

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 06-06
Z.C. Case No. 06-06
(Text Amendments – 11 DCMR)
(Charter Schools Text Amendments)
September 25, 2006

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of amendments to § 199 (Definitions), § 201 (Uses as a Matter of Right (R-1)), § 206 (Public and Private Schools and Staff Residences), § 400 (Height of Buildings or Structures (R)), § 401 (Minimum Lot Dimensions (R)), § 403 (Percentage of Lot Occupancy (R)), § 501 (Uses as a Matter of Right (SP)), § 601 (Uses as a Matter of Right (CR)), § 771 (Floor Area Ratio (C)), § 901 (Uses as a Matter of Right (W)), Chapter 21 (Off-Street Parking Requirements), and Chapter 31 (Board of Zoning Adjustment Rules of Practice and Procedure) of the Zoning Regulations (Title 11 DCMR). The amendments change the definition of “Schools, public” in the Zoning Regulations to include charter schools; amend the building height, lot area, lot width, and lot occupancy requirements for public schools in Residence Districts; allow collocation of school uses with other uses and sharing of recreation facilities; permit schools in Residence Zones not meeting the requirements of Chapter 4 to be allowed as special exceptions; allow public schools in SP, CR, and W Zone Districts; amend density limits for public schools in Commercial Districts; and create parking standards for preschools. The Commission took final action to adopt the amendments at a public meeting held on September 25, 2006.

Only one substantive change was made to the text of the Corrected Revised Notice of Proposed Rulemaking published in the August 18, 2006 edition of the *D.C. Register*, namely the elimination of an exception from the lot dimension requirements for schools of sixteen (16) or fewer students. As discussed later in this Order, the change was made in response to public comment, and, therefore does not require publication of a new Notice of Proposed Rulemaking.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

The existing regulations neither define charter schools nor provide standards for their development. The existing definition of public school defines public schools as being operated or maintained by the Board of Education. Charter schools do not fall within that description. Although charter schools may be similar to public schools, the District of Columbia Court of Appeals has ruled that the Zoning Administrator may not “interpret defined uses in the Zoning Regulations to encompass other uses that are functionally comparable ... if they are outside the definition,” *Chagnon v. District of Columbia Board of Zoning Adjustment*, 844 A.2d 345, 348 (D.C. 2004). Thus, without these amendments, charter schools would be disallowed in most zone districts.

Description of Text Amendment

The Commission initiated this rulemaking to respond to the Zoning Administrator’s concerns regarding charter schools. The amendments change the definition of “Schools, public” in the Zoning Regulations to include charter schools; amend the building height, lot area, lot width, and lot occupancy requirements for public schools in Residence Districts; allow collocation of school uses with other uses and sharing of recreation 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; amend density limits for public schools in Commercial Districts; and create parking standards for preschools.

Relationship to the Comprehensive Plan

The text amendments are not inconsistent with any of the Comprehensive Plan themes, goals, objectives, or 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 are not inconsistent with any specific areas of the Plan.

Set Down, Emergency Action, Public Hearing, and Proposed Action

At its regularly scheduled public meeting on February 13, 2006, the Commission decided to set down the proposed changes to the Zoning Regulations for a public hearing, to adopt a portion of the proposed text on an emergency basis, and to publish all of the amendments for public comment in a notice of proposed rulemaking. The combined Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on March 17, 2006 at 53 DCR 2017 along with a notice of the public hearing.

The Commission held a public hearing on the case May 11, 2006. At the hearing, more than a dozen persons and organizations testified, both in favor and against the proposed rule. Those in favor stressed the compromise between educational opportunities and the protection of existing neighborhoods. Witnesses testifying in opposition fell into two categories, those who thought the proposed action was too restrictive on schools and those who thought it was not restrictive enough. Several charter school proponents and groups testified that they were concerned that the regulations would make the siting and development of charter schools much more difficult than at present. Other opponents, including representatives of ANC 3C, expressed concern that the new regulations would allow matter-of-right schools in established neighborhoods with no community input. The chair of the D.C. Public Charter School Board testified to the role of his Board and their willingness to work with the Commission on communication and addressing community concerns regarding new schools. No representative of the District of Columbia Board of Education or District of Columbia Public Schools testified.

The Office of Planning, through testimony and a written report, suggested that the Commission:

- Add a new § 401.9 to clarify the lot width requirement for public schools on corner and through lots;
- Add a new § 401.10 to clarify that public schools locating on existing split-zoned lots can use the lot area and width standards of the less restrictive zone;
- Remove the lot area requirements for public schools in R-5-C, R-5-D, and R-5-E Zone Districts;
- Reduce the minimum lot width requirement for public schools to 80 feet in all R-5 Zone Districts; and
- Treat public schools as residential uses for purposes of calculating density in Commercial Zone Districts.

After the hearing, the Office of Planning filed a supplemental report suggesting that the Commission add a new § 401.11 to exempt public schools with 16 or fewer students from the residential lot requirements.

The Commission took proposed action on July 10, 2006 to approve the proposed text with the modifications suggested by the Office of Planning at the hearing and in its supplemental report.

Because the text of the proposed rule differed in several respects from that published in March 2006, a Revised Notice of Proposed Rulemaking was published in the *D.C. Register* on July 21, 2006 at 53 DCR 5888, for a 30-day notice and comment period. A Corrected Revised Notice of Proposed Rulemaking was published on August 18, 2006 at 53 DCR 6860.

