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August 24, 2006

Zoning Commission of the District of Columbia
One Judiciary Square, Suite 210-South
441 Fourth Street, NW
Washington, D C 20001

Re: ZC Case 06-06 "Charter Schools Text Amendments"

Honorable Members of the Commission

This letter is prompted by the publication, in the *D.C. Register* of July 21, 2006, of proposed rules that would affect public schools, charter schools, and add explicit parking requirements for pre-schools

These comments note certain issues that might well be addressed within the scope of the changes proposed and the case record. In addition, the comments suggest some areas for future attention

As you know, the case mostly arose from the determination of the Zoning Administrator that "charter schools" were not clearly addressed in the existing zoning regulations. The Office of Planning also realized that existing regulations for public schools did not allow for adequate density and mass of buildings or provide appropriate area requirements. The case as set down and heard addressed all of the above along with establishing rules heretofore absent for parking for pre-schools.

The proposed rulemaking identifies nine sections of the regulations that would be changed. This is a letter of overall support for the changes proposed, but with particular focus on three provisions – those in proposed provisions A, B, and H – that I believe should be examined and modified prior to final action

A. Clarify the Definition of "Public School"

I support the first change as proposed, which adds charter schools to the definition of public school. However, I recommend that the Zoning Commission examine the implications of merely retaining pre-existing language at the end of the definition. I believe it warrants further attention

Present regulations define "public school" as a place "... for educational purposes and other such community uses as deemed necessary and desirable". The issue that emerges is who determines if those other "community" uses are either necessary or desirable. Up to the present, the District of Columbia Board of Education has controlled the use of public school facilities, at least to some extent. While the same could hold if the District of Columbia Charter School Board decided to weigh in, it is equally likely that that Board could defer such decisions to the governing body or officials of the individual charter schools and that a range of uses could emerge about which there could be significant disagreement as to whether they are either "needed" or "desirable" in the affected "community" in terms of use, attendance, days or hours of operation, etc

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Therefore, I recommend that you request the Office of Planning to study the issue and provide appropriate recommendations to you as part of its ongoing efforts to refine the Zoning Regulations.

In the meantime, I recommend your taking two steps at this time, both reasonably within the scope of the proposed rulemaking

First, to protect residential uses in exclusively or largely residential areas and bolster overall accountability, I suggest that the language at the end of the section clarify that “community uses” preclude “commercial” ones (e.g., a private, profit-seeking exercise business or a caterer) in Residential and Special Purpose (and possibly Waterfront) zone districts and that the overall uses be subject to approval by a citywide public body, either the District of Columbia Board of Education or the District of Columbia Charter School Board. Such interim language could, in my view, be adopted now within the scope of the text considered at the hearing and the subsequent proposed rulemaking

Second, to bolster transparency, I suggest that these other community uses (in all zone districts) be set out in the individual Certificates of Occupancy that must, in any event (under the already applicable but easily overlooked provisions of Chapter 32), be sought, acquired, and posted on each property

The following substitute language illustrates one way to achieve these two results if you concur:

“... for educational purposes and other community uses as deemed necessary and desirable by the District of Columbia Board of Education or the District of Columbia Charter School Board; provided that the other community uses are also denoted on the Certificate of Occupancy¹ for the property and further provided that none of those other community uses may be of a commercial nature in a Residence, Special Purpose [or Waterfront?] district.”

B. Explicitly Convey that Loading Regulations Apply to Educational Uses

Existing and proposed rules refer to Chapter 21 of the zoning regulations establishing parking standards for public schools. Nevertheless, public schools and other educational uses are also already subject to the provisions of Chapter 22, even though that Chapter is not referenced. This is the case as the table within §2201.1 concludes with requirements for “Any Other Use in All Districts” and there is no entry for schools whatsoever. Thus, as presently established, the requirement to provide loading areas is triggered for any public school (and for that matter, private schools, pre-schools, colleges, universities, etc.) with 30,000 or more gross square feet.

As a drafting matter, it would seem appropriate to include references in the amendments to both Chapters 21 and 22 where the regulations now refer only to Chapter 21. This “change” clarifies what already operates under the provisions of Chapter 22 in its own right. As appropriate, proposed text at §206.3 now speaks just to “ample parking space.” I recommend this be revised to read “**ample parking space and loading areas**”.

¹ Following established procedures to acquire Building Permits and Certificates of Occupancy should also identify any existing public school site that, for whatever reason, remains unzoned. If such a situation emerges (outside the “Central Area”) no expansion of any existing public school facility, or co-locating or substituting a Charter school use, should occur until zoning is applied to the site. (Of course, public schools in the “Central Area” would not be subject to zoning, as provided at §106.5(c) but must comply with the other provisions of that sub-section.)

As quickly as possible, but likely outside the scope of the present case, the Zoning Commission should provide specific loading standards for various educational institutions

As a stop-gap measure, the Zoning Commission might consider language that would at least exclude gross square footage of accessory buildings and accessory areas in primary buildings. For example, gymnasiums and auditoriums, when added to classroom and small areas for administrative offices, could easily propel even smaller schools over the present 30,000 gross square foot threshold

The following might be considered, refining the present default provision of Chapter 22 to exclude ancillary areas of educational uses that do not inherently add to the need for such loading space in the first place

Add an entry for at least some of the common educational uses to the table in §2201.3, leaving the question of standards for colleges and universities to the text case already under development within the Office of Planning.

Child/Elderly Development Centers, Public Schools, Private Schools and Pre-Elementary Schools and Pre-Kindergarten Schools or Facilities in All Districts:

With 30,000 to 100,000 gross square feet of classrooms and program administration along with adjoining hallways, stairs, entrances, and lobbies, but excluding areas of special purpose teaching or resource areas, e.g. music rooms, libraries, auditoriums or gymnasiums):

1 30' loading space / 1 100' loading berth / 1 20' service delivery space.

With more than 100,000 gross square feet of classroom, administrative, and adjoining hallways, stairs, entrances, and lobbies, but excluding areas of special purpose teaching or resource areas, e.g. music rooms, libraries, auditoriums or gymnasiums):

1 30' and 1 55' loading space / 1 100' and 1 200' loading berth / 1 20' service delivery space.

H. Clarify "Employees" within Parking Standards for Pre-Elementary Schools and Pre-Kindergarten Schools or Facilities

The proposed rules further establish parking standards for pre-schools. The standard proposed is identical to that already in effect for elementary and junior high schools.

The Commission may want to consider, now or at some point, if the standards should also "count" various other persons that may come to pre-schools, schools, colleges and universities on a recurring basis. One such class of persons, much more common now as "out-sourcing" becomes more common place, is those who are at the property on a contractual basis, be they to operate a lunch program, maintain equipment, or various other purposes

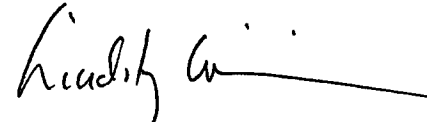
To address this, the expression "teachers or other employees" could simply be clarified to read "teachers or other employees or independent contractors or contractor staff at the location."

Coordination and Disclaimer:

For your information, this letter expresses my views only and the comments are provided solely from the undersigned, not on behalf of any client or organization

I also want to express my appreciation to Travis Parker in the Office of Planning with whom I had a constructive discussions prior to composing and sending this letter. Of course, I am not asserting that he or his office concur with the views herein expressed

Thank you



Lindsley Williams

E-Mail "pdf" copies to

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