

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN Secretary
ESTHER BUSHMAN General Counsel

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
TRAVIS PARKER

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the
minutes from the Public Hearing held on
April 19, 2007.

A G E N D A

Z.C. Case No. 06-23

Text Amendment - Eating Establishment
Definition

ANC 6A: 8
Commissioner Fengler

OFFICE OF PLANNING 57
Travis Parker

PROPOSERS

Andrew Klein 82
Linsley Williams 89
Commissioner Jarboe 95

PERSONS IN OPPOSITION

Nancy Macwood, Commissioner, ANC 3-C . 107
George Idelson 114

1 P-R-O-C-E-E-D-I-N-G-S

2 6:38 p.m.

3 VICE CHAIRMAN HOOD: All right.
4 We're ready to get started.

5 Good evening, ladies and
6 gentlemen. This is a Public Hearing of the
7 Zoning Commission of the District of Columbia
8 for Thursday, April 19th, 2007.

9 My name is Anthony J. Hood and
10 joining me this evening are Commissioners
11 Jeffries, Parsons and Turnbull.

12 We're also joined by the Office of
13 Zoning staff Sharon Schellin and Esther
14 Bushman. And also the Office of Planning to
15 my right.

16 The subject of this evening's
17 hearing is Zoning Commission Case No. 06-23.
18 This is a request by ANC-6A for Text
19 Amendments to Title XI of the District of
20 Columbia Municipal regulations of zoning to
21 clarify the definitions for eating
22 establishments.

1 Notice of today's hearing was
2 published in the D.C. Register on June 2nd,
3 2006. Copies of today's hearing announcement
4 are available to you and are located to my
5 left on the table near the door.

6 The hearing will be conducted in
7 accordance with the provisions of 11 DCMR
8 3021. The order of procedure will be as
9 follows: Preliminary matter, presentation by
10 the petitioner. In this case it's ANC-6A.
11 Presentation by the Office of Planning,
12 reports of other Government agencies, if any,
13 organizations and persons in support,
14 organizations and persons in opposition.

15 The following time constraints
16 will be maintained in this hearing.

17 Organizations five minutes,
18 individuals three minutes.

19 The Commission intends to maintain
20 these time limits as strictly as possible in
21 order to hear the case in a reasonable period
22 of time. The Commission reserves the right to

1 change the time limits for presentations, if
2 necessary, and notes that no time shall be
3 seeded.

4 All persons appearing before the
5 Commission are to fill out two witness cards.
6 These cards are located to my left near the
7 door.

8 Upon coming forward to speak to
9 the Commission, please give both cards to the
10 reporter sitting to my right before taking a
11 seat at the table.

12 Please be advised that this
13 proceeding is being recorded by a Court
14 Reporter and is also webcast live.
15 Accordingly, we must ask you to refrain from
16 any disruptive noises and actions in the
17 hearing room.

18 When presenting information to the
19 Commission, please turn on and speak into the
20 microphone, first stating your name and home
21 address. When you are finished speaking,
22 please turn your microphone off so that your

1 microphone is no longer picking up sound or
2 background noise.

3 The decision of the Commission in
4 this case must be based on the public record.
5 To avoid any appearance to the contrary, the
6 Commission requests that persons present not
7 engage the members of the Commission in
8 conversation during a recess or any other
9 time.

10 The staff will be available
11 throughout the hearing to discuss procedural
12 questions. Please turn off all beepers and
13 cell phone at this time so not to disrupt
14 these proceedings.

15 At this time, the Commission will
16 consider any preliminary matters. Does the
17 staff have any preliminary matters?

18 ACTING SECRETARY SCHELLIN: No,
19 sir.

20 VICE CHAIRMAN HOOD: Okay. Thank
21 you, Mrs. Schellin.

22 Okay. ANC-6A and Commissioner,

1 you're very familiar and I want to call your
2 name, but I can't remember it. Commissioner?

3 COMMISSIONER FENGLER: Joe
4 Fengler.

5 VICE CHAIRMAN HOOD: Fengler.

6 COMMISSIONER FENGLER: Joseph
7 Fengler.

8 VICE CHAIRMAN HOOD: Commissioner
9 Fengler.

10 Commissioner Fengler, you may
11 begin.

12 COMMISSIONER FENGLER: Thank you.

13 My name is Joseph Fengler. I'm
14 the Chair of ANC-6A. My home address is 815
15 F. Street, N.E., Washington, D.C 20002.

16 Member of the Zoning Commission,
17 on behalf of ANC-6A, let me thank you for the
18 opportunity to offer our community's general
19 support for the Text Amendment offered by the
20 Office of Planning to revise the definitions
21 of restaurants and fast-food restaurants and
22 to make other amendments intended to better

1 differentiate between the various types of
2 eating establishment uses permitted in the
3 District.

4 According to the DCMR, fast food
5 restaurants in a C2A commercial zone district
6 are only allowed to open with the approval of
7 the Board of Zoning Adjustment. Before
8 opening, fast food restaurants must obtain a
9 special exception from the BZA addressing
10 potentially objectional aspects of operations
11 such as trash, traffic, litter, noise, vermin
12 and other spill-over effects on residential
13 areas.

14 Over the past several years, our
15 Commission has sought to protect the rights of
16 residents to the public intent of this issue
17 that affect the quality of life in residential
18 areas including fast food restaurants.

19 As a result of our involvement in
20 this issue, it has become clear that the
21 existing eating establishment definitions need
22 to be amended. The current definitions are

1 unnecessarily convoluted, difficult for DCRA
2 to implement and contrary to the expectations
3 of a reasonable lay person.

4 Our Commission spent our six
5 months researching the definitions of fast
6 food restaurants and restaurants during the
7 first six months of 2006. During that review
8 we surveyed 47 different cities' definitions
9 of restaurants and fast food restaurants to
10 include the following cities. Calistoga,
11 California, San Francisco, California,
12 Berkeley, California, Boulder, Colorado,
13 Miami, Florida, Athens, Georgia, Chicago
14 Illinois, Cambridge, Massachusetts, Kansas
15 City, Missouri, Madison, New Jersey,
16 Woodstock, New York, Arlington, Virginia and
17 Fairfax, Virginia, two locations closer to the
18 District.

19 Based on that comprehensive
20 research, which I have here for you.
21 Unfortunately, only one copy but I have a copy
22 for the Board for your review if you so

1 choose.

2 Based on that research, we have
3 reviewed the Office of Planning's Text
4 Amendment and while we generally support the
5 amendment, we have the following concerns.

6 First, the self-certification
7 clause contained in the proposed Text
8 Amendment.

9 Two, the definition of prepared
10 food shop based on the number of seats.

11 Three, the lack of definition of
12 clearly subordinate to the principal use.

13 Four, no explanation or definition
14 of what a restaurant is.

15 However, we do support the
16 following criteria offered in the Text
17 Amendment.

18 Customers pay for the food before
19 it is consumed, which is noticed by a service
20 counter without seating. Food is served on or
21 anything else than non-disposable plates. The
22 physical criteria there being the plans do not

1 include a dishwasher or the plans do include
2 trash receptacles in the public area.

3 We believe these physical
4 components in the Text Amendment provide the
5 much needed characteristics for DCRA to
6 evaluate building plans to assess
7 establishments, to assess which fast food
8 establishments require a special exception.

9 Accordingly, we submit an
10 alternative Text Amendment for your
11 consideration this evening and I have 28
12 copies here in front of me.

13 This alternative Text Amendment
14 encompasses a significant majority of the
15 proposed Office of Planning Text Amendment
16 additions.

17 On behalf of ANC-6A and our
18 community we thank you for your time and
19 consideration on this matter. I would like to
20 give you our Text Amendment and use the
21 remainder of my time to explain the subtle
22 difference, if I may?

1 VICE CHAIRMAN HOOD: Sure. Thank
2 you.

3 COMMISSIONER FENGLER: In sum,
4 what we propose over these two pages is to
5 include a general definition of a restaurant.
6 One of the things that ANC-6A found in the
7 Zoning Text Regulations is that when you read
8 the Regulations, it does not really indicate
9 what a restaurant is. It spells out what a
10 fast food restaurant is, but does not give the
11 general lay person any understanding of what
12 the city intends that a restaurant should look
13 like.

14 So, our proposed definition would
15 include a general definition of a restaurant
16 to list the characteristics of that
17 restaurant, to provide the very formal
18 transmission of what the intent of the Zoning
19 Regulation is.

20 The second component of our Text
21 Amendment is to change the definition of a
22 fast food restaurant, which is followed on the

1 second page.

2 Many of the items contained in the
3 Office of Planning Text Amendment are also
4 found in our Text Amendment. The significant
5 difference is that we do not have a special
6 carved out exception for a planned food
7 service, which has a requirement in the
8 proposed Text Amendment of having 12 seats.
9 Instead we list very specific characteristics
10 under sub-point B and the exclusions under
11 sub-point C provide further definition of a
12 delicatessen and a coffee shop.

13 We believe the coffee shop
14 definition would replace the intent of the
15 prepared fast food -- of the prepared food
16 definition contained in the Office of
17 Planning's proposed Text Amendment.

18 In close, we're trying to get to
19 the same thing. And that is, giving DCRA
20 physical characteristics of which they can
21 assess building plans to determine which
22 establishments require a special exception and

1 which establishments don't.

2 We believe our Text Amendment goes
3 further and lays out to the general public, a
4 reasonable lay person, what the city believes
5 a restaurant is and what the city believes a
6 fast food restaurant is. We contain all the
7 enforcement mechanisms on the fast food
8 restaurant definition which is consistent with
9 how the Office of Planning is proposing the
10 Text Amendment for you this evening.

11 So, the subtle difference is
12 between our proposed Text Amendment that we
13 would offer counter to the Office of
14 Planning's Text Amendment is, again, the
15 general summary of what a restaurant is so
16 that a reasonable lay person can read it and
17 understand. And, two, a more specific
18 definition of the fast food restaurant
19 characteristics.

20 That concludes my testimony.

21 VICE CHAIRMAN HOOD: Thank you,
22 Commissioner Fengler.

1 And I want to say to ANC-2A, you
2 know, being a volunteer, I know how that is
3 and I commend you for you and your Commission
4 for bringing this forward to us to deal with.
5 And I would agree. I'm not sure if I'm
6 hearing from anyone else yet, but I would like
7 to see anything so a lay person like you and
8 I can understand it.

9 But, anyway, let's --
10 unfortunately, we were given a submittal which
11 I understand has some very good information
12 from -- well, what you just passed us for us
13 to look . And also ANC-6B -- I see it here,
14 6-C. I see Commissioner Macwood's ANC in
15 here. I haven't had a chance to read it
16 because we got it this evening.

17 Also, Cleveland Park, I understand
18 has some good thing. But, unfortunately, we
19 had this. So, we're operating at a little bit
20 of a disadvantage because we just got this
21 this evening. But we will be hopefully asking
22 some questions from this. If not, when you

1 come and do your presentations after you,
2 Commissioner, hopefully, somebody -- they will
3 allude to what they had prepared here for us.
4 Unfortunately, we just got this.

5 And I'm sure there's some dynamite
6 stuff here, but sometime, you know, at least
7 for myself, have to have it altogether so I
8 can figure out which way we're going here.

9 So, with that, Commissioners, any
10 questions for Commissioner Fengler?

11 Am I pronouncing it right?
12 Fengler?

13 COMMISSIONER FENGLER: Yes, sir.
14 You are.

15 VICE CHAIRMAN HOOD: Okay.

16 Commissioner Parsons.

17 COMMISSIONER PARSONS: Mr.
18 Chairman, I find this troubling. I mean,
19 we're advertised a certain case here and while
20 this is very helpful, it's completely
21 different. I don't know we really proceed.

22 We can take testimony on what we

1 advertised, but --

2 COMMISSIONER FENGLER: Sir?

3 COMMISSIONER PARSONS: This is
4 different.

5 COMMISSIONER FENGLER: Well, what
6 we've done. You're right it is -- we are
7 testifying in support of the Office of
8 Planning's Text Amendment. It's my estimation
9 that we have an 80 percent overlap between --

10 COMMISSIONER PARSONS: Eighty
11 percent?

12 COMMISSIONER FENGLER: Eighty
13 percent overlap. So, there is -- well, the
14 idea of the testimony is that we have some
15 concerns with how the Office of Planning
16 treated a few things such as, you know, the
17 self-certification. Yes. The self-
18 certification, etcetera, etcetera.

19 And our testimony is, we believe
20 that we shouldn't have self-certification,
21 that we should have a better definition of
22 what a prepared food shop is, not based on 12

1 seats. So, we're talking to the specific
2 nature of the Office of Planning Text
3 Amendment.

4 COMMISSIONER PARSONS: Okay.

5 COMMISSIONER FENGLER: And, you
6 know, that's --

7 COMMISSIONER PARSONS: All right.

8 COMMISSIONER FENGLER: I
9 apologize.

10 COMMISSIONER PARSONS: That's all
11 right. Let's go to the specifics.

12 COMMISSIONER FENGLER: Yes, sir.

13 COMMISSIONER PARSONS: Under
14 Exclusion C-2 you talk about a coffee shop,
15 delicatessen, ice cream parlor.

16 COMMISSIONER FENGLER: Right.

17 COMMISSIONER PARSONS: But only if
18 any other use is clearly subordinate.

19 How would you define subordinate?
20 50 percent?

21 COMMISSIONER FENGLER: Well, we
22 would propose that subordinate would be

1 anything that's greater than 25 percent of
2 your sales going towards fast foods -- 75
3 percent of your business.

4 COMMISSIONER PARSONS: 75 percent.

5 COMMISSIONER FENGLER: Yes, sir.

6 COMMISSIONER PARSONS: Okay.

7 Thank you.

8 Because I think, wouldn't you
9 agree we need to define that term rather than
10 leave --

11 COMMISSIONER FENGLER: Yes. And
12 that's part of our --

13 COMMISSIONER PARSONS: -- it up to
14 somebody else?

15 COMMISSIONER FENGLER: Right.
16 That's all part of our testimony is the lack
17 of a definition of clearly subordinate to the
18 principal use.

19 We would offer and your proposed
20 Text Amendment would have to be set at 75
21 percent. At 75 percent of your business mile
22 must be based on a restaurant and 25 percent

1 based on carry out or fast food
2 characteristics.

3 So, we would agree with you, sir.

4 COMMISSIONER PARSONS: Okay.

5 Thank you.

6 So, that would be the same
7 percentage you have in delicatessen which is
8 the next --

9 COMMISSIONER FENGLER: We would --
10 we would define it consistently across all
11 definitions. Anything greater than 25 percent
12 carry out use would fall under the category of
13 a fast food establishment or a fast food
14 restaurant.

15 COMMISSIONER PARSONS: Okay.

16 Thank you.

17 COMMISSIONER FENGLER: I apologize
18 for the late notice and submitting an
19 alternative Text Amendment.

20 COMMISSIONER PARSONS: You know,
21 it's constructive.

22 COMMISSIONER FENGLER: Thank you.

1 VICE CHAIRMAN HOOD: Anybody else?
2 Any other questions?

3 I had a few, but actually it's for
4 the main text. I have not had a chance,
5 Commissioner --

6 COMMISSIONER FENGLER: I
7 understand.

8 VICE CHAIRMAN HOOD: -- to look at
9 what you have in here. We may have some.

10 Let me ask this though. Has there
11 been a -- maybe a question for the Office of
12 Planning.

13 In the past when we have Text
14 Amendments like this because of the variety of
15 definitions and the way to proceed.

16 Have you had any -- was there a
17 work group that did this or -- there was a
18 work group? Office of Planning? ANC-6A?
19 Andrew Park?

20 COMMISSIONER FENGLER: That's
21 correct, sir. That's correct.

22 VICE CHAIRMAN HOOD: So, you had a

1 number of people. So suggest the work group
2 I'm after the fact. We've already been down
3 that road?

4 COMMISSIONER FENGLER: Correct,
5 sir.

6 VICE CHAIRMAN HOOD: Okay.

7 COMMISSIONER FENGLER: And I can't
8 speak for Office of Planning, but from my
9 perspective, it was a very positive work group
10 and the result of that work group created the
11 Office of Planning Text Amendment before you.

12 VICE CHAIRMAN HOOD: Okay. Okay.
13 All right.

14 Any other questions? Mr.
15 Turnbull?

16 COMMISSIONER TURNBULL: Yes,
17 Chairman Hood.

18 I would just -- you know, I guess
19 one of the things that Commissioner Parsons
20 was talking about, we get into the definitions
21 of a lot -- and a lot of ANCs have struggled
22 with definitions and what it really means.

1 But even under, Commissioner
2 Fengler, I knew your definition under
3 restaurant and it's a fine point. But it's
4 number four. The establishment requires
5 payments only after consumption. But in
6 parenthesis you would have to say other than
7 for carry out.

8 You mean it's a no-brainer, I
9 mean, it follows, but it's one of those things
10 that you get into all of these things.

11 COMMISSIONER FENGLER: Well,
12 that's where when we -- and I will admit -- I
13 will admit up front that writing a Zoning Text
14 Amendment to capture the ever-changing
15 business model of the restaurant industry is
16 extraordinarily difficult because the models
17 change.

18 When this initial text was written
19 20 odd years ago, we didn't have the types of
20 fast food consumption we have today. So,
21 that's why in our counter testimony what we
22 wanted to offer was the inclusion of what a

1 restaurant generally looks and feels like,
2 because that doesn't change over time. And by
3 including that in the Text Amendment it gives
4 everyone -- okay. Now I see what they're
5 talking about.

6 Then let's talk about fast food
7 restaurants and that's why we're trying to
8 write the specific things trying to catch
9 today's practices so we can protect the
10 residents that abut -- that live in R-4. It's
11 actually a C2A. So, it is extraordinarily
12 difficult. And this is our best lay effort to
13 do so. And we applaud the Office of Planning
14 because they really did -- like I said, we
15 have 80 percent overlap, which I think is
16 pretty good when you consider how challenging
17 this topic is.

18 COMMISSIONER JEFFRIES: So,
19 Commissioner Fengler, so this whole business
20 of nailing down a definition for a restaurant
21 and a fast food restaurant, that was always
22 sort of -- you were at odds with the Office of

1 Planning in terms of that aspect of the text?

2 COMMISSIONER FENGLER: Well, I
3 would say at odds is a difficult challenge.
4 The Office of Planning has a requirement to
5 present something and we just at the very end,
6 we wanted to include what -- and I can't speak
7 for Office of Planning, but we wanted to
8 include a general description of what a
9 restaurant was.

10 In our definition that we proposed
11 in our Text Amendment there are no binding
12 criteria for what a restaurant truly is. It
13 communicates a sense of what we think it
14 should look like. All the binding criteria
15 and all the binding requirements that are
16 measurable are found in the fast food
17 establishment section.

18 So, Office of Planning may have
19 felt that including the definition of a
20 restaurant or a description of a restaurant
21 may be superfluous to the actual Zoning Text
22 Amendment. But we believe it's a challenge of

1 the average lay person to include that. So,
2 five years down the line if someone wants to
3 open a restaurant in a C2A, at least they have
4 an idea of what the city believes a restaurant
5 looks like and they have the Zoning
6 enforcement for what a fast food establishment
7 looks like.

8 So, again, I will leave that to
9 Office of Planning. So, those are the subtle
10 things that we're indicating, you know, and we
11 don't like the self-certification because that
12 exists today. And people can self-certify
13 themselves to be a restaurant and DCRA says
14 you're a restaurant. And that's kind of where
15 we are.

16 So, again, these are minor
17 differences. I believe minor in my mind, but
18 significant to get away from looking at the
19 regulations by the letter of the law and then
20 trying to convey a spirit of what the
21 regulation is. And that's kind of where the
22 ANC comes from that we want a document, a Text

1 Amendment that shows the spirit of where we're
2 trying to do, as well as the actual letter of
3 where we're trying to go. So, we can provide
4 a transparent regulation for industry and
5 businesses when they want to open it in a C2A.

6 VICE CHAIRMAN HOOD: Commissioner,
7 let me ask you. I'm looking here. You said
8 exclusions.

9 Are you proposing that the word
10 delicatessen and coffee shop be in the
11 regulations somewhere defined? Is that --

12 COMMISSIONER FENGLER: Right.

13 This is where we come at a little
14 bit differently. And, unfortunately, we don't
15 have the good knowledge of Travis. I kind of
16 jumped over Travis and gave you an alternative
17 of having him explain to you what they're
18 proposing.

19 But what we're saying is that a
20 coffee shop, a delicatessen, ice cream parlor
21 would be an exclusion and should not be
22 included in the definition of fast food

1 restaurant with some following criteria that
2 we list on there. The 75/25 percent rule, for
3 example.

4 Because there are certain
5 delicatessens that do have carry out, that do
6 have seats. We don't want to make those
7 delicatessens go through a special exception
8 process. But we want their use primarily
9 restaurant versus primarily carry out, because
10 a delicatessen could be a window -- a take-out
11 window with no seating and that could be a
12 delicatessen if they have sandwich meat.

13 So, again, it's hard to wrap your
14 hands around it but we're trying to, again,
15 communicate an intent.

16 COMMISSIONER JEFFRIES: What's the
17 genesis of this whole test change? Can you
18 just put that on the record? I mean, in terms
19 of what drove this.

20 COMMISSIONER FENGLER: Yes.

21 COMMISSIONER JEFFRIES: I mean, is
22 it a proliferation of carry-out restaurants

1 and --

2 COMMISSIONER FENGLER: Yes.

3 COMMISSIONER JEFFRIES: -- okay.

4 COMMISSIONER FENGLER: Generally,
5 ANC-6A has the H Street, NE, corridor in our
6 Commission and that's a corridor that's
7 undergoing revitalization. It's a C2A. And
8 the corridor, the business corridor has
9 sometimes an alley way and sometimes it has no
10 alley way between the commercial C2A and the
11 R4.

12 There has been several eating
13 establishments that have opened up on the H
14 Street Corridor that we have believed are more
15 fast food in nature and not a restaurant in
16 nature. One of them was a Blimpie's case
17 where we actually appealed and won.

18 The other one was Cluck U Chick
19 where we appealed and lost.

20 COMMISSIONER JEFFRIES: What was
21 the name of that?

22 COMMISSIONER FENGLER: Cluck U

1 Chicken.

2 COMMISSIONER JEFFRIES: Cluck U?

3 COMMISSIONER FENGLER: Cluck U

4 Chicken. That was BZA -- no, no. It's

5 actually -- the food is quite good. I mean,

6 it's really a great place to eat, but that the

7 Cluck U Chicken case was BZA Case 17439 and

8 the Blimpie's case was BZA Case 17214.

9 So, from our perspective, these
10 two food establishments have the same
11 operating principle. Okay. They had a large
12 carry-out component. Both of these
13 establishments required a high turnover of
14 customers to support their business model.

15 So, on one case we prevailed and
16 on one case we lost. And in the case of the
17 Cluck U Chicken was the Chair of the BZA that
18 said that this zoning text is probably the
19 most antiquated and outdated and sorely needed
20 of reform. I'm paraphrasing. Right? So,
21 that was our trigger as an ANC to say. Okay.
22 If I have the Board of Zoning Adjustment

1 saying that the current zoning regulations
2 that determine what a fast food restaurant are
3 so poorly written that they can't really can't
4 -- anything can qualify for a restaurant.
5 That was a signal to us as a community that we
6 had to approach Office of Planning and try to
7 update the text for what a restaurant or what
8 a fast food restaurant is so we can provide
9 some stability.