The majority of the comments received expressed opposition to the proposed exception from residential lot requirements for schools of 16 or fewer students, believing that the exemption would destabilize existing residential neighborhoods due to the potential negative impacts of very small schools.

ANC 3C submitted a resolution dated August 22, 2006 in opposition to the text amendment. The resolution recommended that all charter schools require special exception approval in order to assure full participation by affected residents. It further listed nine reasons for the ANC's opposition to the proposed regulation, including the potential destabilization of residential areas, lack of limits on the number of schools in a neighborhood, lack of community input in the existing chartering process, and the lack of a citywide plan for educational institution location.

An August 24, 2006 letter from Mr. Lindsley Williams described three areas that he believes need further clarification. Two of the issues concerned text already in the Zoning Regulations. First, he suggested that the extent to which a public school may allow community uses should be more clearly defined. Second, he questioned why the current regulation (and three provisions in the proposed text) refers to compliance with Chapter 21 (Off-Street Parking Requirements) but not Chapter 22 (Off-Street Loading Facility Requirements). As to the proposed text, he recommended clarifying the definition of "employees" for the purposes of calculating the parking standards for pre-elementary and pre-kindergarten schools, given the extent to which contractors and other third parties service such facilities.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. The NCPC Executive Director, by delegated action dated August 8, 2006, found the proposed text amendments would not affect the identified federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

The Office of the Attorney General determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on September 25, 2006.

The Commission decided to remove the proposed new § 401.11 that created an exception from the lot dimension requirements in Residence Districts for public schools with no more than sixteen students. The Commission believes that ANC 3C offered persuasive advice regarding the potential negative impacts the exemption would have on residential neighborhoods. Moreover, after the Commission added this provision, it learned that no existing public school (including any charter school) was small enough to qualify for the exception and it is unlikely that any future school of that size would be established. The Commission concluded that the combination of these factors warranted the elimination of the proposed exception. The remaining concerns of the ANC pertain to actions of District agencies that are not under the control of the Zoning Commission. The District government has decided to allow Charter Schools. The Commission began this case because that use was undefined. The Commission cannot wait for other

processes to occur before allowing these schools in the areas they are intended to serve, under conditions that will mitigate any potential adverse impact.

The Commission also noted that while Mr. Williams' comments were meritorious, further study was needed before they could be implemented. Rather than delaying the permanent implementation of this rule, the Commission requested that the Office of Planning study the issues raised by Mr. Williams' comments and report the results to the Commission.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 1, 2, 4, 5, 6, 7, 9, and 21 of the Zoning Regulations, Title 11 DCMR. Added wording is underlined, and deleted wording is shown in strike-through lettering:

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 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>

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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>80</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 Public School</u>	<u>9,000</u>	<u>80</u>
<u>R-5-C, R-5-D, R-5-E Public School</u>	<u>None prescribed</u>	<u>80</u>
R-5-B, R-5-C, R-5-D, R-5-E All other structures	None prescribed	None prescribed

3. By adding new §§ 401.8 through 401.10 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.

401.9 For public schools on a corner lot or through lot, minimum lot width may include the measurement of all street frontages.

401.10 For public schools on split-zoned lots, the minimum lot width and minimum lot area requirements if any, of the less restrictive zone shall apply to the entire lot as long as the lot was in existence as of February 13, 2006.

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 shall 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 as follows:

1. By amending the heading of the table in § 771.2 to read as follows:

ZONE DISTRICT	APARTMENT HOUSE OR OTHER RESIDENTIAL USE <u>OR PUBLIC SCHOOL</u>	OTHER PERMITTED USE	MAXIMUM PERMITTED (FAR)
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2. 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>

- I. Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended by adding to the table of special exceptions in §3104.1, in the proper alphabetical order, the following new entry:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH CONDITIONS ARE SPECIFIED
Public school (not meeting the Requirements of Chapter 4).	Any R District	206

Vote of the Zoning Commission taken at its public meeting on July 10, 2006, to **APPROVE** the proposed rulemaking by a vote of **4-0-1** (Carol J. Mitten, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve; Anthony J. Hood, not participating, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 25, 2006, by a vote of **3-0-2** (Carol J. Mitten, Gregory N. Jeffries, and Michael G. Turnbull in to adopt; John G. Parsons, not present, not voting; Anthony J. Hood, not participating, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is, on DEC - 1 2006.



CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

AND

Z.C. ORDER NO. 06-06

Z.C. Case No. 06-06

(Text Amendments – 11 DCMR)

(Charter Schools Text Amendments)

September 25, 2006

The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 06-06

DEC 05 2006

As Director of the Office of Zoning, I hereby certify that on _____ copies of this Z.C. Notice of Final Rulemaking & Order No. 06-06 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. All ANC Chairs (see attached list)
3. Gottlieb Simon
ANC
1350 Pennsylvania Ave., N.W.
Washington, D.C. 20004
4. All Councilmembers (see attached list)
5. Office of Planning (Ellen McCarthy)
6. Ken Laden, DOT
7. Zoning Administrator (Bill Crews)
8. Office of the Attorney General (Alan Bergstein)
9. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002

ATTESTED BY:

A handwritten signature in cursive script that reads "Sharon S. Schellin".

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning