

Government of the District of Columbia
OFFICE OF ZONING



MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S. Schellin *SS*
Acting Secretary to the Zoning Commission

DATE: March 8, 2006

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D C Register* on March 17, 2006

- 1 Z C Notice of Filing (Case No 06-14),
- 2 Z C Notice of Emergency and Proposed Rulemaking (Case No 06-06),
- 3 Z C Notice of Public Hearing (Case No 06-06), and
- 4 Z C Notice of Public Hearing (Case No 06-03)

Attachments

Office of
Documents and
Administrative
Issuances
2006 MAR -8 PM 4:52

ZONING COMMISSION

CASE No. 06-06

EXHIBIT No. 4

230 MAR -8 PM 4:52

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: ☐ EMERGENCY RULES
☐ FINAL RULES ☐ PROPOSED RULES ☒ COMBINED

DATE AND TIME RECEIVED

Office of Documents use only

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: SHARON SCHELLIN

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: 727-0340

TITLE AND DESCRIPTION OF RULES: Case No. 06-06 (Charter Schools – Text Amendment)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed. Title 11 (Zoning) Sections 199.1, 206.1 – 206.3, 400.10, 400.11, 401.3, 401.8, 401.9, 403.1, 501.1(i), 601.1(u), 771.10, 901.1(v), and 2101.1

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules. DCR _____ DATE _____

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01)

LEGAL CERTIFICATION. I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient

DATE: MARCH 8, 2006

SIGNED: *Robert J. Spagnoletti*

PHONE: (202) 442-9777

☒ FINAL

☐ CONDITIONAL

NAME: ROBERT J SPAGNOLETTI **TITLE:** ATTORNEY GENERAL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)

Zoning Commission For The District Of Columbia

Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules.

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE:

2/13/06

APPROVAL OF ATTEST:

Sharon J. Schellin

TITLE: Acting Secretary to the Zoning Commission

PHONE: (202) 727-0340

Office of Documents use only:

THIS NOTICE PUBLISHED AT:

VOL:

DCR:

DATE:

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY and PROPOSED RULEMAKING
Z.C. Case No. 06-06
(Text Amendments – Charter Schools)
February 13, 2006

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, D C Official Code § 6-641 01 (2001)) and the authority set forth in section 6 (c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat 1206, D C Official Code § 2-505 (2001(c)) hereby gives notice of the adoption, on an emergency basis, of amendments to §§ 199 1 400.10, 400 11, 401 3, 401.8, 403 1 of the Zoning Regulations (DCMR. Title 11) The amendments will modify the definition of “School, public” to include schools chartered by the District of Columbia Board of Education or the District of Columbia Public Charter School Board. In addition, the rules would amend existing area requirements that apply to all public schools in Residence Districts These rules are contained in Part A and B of this notice

This action is being taken on an emergency basis because the Zoning Administrator has recently received several Charter School building permit applications, but is unable to process them because the Zoning Regulations do not currently recognize Charter Schools as a distinct use classification Nor are Charter Schools included in the current definition of “Schools, public”, which only pertains to buildings “operated and maintained by the District of Columbia Board of Education”. Immediate action is required to remove this ambiguity so as to permit these new Charter Schools to be constructed by the start of the next school year

However, the immediate proliferation of Charter Schools in residence districts has the potential for adverse impacts unless the current area requirements for public schools are made more restrictive. The emergency action therefore includes amendments to the area provisions that govern public schools in residence zones

This emergency rule was adopted on February 13, 2006, and became effective on that date

The emergency rule will expire on July 13, 2006, which is the 120th day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *Register*, whichever occurs first

In addition to Part A and B of this notice, the Commission also gives notice of its intent to take final rulemaking action to adopt the following amendments to §§ 201 1(k), 206, 501 1(i), 601 1(u), 771 10, 901 1(v), and 2101.1 of the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D C Register* or thirty days following referral of this amendment to the National Capital Planning Commission, whichever occurs last. These amendments would allow collocation of school uses with other uses and sharing of recreational facilities, permit schools in residential zones not meeting the proposed requirements to be allowed as special exceptions, allow public schools in SP, CR, and W Zone Districts, and create standards for preschools, and are contained Parts C through H of this Notice. The Commission will hear public testimony concerning all of these amendments at a public hearing to be held at

Z.C. NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

Z.C. CASE NO 06-06

PAGE 2

the date, time and place indicated in the Notice of Public Hearing is published elsewhere in this edition of the *Register*. All written comments received before the close of the hearing record will be considered

Title 11 (DCMR) is amended as follows (additions to the text are underlined, deletions are ~~struck through~~).

A Chapter 1, THE ZONING REGULATIONS, § 199 1, is amended as follows

School, public - 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.

B Chapter 4, RESIDENCE DISTRICTS HEIGHT, AREA, AND DENSITY REGULATIONS, is amended as follows:

1 By amending §§ 400 10 and 400 11 to read as follows:

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).

2 By amending the table in § 401 3 to read as follows

ZONE DISTRICT AND STRUCTURE	MINIMUM LOT AREA (square feet)	MINIMUM WIDTH OF LOT (feet)
<u>R-1-A</u> <u>Public School</u>	<u>15,000</u>	<u>120</u>
R-1-A All <u>other</u> structures	7,500	75
<u>R-1-B</u> <u>Public School</u>	<u>15,000</u>	<u>120</u>
R-1-B All <u>other</u> structures	5,000	50
<u>R-2</u> <u>Public School</u>	<u>9,000</u>	<u>120</u>

R-2 One-family semi-detached dwelling	3,000	30
R-2 All other structures	4,000	40
<u>R-3</u> <u>Public School</u>	<u>9,000</u>	<u>120</u>
R-3 Row dwelling	2,000	20
R-3 One-family semi-detached dwelling	3,000	30
R-3 All other structures	4,000	40
<u>R-4</u> <u>Public School</u>	<u>9,000</u>	<u>120</u>
R-4 Row dwelling and flat	1,800	18
R-4 One-family semi-detached dwelling	3,000	30
R-4 Conversion to apartment house	900/apartment or bachelor apartment	None prescribed
R-4 All other structures	4,000	40
<u>R-5-A</u> <u>Public School</u>	<u>9,000</u>	<u>120</u>
R-5-A All other structures	As prescribed by the Board pursuant to § 3104	As prescribed by the Board pursuant to § 3104

<u>R-5-B, R-5-C, R-5-D, R-5-E Public School</u>	<u>9,000</u>	<u>120</u>
R-5-B, R-5-C, R-5-D, R-5-E All other structures	None prescribed	None prescribed

3 By adding a new § 401 8 to read as follows:

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

4 By amending § 403 1 to read as follows

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.

C. Chapter 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, is amended as follows,

1 By amending § 201 1(k) to read 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 provided that the school is adjacent to the shared recreation space, on-site office use must be ancillary and necessary to the operation of the particular school

2 By amending §206 to read 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 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.

D Chapter 5, SPECIAL PURPOSE DISTRICTS, is amended by adding a new §501 1(i) to read as follows

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

E Chapter 6, MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS, is amended by adding a new §601 1(u) to read as follows

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

F. Chapter 7, COMMERCIAL DISTRICTS, is amended by adding a new § 771 10 to read as follows

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

G Chapter 9, WATERFRONT DISTRICTS, is amended by adding a new § 901 1(v) to read as follows

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

Z.C. NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

Z.C. CASE NO. 06-06

PAGE 6

H Chapter 21, OFF STREET PARKING REQUIREMENTS, is amended by adding the following to the chart found in § 2101 1:

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

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon Schellin, Acting Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N W , Suite 200, Washington, D C 20001. Comments must be received not later than thirty (30) days after the publication of this notice in the *D C Register* or by the close of the record for the hearing on this matter, whichever is later. A copy of this proposal may be obtained, at cost, by writing to the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, May 11, 2006, @ 6:30 P.M.**
 Office of Zoning Hearing Room
 441 4th Street, N.W. Suite 220
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 06-06 (Charter Schools – Text Amendment)

THIS CASE IS OF INTEREST TO ALL ANCs

The Office of Planning, through a report dated February 3, 2006 requested a text amendment to §§ 199 1, 206 1 – 206 3, 400 10, 400 11, 401 3, 401 8, 401 9, 403 1, 501 1(i), 601 1(u), 771 10, 901 1(v), and 2101 1 of 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, lot occupancy permitted for public schools in Residence Zones, 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, allow public schools in SP, CR, and W Zone Districts, and create standards for preschools. The Office of Planning's report on charter schools was received on February 3, 2006, and served as the pre-hearing submittal for the case.