10 We take no joy in going after
11 someone who spends a lot of their -- hundreds
12 of thousands of their own dollars to open up
13 an establishment. But if that establishment
14 is based on high volume, high traffic, that is
15 not congruent with someone's house 50 feet
16 away. That's why we have the C2A protections.
17 Why it's not a matter of right for a fast food
18 restaurant in a zone C2A. They can come, need
19 a special exception, which is that transparent
20 public process that we encourage.

21 So, what we're trying to do, just
22 to be clear, is we're not trying to say no

1 fast food restaurant at all on a C2A. We just
2 want the burden of transparency. We want the
3 opportunity for a community to have a chance
4 to say based on a business model that looks
5 like a fast food restaurant, the special
6 exception process. That's what we want.

7 This is not saying it can never be
8 there. It just says if you have these
9 characteristics that are high volume, high
10 food, high content, high turnover, then you
11 need a special exception. That allows a
12 community to come in and look at the owner to
13 see what the effects are and maybe offer site
14 agreements that could be appended to the
15 business license about trash pick-up, cleaning
16 pick-up.

17 A lot of fast food restaurants
18 they have grease. They have a high volume
19 that's deep fried. Where do you store the
20 grease? Is it a 50 gallon container? Is it
21 a 25 gallon container? How often do you empty
22 it? If that container is 10 feet from

1 someone's backyard you want to empty it
2 probably, you know, a couple of times a week.

3 How do you handle trash? Do you
4 have someone that goes outside and picks up
5 the trash? Because if you're a fast food
6 restaurant, people tend to litter more.

7 These are the things that with a
8 special exception process we can append to a
9 Certificate of Occupancy and hold them
10 accountable to give them that right to operate
11 in a C2A, which right now doesn't exist
12 because almost everything that comes in front
13 of DCRA is classified as a restaurant.

14 VICE CHAIRMAN HOOD: Go ahead.

15 COMMISSIONER TURNBULL: I was just
16 wondering.

17 You are very specific in your use
18 of restaurants and knowing either on H Street
19 or an historic area. I'm wondering why and I
20 was going to ask the Office of Planning why
21 you didn't make reference or try to define
22 formula restaurant?

1 COMMISSIONER FENGLER: By
2 definition, sir?

3 COMMISSIONER JEFFRIES: Formula
4 restaurant. The formula restaurants are your
5 main fast food restaurants. That's -- I'll
6 give you a couple of definitions. It's
7 business name common to similar businesses
8 located elsewhere. Standardized menus.
9 Ingredients, food preparation is uniform or
10 other standardized features common to
11 restaurants located elsewhere.

12 Interior decor common to similar
13 businesses located elsewhere, architecture
14 interior signs. Use of a trademark or logo.
15 You know where I'm going?

16 COMMISSIONER FENGLER: Yes. I do
17 and thank you very much.

18 COMMISSIONER JEFFRIES: And I'm
19 wondering why that's not -- I mean, if that's
20 -- and I can see in the historic area or an
21 area where you're very concerned. You want to
22 keep the character. You want the mom and pops

1 and you don't want the "formula" restaurants.
2 And I'm wondering why you didn't bring up that
3 or go down that road?

4 COMMISSIONER FENGLER: I have
5 three reasons why.

6 Just to be clear first. H Street
7 Corridor is not a historic corridor.

8 COMMISSIONER JEFFRIES: Right.

9 COMMISSIONER FENGLER: Okay. So,
10 we're really talking about C2A corridors with
11 R4 residential communities that abut against
12 them.

13 Second, we struggled with the
14 business model approach. If you have a Text
15 Amendment that's based on a business model,
16 the type of menu, how the food is cooked, the
17 color of the decor, whether it is a trademark
18 name or a name that's replicated elsewhere.
19 When DCRA gives those permits, they can't
20 evaluate that business model. All they can
21 really evaluate are the physical
22 characteristics presented to them on the

1 actual drawings.

2 So, what we tried to do because
3 that is very subjective. And even in the
4 Cluck U Chicken order which we lost and I have
5 a copy of that here. Only one copy. I can
6 leave it with Sharon. Is that towards the
7 end, the BZA is saying at the time that DCRA
8 gave the permit application, they had no way
9 to know the model. They had no way to know
10 whether the food was going to be bought in
11 advance or not bought in advance. They had no
12 way of knowing the actual business model.
13 Because all they a really have are a series of
14 business plans.

15 So, when we did that research
16 against 47 different cities across the
17 country, two things came out screaming at us.
18 And I'll leave this copy with Sharon too.
19 And, again, I apologize for not having enough
20 copies.

21 But the two things that came out
22 are the physical characteristics that were

1 embedded in other cities' zoning text
2 amendments. And those physical
3 characteristics were a service counter with no
4 seating, trash receptacles in the common area
5 and what we did not include was a billboard or
6 a board fashioned to elicit all the menu items
7 and then you have the lights that light it up.
8 That would seem to also indicate that it is
9 predominately more carry out than it was a
10 restaurant.

11 We did not include the physical
12 board component because it was hard for us.
13 You know, how do you put that on a drawing
14 whether there's going to be a board there or
15 not? So, we stuck to physical attributes that
16 could be readily identifiable by DCRA
17 officials in the permit process that would
18 trigger a flare that says. Based on what your
19 drawings look like, this appears to be a fast
20 food restaurant. We're going to set it aside
21 and we're going to have a further review of
22 that. So, that's why we didn't include that.

1 And my third comment was is that
2 sometimes you can have like a Denny's for
3 example. I mean, there is a restaurant that
4 has many franchises that would qualify, a
5 Silver Diner Cafe. So, we were hesitant to
6 lock it in to like a McDonald's or a Burger
7 King or a KFC because sometimes those
8 franchises. There are franchise restaurants
9 that we would welcome in a C2A zone because
10 they are predominately sit-down. They're not
11 high volume turnover foot traffic.

12 That answers your question, sir.

13 COMMISSIONER TURNBULL: I guess I'm
14 looking at more of the fast food operation
15 ones.

16 COMMISSIONER FENGLER: Yes. it's
17 just difficult to try to include those.
18 Whenever you try to put in the Text Amendment
19 or in the text, you know, how they operate, we
20 could do that, but then how does the DCRA
21 clerk know that -- what that operation is?
22 You know, it's difficult. And I think that's

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1 probably why Office of Planning and the ANCs
2 that were involved in that planning group
3 resorted to physical characteristics to give
4 DCRA a chance to have an honest review for
5 those, you know, a review of what the building
6 plans look like. And that's why we wanted to
7 include the general description of a
8 restaurant to further convey what we think a
9 restaurant is because it's pretty difficult to
10 define a fast food restaurant because it
11 always changes. It always changes.

12 But a restaurant model has always
13 kind of been the same way. You sit down, you
14 have dinner and that's kind of why we are
15 proposing to include that in the Office of
16 Planning Text Amendment.

17 VICE CHAIRMAN HOOD: Let me ask
18 you a straightforward question here. I mean,
19 I understand what's in front of us here. And
20 actually if you could see back behind, you
21 probably would laugh.

22 Are you familiar with the Florida

1 Avenue Grille?

2 COMMISSIONER FENGLER: Sir, I am
3 not. No.

4 VICE CHAIRMAN HOOD: Okay. Let me
5 describe it to you.

6 And I had to call a name. I don't
7 want to -- I hope I won't get in trouble, but
8 I want to see what your interpretation is.

