

Jablow Testimony, February 23, 2023

I am Valerie Jablow, and as a DC resident I am here to outline for you how the office of zoning, office of planning, and the zoning commission together act on flawed, self-interested, and publicly exclusionary data and decisions.

Last year, Ward 8 residents who were harmed by a charter school development [petitioned](#) the zoning commission (ZC case 22-26) to have DC charter schools—all of which are private nonprofit businesses--declared private for the purpose of land use and development, thus ensuring better public oversight and voice through the BZA (board of zoning adjustment) process. (See [here for all documents](#) in this case.)

The office of planning created a report on the petition for the office of zoning. Based on statements the planning office solicited from self-interested public and private actors, including the [Federal City Council](#) and [charter board](#), that [office of planning report](#) is factually wrong in many areas.

In my written testimony, I have outlined more than a dozen serious errors in those documents (see footnote below).

Importantly, the office of planning report determined that it would be confusing to have charters declared private in any manner and that democratically controlled processes ensure public voice in DC charter land use and development.

I want to ensure the record is clear on this:

*DC charters exist whenever, however, and wherever entirely as a private matter decided by their private boards and approved by unelected and publicly unaccountable DC charter board members. The ONLY public process in DC charter school land use and development is public notification that the schools are hoping to start, expand, or locate somewhere. The public literally only has the ability to **comment** on that—NOT to direct, reject, petition, or choose it.*

Like other DC residents harmed by charter development in their midst (see [here](#) and [here](#) and [here](#) and [here](#)), the petitioners in this case know that bait and switch well:

Almost an entire charter school building was built in their midst without appropriate permits, causing damage to adjacent properties. They neither wanted it nor the problems it brought, but had no choice in the matter.

Public oversight through BZA would have provided them some protection.

Any change in zoning for charters would affect charters only as they wish to expand or locate somewhere--and neither is specified OR required by DC government. There is

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literally NO government agency or process *directing* DC charter school land use and development, unlike that for DCPS—though both are considered matter of right.

In short, charter school land use and development in DC is **not** a public process whatsoever—it is a private process with limited public *notification*, like development of private schools here, which are subject to BZA.

But DC’s zoning commissioners never heard any of this--despite my writing to the zoning office about it. Instead, the zoning commission voted against the petitioners on the basis of flawed office of planning documents.

That’s because zoning commissioners have no obligation to hear *anything* from the public before deciding to allow a case to go forward—even *when their decision relies on biased and inaccurate material as it did for this case*. The only time the commission hears public testimony is if they accept a case to be set down for a public hearing.

There is no justice in the “quasi judicial” zoning commission operating in such an ill-informed manner—especially as appropriate DC land use and development is the responsibility of the zoning commission, not that of private nonprofit businesses.

I urge you now to change how the zoning commission works and ensure its responsiveness to the public it supposedly serves. Thank you.

FOOTNOTE:

PROBLEMS IN OFFICE OF PLANNING DOCUMENTS FOR ZONING COMMISSION CASE ZC 22-26

Background for ZC 22-26:

The office of zoning sent the Ward 8 residents’ [original petition](#) (ZC 22-26) to the office of planning, which in turn sent it to the following for comment:

--Deputy mayor for education (appointed by and answerable to the mayor); [see here](#).
 --The executive director of the DC public charter school board (appointed by the public charter school board and answerable to that body only, which is itself appointed by the mayor); [see here](#). *It is important to note that the charter board receives annual revenue from each charter school, so it is a self-interested body inasmuch as charter proliferation fiscally benefits the charter board.*

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--The federal city council (a private organization with no public answerability that has advocated for charters in DC); [see here](#).

Based on reports by those entities, the [office of planning issued a report](#) on the petition, directed to the office of zoning. The zoning commission used that report as the basis of their decision to reject the Ward 8 residents' petition.

Those office of planning documents raised a number of objections to the petitioners' desire to have charter schools declared as private for the purpose of zoning: administrative burden, additional time, confusion about whether DC charters are not private, and additional costs.

*But those office of planning documents also have **significant omissions, erroneous presumptions, and outright misrepresentations**, which I have documented below.*

Omissions in office of planning documents for ZC 22-26:

--The fact that changing zoning status does not affect charters EXCEPT as existing charters wish to expand or re-locate and future ones wish to locate somewhere.

--The fact that the public is never directly involved in charter decisions, whether in locations, expansions, or existence and that the public's role therein is limited to **commentary**—NOT directing, rejecting, petitioning, or choosing any charter locations, expansions, or even existence.

--The express difference in how DCPS operates from DC charters, as the people directing DCPS actions are public officials with a statutory duty TO the public and with direct oversight of elected officials.

Erroneous presumptions in office of planning documents for ZC 22-26:

--The untrue presumption that notice to the public of charter school locations is democratically sufficient.

—The untrue presumption that treating charter **locations** for zoning as if they were private schools would hurt charter enrollment—with no explanation of how zoning would affect either the public funding of charters or their appearance in the lottery (in reality, it wouldn't, because both are set in law).

—The misguided presumption that this zoning change would bring new administrative burdens and costs to charters, without acknowledging the extensive public burden charter development already incurs on DC taxpayers.

Outright misrepresentations and misunderstandings of DC law in office of planning documents for ZC 22-26:

1. "Schools are non-residential uses that are deemed to be compatible with residential uses and are to be located near and integrated into the community they serve and add to neighborhood character" (p. 6, office of planning report).

No DC charter school "serves" a specific physical community. All DC charters are schools of choice constituted of those who apply through the lottery. That may in fact be people from a specific physical community—but that is happenstance, not by design.

2. "DC PCSB [public charter school board] has open meetings on each application where residents can make their concerns known. This process seems to be similar to the BZA process and the remedy may be for the DC PCSB to make changes to their review process to better address community concerns" (p. 7, office of planning report).

This is a misrepresentation.

A DC charter school's approval to exist and its finding a site are decoupled. The approval often comes well before the school has signed a lease or purchased property.

Once a charter is approved by PCSB and has secured a location, it then seeks PCSB approval of that location. **This is the first time the public is notified about the charter school's actual location.** The public has no way to know ahead of time what locales are being considered seriously and no way to give voice to any of that except after the fact of the selection of the actual location by the charter school.

And the public certainly has no choice in what charters decide to apply for existence, much less when or where—and has no power to influence any of that because all decisions and oversight are by unelected and publicly unaccountable bodies (the charter board as well as individual charter school boards). I have never known the charter board to vote against a charter school location, no matter community opposition.

3. "The proposed amendment could result in the displacement of students from the schools they currently attend. Having charter school [sic] be categorized as private school when they are not on DCPS property could result in uncertain funding of charter schools when they need to expand or relocate. This could lead to them have to reduce the number of children they serve or having to close. The result could also affect students with special needs being displaced due to closure of schools or reduction in

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curriculum which could reduce the number of schools that provided opportunities for their education” (p. 10, office of planning report).

This is a grave misunderstanding of DC law.

Charters will always get the same amount of public money no matter their zoning. The uniform per student funding formula is encoded in DC law and is completely separate from any and all issues of zoning, location, or facilities.

As it is, expansion of all DC charters is a CHOICE the schools themselves make, at their own discretion. Their expansion is never a requirement of anyone or anything in DC government. Thus, the “need to expand” is entirely a private matter.

And PCSB closes charter schools for low test scores, unrelated to zoning.

4. On p. 10 of the office of planning report, demographic data are used to support a statement of “the important role charter schools play in public education.”

Not only can the same data could be used to support “the important role DCPS plays in public education,” but this statement ignores the fact that the change in zoning that the petition seeks doesn’t presume to close any charters or otherwise affect their role at all.

5. “DC PCSB monitors potential school locations and each charter school is required to work with the neighborhood in which they are located to address their concerns. The charter and collocated DGS [sic] and DC PCSB work together to address community impacts” (p. 12, office of planning report).

This is a misrepresentation.

PCSB does NOT “monitor potential school locations” with any specificity or public acknowledgement, and charter school interaction with neighborhoods is after their own choosing of those locations. By the time the public is notified of a charter desire to locate anywhere, the process is already well along, directed entirely by the charter schools themselves, NOT by the general public or by elected officials or DC regulations.

Moreover, PCSB has no authority to order a charter school to dispose of its private property in any manner, because all DC charters are private nonprofit businesses.

6. “In addition to the funding that charter school [sic] receive from the government for each student and for facilities, it is also necessary in some situations to seek other

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financing to support their facility's needs. If the charter schools were to be classified as private schools it may result in greater dependence on these financing programs" (p. 13, office of planning report).

This is a misrepresentation.

As private nonprofit businesses whose main source of revenue is public funds, DC charters have easy access to low-cost loans through the DC revenue bond program as well as loans and other financing through the office of the state superintendent of education. That access is based on the charters' self-reporting and PCSB ratings, not zoning considerations. DC charters also use bank loans, which they secure regularly through the strength of their main source of revenue, which is DC taxpayer funds.

7. On p. 12 of the office of planning report, quoted passages of the comp plan support enacting the petition's change by examining cause and effect of charter location and co-locations, something that currently is not done by any public body in DC.