This case was set down for hearing on February 13, 2006, at which time the Commission also adopted the amendments to §§ 199 1, 400 10, 400.11, 401 3, 401 8, 401.9, and 403 on an emergency basis and authorized the publication of a notice of proposed rulemaking with respect to all of the proposed rules.¹ The Commission also waived § 3013 1 of its rules of procedures, which would have required a twenty-day waiting period before publication

The following amendments to Title 11 of the District of Columbia Municipal Regulations (ZONING) are proposed.

A Chapter 1, THE ZONING REGULATIONS, § 199 1, is amended as follows:

School, public - 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

¹ A Notice of Emergency and Proposed Rulemaking is being published elsewhere in the same edition of the *D C Register*

B Chapter 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, is amended as follows,

1 By amending § 201 1(k) to read 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 provided that the school is adjacent to the shared recreation space, on-site office use must be ancillary and necessary to the operation of the particular school

2 By amending §206 to read 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 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

C Chapter 4, RESIDENCE DISTRICTS HEIGHT, AREA, AND DENSITY REGULATIONS, is amended as follows:

1. By amending §§ 400 10 and 400 11 to read as follows:

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).

2 By amending the table in § 401 3 to read as follows

ZONE DISTRICT AND STRUCTURE	MINIMUM LOT AREA (square feet)	MINIMUM WIDTH OF LOT (feet)
<u>R-1-A</u> <u>Public School</u>	<u>15,000</u>	<u>120</u>
R-1-A All <u>other</u> structures	7,500	75
<u>R-1-B</u> <u>Public School</u>	<u>15,000</u>	<u>120</u>
R-1-B All <u>other</u> structures	5,000	50
<u>R-2</u> <u>Public School</u>	<u>9,000</u>	<u>120</u>
R-2 One-family semi- detached dwelling	3,000	30
R-2 All other structures	4,000	40
<u>R-3</u> <u>Public School</u>	<u>9,000</u>	<u>120</u>
R-3 Row dwelling	2,000	20
R-3 One-family semi- detached dwelling	3,000	30
R-3 All other structures	4,000	40
<u>R-4</u> <u>Public School</u>	<u>9,000</u>	<u>120</u>
R-4 Row dwelling and flat	1,800	18

R-4 One-family semi-detached dwelling	3,000	30
R-4 Conversion to apartment house	900/apartment or bachelor apartment	None prescribed
R-4 All other structures	4,000	40
<u>R-5-A</u> <u>Public School</u>	<u>9,000</u>	<u>120</u>
R-5-A All other structures	As prescribed by the Board pursuant to § 3104	As prescribed by the Board pursuant to § 3104
<u>R-5-B, R-5-C, R-5-D, R-5-E</u> <u>Public School</u>	<u>9,000</u>	<u>120</u>
R-5-B, R-5-C, R-5-D, R-5-E All other structures	None prescribed	None prescribed

3 By adding a new § 401 8 to read as follows:

401 8 For public schools minimum lot area may include adjacent parcels under the same ownership that are separated only by a public alley

4 By amending § 403 1 to read as follows.

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

D Chapter 5, SPECIAL PURPOSE DISTRICTS, is amended by adding a new §501 1(i) to read as follows

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

E. Chapter 6, MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS, is amended by adding a new §601 1(u) to read as follows

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

F Chapter 7, COMMERCIAL DISTRICTS, is amended by adding a new § 771 10 to read as follows

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

G. Chapter 9, WATERFRONT DISTRICTS, is amended by adding a new § 901 1(v) to read as follows

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

H. Chapter 21, OFF STREET PARKING REQUIREMENTS, is amended by adding the following to the chart found in § 2101 1

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

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat 797), as amended, D C Official Code § 6-641 01 (2001), *et seq*

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of Section 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing

**Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 06-06
PAGE 6**

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to Sharon Schellin, the Secretary of the Zoning Commission, Office of Zoning, Suite 200, 441 4th Street, N W , Washington, D C , 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

CAROL J. MITTEN, ANTHONY J. HOOD, GREGORY JEFFRIES, JOHN G. PARSONS, AND MICHAEL TURNBULL, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR, AND BY SHARON SCHELLIN, ACTING SECRETARY TO THE ZONING COMMISSION.