9 COMMISSIONER FENGLER: Sure.

10 VICE CHAIRMAN HOOD: They cook
11 food, they have carry out. They have non-
12 disposable -- they use regular utensils, a
13 plate, non-disposable utensils. You can come
14 in and sit down. They have tables. I'm not
15 sure how many tables they have. I would say
16 roughly --

17 COMMISSIONER JEFFRIES: I'm
18 thinking 20.

19 VICE CHAIRMAN HOOD: Oh, you're
20 familiar with it?

21 COMMISSIONER JEFFRIES: I'm in the
22 neighborhood.

1 VICE CHAIRMAN HOOD: Okay. About
2 15? maybe they've taken some out since the
3 last time I was there.

4 COMMISSIONER JEFFRIES: There is a
5 long counter though.

6 VICE CHAIRMAN HOOD: And that's
7 it. That was my point. There's a long
8 counter with seats.

9 From that abstract description,
10 what would we consider that?

11 COMMISSIONER FENGLER: I think --

12 COMMISSIONER JEFFRIES: Let me add
13 too that that restaurant has high volume. I'm
14 sorry, not to say a word, but that place has
15 high volume. I mean, there's lots of activity
16 -- lots of people in and out.

17 COMMISSIONER FENGLER: Sure.

18 You know, based on the physical
19 characteristics of the counter with seats,
20 that would -- both in the Office of Planning
21 Text Amendment and our Text Amendment, that
22 would look like it's a restaurant.

1 The fact that under the Office of
2 Planning Text Amendment and our Text Amendment
3 if they used disposable utensils, that would
4 be an issue of concern. We would look to see
5 if they had a dishwasher and other physical
6 characteristics to see if they really are
7 predominately carry out or eating in.

8 The fact that you tables is really
9 excluded from both the Office of Planning Text
10 Amendment and our Text Amendment. And the
11 reason why, McDonald's has tables. Burger
12 King has tables.

13 To your question directly would
14 this be classified -- would this be -- would
15 this establishment require a special
16 exception? I guess it would the break between
17 looking at the service counter and the chairs
18 and the amount of business that is done in
19 carry out fashion versus a dining in fashion.

20 So, it's hard to say. But even in
21 the end, I would posit that all we're doing is
22 triggering a special exception. If the

1 community really liked the business model and
2 liked the owner, they can support the special
3 exception process with the Board of Zoning
4 Adjustment.

5 And from my understanding, when an
6 ANC supports a special exception in front of
7 the Board in Zoning more times than not the
8 Board in Zoning goes along. That was the idea
9 of the special exception process to have that
10 community safety valve input.

11 There are lots of establishments
12 that are historical in nature in D.C. that,
13 you know, might run afoul of this current
14 definition. And we're not going after those.
15 What we're saying is that as we move forward
16 in the future, when we have high volume
17 establishments that predominately have a take
18 out role, we just want the extra step of
19 asking the community involvement before that
20 is placed next to an R4.

21 And it's a good business model. I
22 can't speak to every single one. But if it's

1 a good business model and makes sense the
2 community is going to welcome it.

3 Right now what we have anything
4 qualifies as a restaurant. McDonald's could
5 qualify for a restaurant under the current
6 definition because it has tables. So, that's
7 the dichotomy. The current status quo Text
8 Amendment is so broad that you can argue
9 anything to be a restaurant.

10 VICE CHAIRMAN HOOD: Okay. And in
11 this case, I think they do non-disposable and
12 disposable.

13 COMMISSIONER JEFFRIES: Yes. They
14 have plates.

15 COMMISSIONER FENGLER: Yes. So,
16 you know -- you know, without knowing the
17 store and seeing it, it would probably look
18 more like a restaurant than it would be a fast
19 food establishment.

20 COMMISSIONER JEFFRIES: The only
21 concern I have is, you know, obviously, a
22 number of neighborhoods in the District. You

1 know, it's changing demographics and a lot of
2 people are moving into these neighborhoods
3 where people have small businesses have been
4 in place. You know, operating, you know,
5 carry out restaurants or whatever. So, I
6 would just hate that, you know, for the text
7 to be used -- I mean, obviously, you are
8 trying to drive to a special exception. You
9 really just want to be able for the community
10 to weigh in.

11 You know, sometimes for some
12 business owners that could be a clear
13 impediment and, you know, to really having a
14 business. And, you know, my only concern is
15 that, you know, I hear you. I think the
16 language is broad, but I do think that the
17 language needs to have some breathing room
18 such that, you know, to the extent that, you
19 know, we're not showing -- we're not creating
20 an impediment for businesses -- small
21 businesses to open up. Because the moment
22 they have to come before the BZA and start

1 working with the community and so forth it
2 then becomes very expensive proposition and,
3 you know, I would just hate to see that kind
4 of impact.

5 So, that's -- I'm just speaking
6 more generically --

7 COMMISSIONER FENGLER: Sure.
8 Sure.

9 COMMISSIONER JEFFRIES: -- in
10 terms of perhaps some of the sort of
11 unintended --

12 COMMISSIONER FENGLER: Sure.

13 COMMISSIONER JEFFRIES: --
14 consequences from being too narrow in your
15 definitions and so forth and sort of driving
16 everybody down the BZA route.

17 COMMISSIONER FENGLER: Right.

18 COMMISSIONER JEFFRIES: So, anyway
19 that's for comment.

20 COMMISSIONER FENGLER: And just in
21 response. You know, again, that's why we
22 liked including what a restaurant looks like

1 for the lay person to see. That was the
2 exclusion that was not in the current Office
3 of Planning Text Amendment.

4 In addition, let me give you
5 another parallel that happens.

6 When a small business wants to opt
7 up a Class T tavern or a restaurant or a
8 nightclub, they have to go get a liquor
9 license. And in that liquor license process
10 they come to an ANC and a lot of times there's
11 a voluntary agreement that's done.

12 In my mind, this is very akin to
13 that situation. If you want to open up a fast
14 food restaurant in a C2A that abuts an R4,
15 it's one extra step. I mean, it could be a
16 daunting step but if -- if someone was to open
17 a business --

18 COMMISSIONER JEFFRIES: And
19 expensive step.

20 COMMISSIONER FENGLER: Well, it
21 depends. I don't now how, you know -- when we
22 have -- I can only give you the corollary when

1 it comes to liquor licenses. When a put
2 together business owner comes in front of our
3 ANC asking for a liquor license, they don't
4 have an attorney with them. They have their
5 business model, they bring their plan in, they
6 lay it out in 30 minutes. We talk to them and
7 we make a decision to -- 9 times out of 10 we
8 support their liquor license application
9 because they've taken the time and the due-
10 diligence. They understand what their model
11 is. And I think that process has encouraged
12 business owners who open up CTs and CR zoning
13 but really think about what their business
14 model is before they open it up.

15 There is no legal requirement to
16 have an attorney when someone goes to the BZA
17 and likewise the ANC. I do understand it is
18 an extra burden. But I think that burden is
19 worth it when it's in the gray area of use
20 that abuts a residential community. Because
21 when you have a fast food restaurant that's 50
22 feet from your house, that's why -- I mean,

1 that's why C2A says they need a special
2 exception. We're just trying to improve the
3 existing zoning that says you need a special
4 exception for a C2A.

5 COMMISSIONER JEFFRIES: There is a
6 lot of R4 that abuts against the C zone. I
7 mean, we have that quite a bit.

8 COMMISSIONER FENGLER: This is
9 with the C2A though.

10 COMMISSIONER JEFFRIES: C2A, R4.
11 I guess what I'm saying is, you know, we live
12 in a city, you know, that's dense. You know,
13 this is, you know, I mean it's a dense city
14 and, you know, I hear this all the time.
15 People, you know, trying to capture a
16 neighborhood that is effectively in a city,
17 you know, that's dense and you have different
18 uses.

19 COMMISSIONER FENGLER: Sure.

20 COMMISSIONER JEFFRIES: And I hear
21 your argument, but I just, you know, I just
22 want to caution you that, you know, this -- I

1 hear you trying to protect. You keep saying
2 50 feet away. I got it, but I just want to
3 make certain that you're clear about the
4 context in which you live in.

5 COMMISSIONER FENGLER: And, again,
6 I understand completely what you're saying.
7 To the extent that the current Text Amendment.
8 The current text -- the DCMR currently says in
9 a C2A you need a special exception for fast
10 food restaurant. That's already in the status
11 quo. What we're doing is trying to tighten
12 that up, not to restrict but to further
13 clarify so everyone understands what a
14 restaurant -- what a fast food restaurant is.
15 Right not the ambiguity is so great that it
16 causes people to go places they shouldn't
17 probably go. And we want to help them not do
18 that because we don't enjoy going after
19 someone to open.

