

**REPORT OF THE
ECONOMIC DEVELOPMENT AND ZONING COMMITTEE
OF ANC 6A
February 28, 2006**

Present: Commissioner Cody Rice; Resident Members Jeff Fletcher, Virginia Gaddis Rich Luna, Vanessa Ruffin-Colbert, Mary Spencer and Linda Whitted.

Commissioner Rice chaired the meeting.

2006 Committee Goals

The committee discussed goals for 2006. The draft goals are very similar to those for 2005 with the exception of a goal that identifies major topical focus areas for the year.

Recommendation: That the ANC approve the attached 2006 goals for the committee.

ZC 06-06: Text Amendment on Site Requirements for Public Schools

The committee discussed a proposed text amendment to the zoning regulations to change the definition of “public school” and the “matter-of-right” requirements for these schools. This text amendment would clarify the zoning treatment of public charter schools. The Zoning Commission accepted this text amendment for setdown on February 13, 2006 and adopted items 1, 2, and 3 from the attached OP report on an emergency basis. A public hearing will be scheduled for a later date.

The committee discussed the need to clarify the zoning treatment of public charter schools, particularly in the wake of the purchase of a small site on the 100 block of 12th Street NE for a charter preschool. Public charter schools seem to fall somewhere between private schools and public schools in terms of public accountability. Private schools always require a special exception in residential zones. Public schools are allowed as a matter-of-right, but generally there is some public accountability during the facility planning process that might reduce spillover effects. Public charter schools receive public funds, but are operated independently with limited operational oversight from the Board of Education or the unelected Public Charter School Board.

The committee discussed how zoning standards and a public input process are needed, especially for smaller sites in residential areas that have potential spillover effects in terms of noise, traffic, and safety. The text amendment proposed by the Office of Planning seems reasonable in that every existing DCPS and public charter school would meet the criteria for matter-of-right treatment. As a result, the text amendment would not make any of these schools non-conforming.

Recommendation: That the ANC send a letter of support for the text amendment and authorize testimony before the Zoning Commission.

Zoning Definitions of “Fast Food Restaurants” and Other Eating Establishments

The committee discussed various eating establishment definitions in the zoning regulations of DC and other jurisdictions (see agenda package). Although the fast food restaurant definition in the DC code is sometimes cited as a model, the experience of this ANC has been that DCRA is unable or unwilling to identify fast food restaurants and trigger a special exception review that would allow public input.

There are a variety of approaches to the classification of eating establishments. Some jurisdictions focus on “formula” or chain restaurants. Some jurisdictions use operating or physical characteristics to identify types of eating establishments. Some jurisdictions focus on the concentration of fast food restaurants in a particular area.

As a starting point, the committee discussed some of the shortcomings of the existing fast food restaurant definition. One problem is that it employs convoluted criteria:

A fast food restaurant is (a) an eating establishment with a drive-through or (b) an eating establishment with a certain amount of space for queuing and on-premises consumption and either (c) 60 percent of food is prepared or packaged before serving or (d) primarily uses disposable tableware and containers.

Everyone involved seems to have some difficulty interpreting and applying this definition. In particular, the criteria related to floor space for queuing and on-premises consumption has been difficult to evaluate.

Another problem is that the existing definition relies on operational characteristics (particularly (c) and (d)) that are difficult to evaluate prior to opening and can be difficult to evaluate even after the restaurant opens. DCRA must rely on an eating establishment affidavit that may or may not be completed accurately by the business owner. It may not become clear whether an eating establishment is a fast food restaurant until the property has been fully developed and is in operation. It might be preferable to have a definition that could be evaluated solely on the basis of permit drawings before substantial construction begins. On the other hand, many of the characteristics that a layperson would associate with a fast food restaurant are operational characteristics.

The committee discussed the need to be aware of the diversity of types of eating establishments in terms of configuration, operating characteristics, and demands of various cuisines. The committee then brainstormed on two issues: 1) types of eating establishments that a revised definition might need to address and 2) operating and physical characteristics of eating establishments that might serve as criteria to distinguish among the various types of eating establishments.

Types of Eating Establishments

Restaurant	Delicatessen	Accessory use (carryout)
Cafeteria	Coffee Shop	Drive-Through, Drive-In
Hot Food Bar	Teahouse	Street Vendors
Café	Fast Food Restaurant	Caterer
Lunch Counter	Convenience Store	Food Delivery Services
Ice Cream Parlor/ Soda Fountain	Accessory use for other businesses (Theater, Bowling Alley, etc.)	Dinner Theater
Diner	Bakery	Bar/Tavern

Operating Characteristics	Physical Characteristics
Time of payment (before or after service)	Amount of seating
Busing of tables	Queuing area
Disposable tableware, utensils, containers	Publicly-accessible trash receptacles
Parking (valet, self)	Service counter
Use of trays	Permanence of seating
Use of individual menus	Affixed menu board
Ordering, delivery, service at table or counter	Drink or condiment station
Fixed menu vs. changing menu	Screening of kitchen area
Locked vs. unlocked bathroom	Ratio of back-end, front end space
Sales by weight (as with deli or hot food bar)	Location of cash registers
Preparation and packaging before or after order	
Volume, speed of sales, turnover	
Location of consumption	
Recycling, garbage	
Formula or chain status	
Predominance of fried foods	

The committee will take this issue up again at the next meeting. Committee members were asked to look through the definitions from other jurisdictions that appear in the agenda package. New or revised definitions would need to distinguish between 1) eating establishments that have significant potential spillover effects on the residential areas and 2) all other eating establishments. The first class of eating establishments (fast food and similar) would continue to require a special exception from the Board of Zoning Adjustment allowing public input and addressing spillover effects with various conditions prior to granting permission to operate. The revised definition should be clear and easy to interpret for business owners, DCRA permit writers, DCRA inspectors, and residents.

Next Scheduled ED&Z Committee Meeting:

Tuesday, March 28, 2006

7-9 PM

900 G Street, NE

Community Room of the Capitol Hill Towers

**DRAFT 2006 GOALS FOR ANC 6A
ECONOMIC DEVELOPMENT & ZONING COMMITTEE**

- 1. Provide a regular public forum for Commissioners and residents to obtain information and discuss land use issues in the ANC 6A area or that affect the ANC 6A area.**
- 2. Review and report to the ANC on all significant activities by the Board of Zoning Adjustment, Zoning Commission, Historic Preservation Review Board, Office of Planning, District Department of Transportation, National Capital Planning Commission, and other agencies that affect land use in the ANC 6A area.**
- 3. Make timely recommendations to the ANC that permit informed participation in city decisions on zoning, historic preservation, economic development, public space, and other topics related to land use in the ANC 6A area.**
- 4. Monitor public and private development activities on H Street NE for consistency with the Strategic Development Plan and Neighborhood Commercial Overlay.**
- 5. As needed, schedule speakers from city or federal agencies who can address the interests or concerns of residents related to land use in the ANC 6A area.**
- 6. As requested by Commissioners and/or residents, assist in gathering information and resolving concerns related to specific properties (*e.g.*, abating problems associated with vacant/abandoned/underutilized properties.)**
- 7. Major topical focus areas will be a) zoning definitions for eating establishments, b) special exception requirements for small public school sites, c) a Business Improvement District for H Street NE, and d) expansion of the Capitol Hill Historic District.**

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