued “that the need to protect the District’s neighborhoods dictates that charter schools be required to obtain approval from the DC Board of Zoning Adjustment to locate or grow in residentially zoned areas.” Northwest Current, November 10, 2005; Northwest Current, September 7, 2005 (copies attached).

Our ANC has adopted a resolution calling for charter schools to require a special exception to locate in residential districts (copy attached). Such a process will ensure that neighborhood concerns will be addressed and that the property will be suitable for a school. We urge you to accept the recommendation of the ANC resolution.

It will foster the links between the schools and their new communities. Ultimately, it will increase public support for the charter school movement

Thank you again for this opportunity to express our views on this important issue.

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THE NORTHWEST CURRENT

Davis Kennedy/Publisher & Editor

Chris Kain/Managing Editor

Chartering decisions

Neighbors of Christ Church of Washington are understandably concerned about the opening of Hope Community Public Charter School in leased space at the church.

With about 125 pre-kindergarten through fifth-grade students, the school is almost certain to affect traffic patterns in the neighborhood.

The major complaint with the arrival of the new school deals with a lack of participation. Residents say their voices were not adequately heard during the decision-making process.

The bottom line, however, is that neighbors have little say because charter schools are allowed to open in residential zones as a matter of right. Public schools of all types are permitted to open — and to expand — without the Board of Zoning Adjustment review that is required of private schools.

Charter schools, though they are free of the D.C. Public Schools' bureaucracy, are public institutions. They are chartered by one of two entities — the D.C. Board of Education or the D.C. Public Charter School Board. Though the chartering agency maintains some oversight, the schools operate independently.

Thus, in the case of facilities decisions, there is no opportunity for public comment as there is when the D.C. Council agrees to provide funding or the D.C. Board of Education decides to locate a school — or, more likely, to alter an existing school in ways that would trigger zoning review if the building were in private hands.

Because charter schools do not face similar public reviews, we believe that they should have to obtain approval from the D.C. Board of Zoning Adjustment to locate or grow in residentially zoned areas. In the case of Hope Community Public Charter School, such a process would probably have meant operating conditions to minimize unwelcome impacts on neighbors.

THE NORTHWEST CURRENT

Davis Kennedy/Publisher & Editor

Chris Kain/Managing Editor

Zoning conundrum

11/16/05

Over the summer, neighbors of Christ Church of Washington voiced concerns about the opening of Hope Community Public Charter School in leased space at the Massachusetts Avenue church.

Had the proposed school been private, its location in a residential neighborhood would have required review by the D.C. Board of Zoning Adjustment.

The D.C. Board of Education, with oversight from the D.C. Council, decides on facilities issues for the D.C. Public Schools. Both provide an opportunity for public comment.

But the location of public charter schools falls in a black hole.

In the case of Hope Community Public Charter School, the advisory neighborhood commission did not challenge the school's ability to locate in the church's excess space.

But an advisory neighborhood commission on Capitol Hill is raising issues in connection with the AppleTree Institute for Education Innovation's plans to locate a preschool in Northeast in the middle of a residential block with limited parking.

Commissioner Cody Rice argues that the zoning regulations define a public school as being "operated and maintained by the District of Columbia Board of Education." In this case, the charter is issued by the D.C. Public Charter School Board, not the D.C. Board of Education. But charter schools are, by definition, independent and not "operated" or "maintained" as entities of the D.C. government.

Zoning administrator Bill Crews has rightly imposed a moratorium on issuing new certificates of occupancy for charter schools until he can sort out the issue. This week, the Zoning Commission asked the Office of Planning to look into the subject.

The question of zoning consistency demands resolution, particularly as the number of charter schools grows. We believe that the need to protect the District's neighborhoods dictates that charter schools be required to obtain approval from the D.C. Board of Zoning Adjustment to locate or grow in residentially zoned areas.

	ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS MCLEAN GARDENS • WOODLEY PARK
Single Member District Commissioners 01-Dia Black; 02-Deborah Jane Lindeman, 03-Stephanie Zobay 04-Avram Fechter; 05-Bruce Beckner; 06-Trudy Reeves 07-Sheila Hogan, 08-Catherine May; 09-Nancy MacWood	2737 DEVONSHIRE PLACE, NW WASHINGTON, DC 20008 TEL 202/232-2232 • FAX 202/232-0667 Email anc3cmail@gmail.com Listserv http://groups.yahoo.com/group/anc3cgroup Website http://www.anc3c.org

RESOLUTION 2006-020

Regarding Methods for Addressing the Impact of Charter Schools on Neighborhoods in Washington, DC

WHEREAS the DC Zoning Commission has scheduled a hearing on May 11, 2006 to consider Case No. 06-06, a text amendment to Title 11 of the District of Columbia Municipal Regulations concerning Charter Schools ("the Amendment"),

WHEREAS the Amendment would allow Charter Schools to be located in residential neighborhoods as a matter of right, subject to lot and frontage requirements,

WHEREAS this ANC is generally supportive of publicly-funded Charter Schools,

WHEREAS there is an established regulatory process by Special Exception for siting private schools in Residence Zones, and

WHEREAS the matter of right establishment of charter schools in facilities in residential neighborhoods that have not presently or previously been used as public schools can obviously have a significant impact upon the neighborhood and the quality of life in the neighborhood; and

WHEREAS the potential impact on residential neighborhoods of the establishment or expansion of private schools is regulated by the Board of Zoning Adjustment and allows for significant input from residents and from the Advisory Neighborhood Commission; and

WHEREAS public school establishment or expansion is subject to the approval of the partially elected, partially appointed School Board with funding authorization by the elected D.C. Council with both bodies inviting and responding to public comment; and

WHEREAS charter schools are not subject to the rules and regulations established for District public schools that ensure the stability of the school and provide mechanisms for the community to address any issues or problems, nor is a proposed charter school subject to the procedures that evaluate the ability of the public infrastructure to support the impacts of a new school:

THEREFORE, BE IT RESOLVED that Advisory Neighborhood Commission 3C (ANC 3C) supports charter schools locating in Ward 3, and specifically in ANC 3C, but has serious concerns that there should be a mechanism to consider impacts due to a substantial new use in a neighborhood;

BE IT FURTHER RESOLVED that ANC3C urges the DC Zoning Commission (DCZC) to require Special Exceptions for all charter schools planning to locate in Residence Zones, except for those locating in a facility presently or previously used as a DSPS facility, in the same manner and to the same extent that private schools and child development centers are required to have Special Exceptions to operate in such locations, and

BE IT FURTHER RESOLVED that ANC3C urges the Office of Planning to involve the neighboring community in its review of a Charter School's Special Exception application and aggressively seek input and comment from DC Department of Transportation (DDOT) to mitigate potential negative effects on the neighboring community. DDOT comments should include at a minimum:

1. an evaluation by DDOT as to (a) whether the additional vehicle traffic resulting from the operation of the proposed charter school would create dangerous traffic conditions or significantly increase the traffic on nearby residential streets in a manner that could not be satisfactorily mitigated by an effective traffic management plan, (b) whether the additional demand for on-street parking resulting from the operation of the proposed charter school creates significant adverse effects on nearby residents and whether those adverse impacts can be mitigated by an effective traffic management plan; and
2. a determination by DDOT as to the number of students and staff that the location can reasonably and safely accommodate;

BE IT FURTHER RESOLVED that ANC3C urges the Office of Planning and the Zoning Commission to establish an application process, funding, and disbursement mechanisms to enable Charter Schools to recover legal and other costs related to Special Exception applications.

BE IT FURTHER RESOLVED that the Chair or her designee is authorized to represent the ANC3C on this matter.

Attested by

Chair, on April 19, 2006

Nancy J. MacWood

This resolution was approved by ANC 3C by a vote of 7-1-1 at a public meeting that was noticed and where there was a quorum of 9 of 9 members present.