20 I echo 100 percent of what you're
21 saying and that's why we want to try to expand
22 and clarify. Tighten is the wrong word. But

1 expand and clarify what the definition of a
2 restaurant and a fast food restaurant is so we
3 can get away from that. So it's clear to the
4 lay person what they're getting involved in
5 when they want to come to a C2A.

6 VICE CHAIRMAN HOOD: Thank you,
7 Commission Fengler.

8 Let me back up though. I'm
9 sitting here reading. Not that I'm not paying
10 attention.

11 COMMISSIONER FENGLER: I
12 understand.

13 VICE CHAIRMAN HOOD: I'm trying to
14 read some of the stuff in here.

15 We actually had a request for a
16 postponement for this evening and
17 unfortunately I did not see that until just
18 now.

19 ACTING SECRETARY SCHELLIN: Well,
20 they were just asking that the record remain
21 open. They said that they didn't receive
22 notice. However, we did send notice to every

1 ANC chair and we did not have anything
2 returned to us.

3 VICE CHAIRMAN HOOD: But I just
4 wanted to assure anyone who was here from --
5 do we have anyone here -- excuse one second.

6 Anyone here from ANC-6C? Okay. I
7 can save that explanation. I was going to
8 explain why I didn't deal with that.

9 COMMISSIONER JEFFRIES: The letter
10 does say that they have asked for a
11 postponement.

12 VICE CHAIRMAN HOOD: Yes. They
13 did ask for a postponement. And that will be
14 a comment period depending upon whichever way
15 we move because I'm not sure. But there is
16 always a -- what is it, a 30-day comment
17 period.

18 MR. RITTING: Once the record is
19 closed and a notice of proposed rule making is
20 issued, if one is issued, there is a 30-day
21 comment period. That doesn't address the
22 question of whether the record will be closed

1 at the end of tonight's hearing, whether the
2 Commission wants to continue the hearing to
3 another night, whether it wants to leave the
4 record open for certain specific comments.
5 Those are all options that the Commission has.

6 VICE CHAIRMAN HOOD: Okay. We'll
7 deal with that towards the end.

8 But I just want to notice. I just
9 noticed that they asked for a postponement.
10 Obviously we did not do that. But anyway.

11 Commissioner Fengler, let me ask
12 you a question

13 COMMISSIONER FENGLER: Sure.

14 VICE CHAIRMAN HOOD: Is what you
15 submitted tonight the same? Are there any
16 changes or it is the same that you submitted
17 with the petition? With your petition? Is it
18 exact same?

19 COMMISSIONER FENGLER: No. When
20 we petitioned to the Office of Planning,
21 essentially we made three changes to what I've
22 given you tonight from what we initially gave

1 Office of Planning. Okay.

2 VICE CHAIRMAN HOOD: Okay.

3 COMMISSIONER FENGLER: We added in
4 the definitions -- I'm trying to see here.

5 Under our definition C under
6 Exclusions, we included movie theater and
7 performing arts theater because a movie
8 theater does serve food in disposal utensils
9 and a performing arts theater does the same
10 when they have, you know, intermission, half
11 time and they're selling stuff. So, we
12 included -- we included that as an exclusion.

13 VICE CHAIRMAN HOOD: Okay.

14 COMMISSIONER FENGLER: That's one
15 and two. And second we further added that 25
16 to 75 percent definition when you get to
17 delicatessen and coffee shop. It says, in
18 delicatessen that derives more than 25 percent
19 of its sales for consumption of food or
20 beverages off the premises will be considered
21 a fast food restaurant in all case, to mirror
22 what the Office of Planning came up with in

1 one of their example.

2 So, essentially, what we have here
3 that we submitted this evening is what we gave
4 the Office of Planning in May of 2006 with
5 those minor changes. And those minor changes
6 were done based on talking to other ANCs as
7 well as looking at a provision the Office of
8 Planning derived that we though was a very
9 good provision to quantity 75 and 25 percent.

10 VICE CHAIRMAN HOOD: I thank you
11 very much.

12 Commissioners, any other
13 questions?

14 Commission Fengler, we thank you
15 for your hard work and we'll see where it
16 goes. Thank you very much to you and your
17 colleagues.

18 COMMISSIONER FENGLER: Thank you
19 very much.

20 VICE CHAIRMAN HOOD: Okay. Now,
21 we'll go tot he presentation by the Office of
22 Planning. Mr. Parker.

1 MR. PARKER: Good evening, Mr.
2 Chair, Members of the Commission. I'm Travis
3 Parker with the Office of Planning.

4 I think the best way for me to
5 proceed would be to start with 6A's version,
6 explain what's happened since the setdown, how
7 we got to the version that's in front of you
8 from OP tonight and then I can talk more about
9 that version and possible other changes.

10 VICE CHAIRMAN HOOD: Mr. Parker,
11 let me just make sure I'm --

12 MR. PARKER: Certainly.

13 VICE CHAIRMAN HOOD: Are we
14 talking about the one that was submitted
15 tonight?

16 MR. PARKER: Correct.

17 VICE CHAIRMAN HOOD: Okay. Good
18 Thank you.

19 MR. PARKER: As you pointed out,
20 this is similar to what was setdown
21 originally. And some of the comments that
22 came in from the Office of the Attorney

1 General were things that the working group
2 tried to address when the Zoning Commission
3 asked us to take a look at this and make some
4 changes to it. And some of those comment
5 included the definitions of restaurant and
6 fast food need to be made more clearly
7 exclusive of each other.

8 The definition of restaurant
9 includes a provision permitting carry out food
10 services as an accessory use and it's not
11 appropriate to do that in the definitions, but
12 should be in the text.

13 Some of the definitions within the
14 restaurant definition are vague and undefined
15 and the proposed text is confusing.

16 So, we took these -- this guidance
17 from OAG and we sat down with the working
18 group which included the ANC, ANC-6C, OAG as
19 well as the Zoning Administrator and we tried
20 to tackle some of these problems. And what we
21 came up with is what you see in our text.

22 One of the first ways that we

1 tried to handle this change was to broaden the
2 restaurant definition to make that the base
3 definition. Characteristics were not deemed
4 to be appropriate within the definition. It
5 needed to just be a textual description. And
6 that's what we came up with with OAG, that a
7 restaurant is a place of business which doe
8 snot meet the definition of fast food where
9 food is cooked on the premises, sold to
10 customers for consumption on the premises.

11 This is meant to be the base
12 definition. Then we come in with the fast
13 food establishment which cuts things out of
14 the definition. So, a fast food establishment
15 then is a place of business where food is
16 cooked on the premises that also meets one of
17 the following characteristics.

18 The characteristics that we
19 defined were changed from the characteristics
20 in ANC's proposal in that we needed to get to
21 things that had clearly defined impacts. We
22 tried to focus on things that -- on the

1 differences between fast food and restaurants
2 that impacted the community, such as the
3 amount of traffic cycling through, the amount
4 of -- the amount of trash that was produced.
5 And we came up with the following three that
6 specifically addressed those issues.

7 The premise has a drive-through.
8 If it does, clearly they can produce a lot
9 more food, a lot more trash, cycle a lot more
10 people through. The same with customers pay
11 before the food is consumed. This is a
12 business model that makes it a lot easier to
13 move a lot of people through rather than sit
14 down and wait service.

15 And while the drive-through is
16 self evident in our plans, that's not as easy
17 to define. So, we've added that this element
18 is considered to be satisfied if the building
19 plans show a service counter without seating.

20 And the third category that we
21 used to define fast food establishment is that
22 the food is served on anything other than non-

1 disposable plates. So, if a restaurant's
2 using disposable silverware, plates, glasses,
3 clearly they can produce a lot more trash,
4 have a lot more adverse effects on the
5 neighborhood and it can move a lot faster as
6 well.

7 So, we really tried to narrow the
8 characteristics down to things that
9 specifically related to impacts on the
10 surrounding community. And then regarding
11 those three, tried to define things that could
12 be noticed on the plans.

13 For non-disposable plates, if
14 there's no dishwasher or if you do have trash
15 receptacles in the main seating area, you're
16 determined to meet that criteria. And those
17 are meant to be exclusive. Maybe you do have
18 a dishwasher, but you could still serve a non-
19 disposable plate. So, the fact of not having
20 a dishwasher is determinative, but having a
21 dishwasher might be.

22 I don't know that I've explained

1 that as well as it's written, but hopefully
2 it's clear.

3 VICE CHAIRMAN HOOD: I was on the
4 dishwasher and now I won't have to worry about
5 it.

6 COMMISSIONER FENGLER: No. No.
7 That's the point though. Like I said, not
8 having a dishwasher clearly is determinative,
9 but having one might not be.

10 Then the next change that we made
11 from 6A's proposal is to try and get two
12 definitions of delicatessens, coffee shops,
13 ice cream parlors. And the thing that we
14 found is that it's very difficult to define
15 these multiple different types of businesses,
16 especially when they're constantly changing,
17 new businesses coming, some businesses are
18 going out of style. And the technique that we
19 came up to solve this problem was to create a
20 catch-all category for these neighborhood
21 serving low impact businesses, the coffee
22 shops, the ice cream parlors, the sandwich-

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1 making shops.

2 So, we created this prepared food
3 shop. And the idea is that these are small
4 neighborhood food establishments that don't
5 cook their food and that's the primary
6 distinction and I'll come back to what cook
7 does or does not mean. And this is where we
8 came up with a table limit just because
9 clearly if you're a sandwich shop, eventually,
10 you can reach a critical mass and you can
11 cycle through, you know, a hundred people an
12 hour and eventually you reach a level of
13 impact that's similar to fast food. So, we
14 tried to define that with the amount of
15 seating inside the establishment at 12. And
16 we're open. I've seen some comments in the
17 record that maybe 18 is more appropriate and
18 we're open to those suggestions and whatever
19 the Zoning Commission thinks.

20 But the point was to try and
21 remove these -- all these disparate types of
22 establishments that have similar impacts and

1 that are appropriate in similar places and put
2 them in one sort of catch-all category.

3 And so that's the latest way that
4 we differ from 6A.

5 COMMISSIONER JEFFRIES: An ice
6 cream shop would not be considered fast food?

7 MR. PARKER: Right. It would fit
8 this third category, this prepared food shop.
9 And prepared food shops would be allowed as a
10 matter of right in C1 and C2A zones as long as
11 they had 12 or fewer tables.

12 One they crossed that threshold
13 then they fall into the -- well, they're still
14 a prepared food shop, but they require a
15 special exception.

16 And I should note as well that
17 clearly that doesn't include outdoor seating.
18 Outdoor seating is off the lot. If it's on a
19 sidewalk, it's not regulated by the zoning
20 regulations. So, that limitation on the
21 number of tables would never include sidewalk
22 seating.

1 The one comment that's been common
2 through a lot of the discussion that was
3 submitted was the intent of the word cooked or
4 the meaning of the word cooked because clearly
5 that's important in distinguishing between
6 restaurants and fast foods which do cook their
7 food and the prepared food shops which don't.

8 The intent was to separate out
9 businesses that don't -- that don't actually
10 prepare food by -- by -- I want to try another
11 word than cooking. But the intent was not to
12 single out the heating up of sandwiches so
13 things like toasting bread or heating
14 something in a microwave would not be included
15 as cooking. And I think that one thing that
16 we can do as we proceed forward is maybe
17 submit to the Zoning Commission a definition
18 that could be included of what cooking means.

19 But it was intended to catch the
20 restaurants and the fast food restaurants.
21 But if you're just preparing a sandwich from
22 pre-cooked meat at another location or if

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1 you're scooping an ice cream cone or you're
2 brewing a cup of coffee, none of those would
3 be included in a cooking definition.

4 But when you're -- when you're
5 putting a pizza in the oven, clearly that is
6 cooking. There's levels that need to be, I
7 think, further flushed out and that's
8 something that I'd be happy to do in a
9 supplemental report. But the intent was not
10 to include in cooking the occasional microwave
11 or heating up a toasted sandwich.

12 VICE CHAIRMAN HOOD: Since you
13 volunteered to do a supplemental report, let
14 me just ask you to help us out.

15 We have a lot of suggestions here.
16 I think once before we did like a chart of who
17 6A, Office of Planning, 6A, Cleveland Park,
18 3C, you know, some of the suggestions here
19 that may cross over, you know, one person
20 makes it. And I know you're looking at me
21 because you know where I'm going. Right? I'm
22 asking you to maybe put something like that

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1 together.

2 We had that done monde before, I
3 believe, right, Ms. Schellin? And that helped
4 us out a lot.

5 ACTING SECRETARY SCHELLIN: I
6 think it was inclusionary zoning.

7 VICE CHAIRMAN HOOD: Is that it?

8 MR. RITTING: I believe it was
9 also done in Forest Hills Tree and Slope
10 Overlay.

11 VICE CHAIRMAN HOOD: Is that it
12 too, also.

13 So, Mr. Parker, if it's too -- you
14 know, we're going to do our work, but that
15 would help us out. You mentioned supplemental
16 and I said, okay. This is a good time.

17 MR. PARKER: I've opened a door,
18 haven't I?

19 VICE CHAIRMAN HOOD: Yes. You
20 did. Thank you.

21 Commissioner Jeffries.

22 COMMISSIONER JEFFRIES: Mr.

1 Travis, Commissioner Fengler talked about, you
2 know, best practices, other municipalities.

3 What was your experience in terms
4 of reviewing text in other places? I mean,
5 how did they handle these definitions? And
6 particularly given the ever-changing nature of
7 these businesses. I mean, how did they handle
8 it?

9 MR. PARKER: I think that's the
10 big -- and then we certainly relied heavily on
11 6A's research. They did an awful lot of
12 research. But that's one thing that you see
13 in all this is there's no two that are alike.
14 I mean, they've all tried to tackle this field
15 where there's constantly evolving models. And
16 it's very difficult to draw a line between two
17 categories of fast food establishment between
18 two categories of eating establishment when
19 there are thousands of types of eating
20 establishments.

21 And you could have a model for
22 each restaurant that's out there. So, like I

1 said. What we tried to do is narrow it down
2 to the -- I mean, the point of requiring a
3 special exception for fast foods in the C2A
4 zone is that supposedly they have a different
5 level of impact on the surrounding neighbors
6 than a restaurant. Therefore, we tried in
7 differentiating them to narrow in just on the
8 impacts that are different between the two
9 uses and the characteristics of those uses
10 that create those impacts.

11 COMMISSIONER JEFFRIES: It's just
12 to me, you know, I know in my neighborhood, I
13 mean, Busboys and Poets, I mean, that's a very
14 different, you know, business model. I mean,
15 there are people who sit there like all day,
16 you know, on their laptops and then there are
17 people who try to have business meetings. And
18 there's so much going on there and it's high
19 volume. And my suspicion is that, you know,
20 a business such as that coming before DCRA and
21 them trying to figure out exactly what is this
22 animal. It's somewhat of a hybrid.

1 And, I mean, there's a lot of, you
2 know, restaurants that have, you know, very
3 hefty carry out businesses. They might have
4 a few tables. Maybe eighteen or nineteen or
5 so, but that's going to, you know, wreak havoc
6 on the residential zone.

7 And so it's, you know, I can see
8 how this is so incredibly hard to nail down.

9 VICE CHAIRMAN HOOD: Did you
10 finish, Mr. Parker?

11 MR. PARKER: Certainly. I might
12 have a few questions, sure.

13 VICE CHAIRMAN HOOD: Okay.
14 Commissioner Turnbull.

15 COMMISSIONER TURNBULL: Thank you,
16 Mr. Chair.

17 Mr. Parker, I was just curious. I
18 mean, you mentioned occasional use of
19 microwave. But it seems to me there's a lot
20 of places now that are heavily using
21 microwaves. It seems like everything is being
22 done in the microwave. I'm just wondering how

1 that --

2 MR. PARKER: I'd like to think
3 that if there was a restaurant -- a
4 restaurant, restaurant that relied solely on
5 the use of microwave, they wouldn't be in
6 business long.

7 VICE CHAIRMAN HOOD: Other
8 questions of Mr. Parker?

9 Let's look at the text for a
10 second, Mr. Parker, and I'm sorry that Chair
11 Mitten is not here because she would be proud
12 of me on this one.

13 On page 3, it's my page 3.

14 MR. PARKER: Okay.

15 VICE CHAIRMAN HOOD: While the
16 customer and I know with this bicycling
17 epidemic that's going on in the city.
18 Everybody is talking about bicycling. And
19 we're talking a motor vehicle. And some
20 people and I'm not saying I've seen this but
21 I want to make sure we try to cover as much as
22 possible.

1 You mentioned here while the
2 customer remains within a motor vehicle. Do
3 people use their bicycles and go through the
4 drive-through?

5 MR. PARKER: I don't know.

6 VICE CHAIRMAN HOOD: We have to
7 ask Chair Mitten. But that was one of the
8 things that popped out at me.

9 Let's look at that.

10 MR. PARKER: Okay.

11 VICE CHAIRMAN HOOD: I actually
12 had a question. You may have asked most of
13 this. Let's go back to the first.

14 Prepared food. It says the text
15 proposes to define prepared food as food that
16 is assembled but not cooked on the premises of
17 a prepared food shop. For some reason I made
18 a note slippery slope here. But I would have
19 to read the whole context.

20 Food that is assembled.

21 MR. PARKER: And there has been
22 some question in the other comments about the

1 word assembled. And that's something we can
2 take a look at as well.

3 VICE CHAIRMAN HOOD: Okay. Okay.

4 MR. PARKER: I mean, the thought
5 was --

6 VICE CHAIRMAN HOOD: Well, I made
7 a note.

8 MR. PARKER: Yes. Sandwich shops,
9 ice cream cone. I mean, you're assembling
10 something. Even a cup of coffee has to be
11 assembled these days. But we can find a
12 better description probably.

13 VICE CHAIRMAN HOOD: And I also
14 had a question mark. You know, as I was
15 reading through these things you get the gist
16 of it, I made some notes. I have a question
17 mark on page 2, section 1C. Who to serve on
18 and anything other than a non-disposable
19 plate. This element is satisfied in the
20 building permit plans. Plans do not depict a
21 dishwasher or do depict trash receptacles in
22 public areas.

1 And I think that was my -- you
2 talked about that. Maybe I need some more
3 testimony because I really don't understand
4 that. If I just put a dishwasher in my
5 establishment then what happens? I mean, they
6 always -- and I'm not saying this is going to
7 be the win-win, the perfect piece.

8 MR. PARKER: Right.

9 VICE CHAIRMAN HOOD: But, I mean,
10 how did we get to a dishwasher?

11 MR. PARKER: The characteristic is
12 that if you serve on anything other than non-
13 disposable plates you're a fast food. And
14 what we've tried to do is put some
15 characteristics down here that the Zoning
16 Administrator and the building permit people
17 can look for when they're looking at plans.
18 It's not exhaustive. The requirement still
19 exists and if a restaurant, you know, puts in
20 a dishwasher, but ends up serving on non-
21 disposable plates, then there's going to be a
22 zoning enforcement issue.

1 But you still have the catch-alls
2 of the -- you still have the customers pay
3 before they're consumed. So, any one of these
4 throw something into a fast food establishment
5 and it's the underlying characteristic that's
6 important. The elements that satisfy that are
7 for the use of building permit reviewers to
8 try and help them out.

9 VICE CHAIRMAN HOOD: Let me see if
10 I asked this.

11 For the time being that CFOs now
12 still have delis. Delicatessens, carry outs.
13 And for the time -- if this language proposed
14 amendment is approved, how -- how is the
15 Zoning Administrator supposed to deal with
16 those CFOs that have delicatessen, delis?
17 Carry outs?

18 MR. PARKER: I think the Zoning
19 Administrator has already been dealing with
20 that to a point. I know that delicatessen
21 right now isn't listed as a permitted use.
22 It's been historically issued -- CFOs have

1 been issued as delicatessens.

2 In my conversations with the
3 Zoning Administrator, he stopped that practice
4 and businesses that have those CFOs that come
5 in for new ones are required to get them under
6 the current regs under either restaurant or
7 fast food or some other existing permitted
8 use.

9 Right now delicatessen is just a
10 term that's randomly found in several parts of
11 the zoning regulations but isn't listed as a
12 permitted use in C districts or in the C2A or
13 anywhere.

14 So, to your question, I think it
15 would happen the same way in the future. No
16 existing business that has a CFO would be
17 affected, but as they come in as a new owner,
18 as a change in use comes in, they'll get a CFO
19 for the proper use.

20 VICE CHAIRMAN HOOD: What I would
21 like to do is because we got some -- I would
22 like to maybe submit a few questions.

1 MR. PARKER: Sure.

2 VICE CHAIRMAN HOOD: I guess it's
3 permissible to you as we continue to read some
4 of the latest submittals and pose some of
5 those to you and maybe you can in the extra
6 work that you volunteered to do, maybe answer
7 a few questions that we may have at a later
8 date if that's okay.

9 MR. PARKER: Okay.

10 VICE CHAIRMAN HOOD: Okay. Thank
11 you, Mr. Parker.

12 I see you frowning up at me. I
13 don't want to give you too much work.

14 COMMISSIONER TURNBULL: Mr. Chair,
15 I just have another question.

16 You know, we've been reading these
17 submittals tonight just looking at them. But
18 looking at the Woodley Park submittal. I
19 don't know if you had a chance to look at it.
20 They brought up, for instance, I mean, this is
21 where we live and die by these definitions.

22 And I'm speaking kind of selfishly

1 here because since we all rotate on the BZA,
2 I know we're going to have a four-hour case on
3 this coming up at some point. But they point
4 out the --

5 VICE CHAIRMAN HOOD: Five.

6 COMMISSIONER TURNBULL: Five. The
7 one example they talk is the Chipotle Burrito
8 example and they talk about how it looks like
9 a restaurant, smells like a restaurant but
10 under the new guidelines it could be
11 classified as a fast food because you pay for
12 it before you go to sit down.

13 So, it's -- again, it's a matter
14 of getting impacts. Chipolte cycles a lot of
15 people through. Produces a lot of trash. Has
16 -- has cooking facilities similar to a lot of
17 fast food restaurants. So, it's not a matter
18 of how necessarily how it feels like when
19 you're sitting at a table and eating. It's a
20 matter of the impacts that could happen on the
21 surrounding neighborhood.

22 COMMISSIONER TURNBULL: Was that

1 clearly defined though in what you've said so
2 far?

3 MR. PARKER: I hope so. Maybe
4 not.

5 COMMISSIONER TURNBULL: All right.
6 Thank you.

7 COMMISSIONER JEFFRIES: Okay. My
8 understanding is that in terms of your
9 approach and in terms of, you know, crafting
10 this text is really looking at impacts on the
11 adjacent residential zone meaning that you
12 were trying to establish or categorize the
13 various places that serve food in some sort of
14 capacity based on how they impacted on the
15 community. And that's how you sort of
16 categorize them. And that was your approach.
17 I don't know if I said it quite the way you --

18 MR. PARKER: In general.

19 COMMISSIONER JEFFRIES: Yes.
20 Okay.

21 MS. STEINGASSER: I'm just going
22 to take this moment and make a little

1 correction.

2 With all the numbers flying around
3 this evening we have said that ANC-6C was part
4 of the working group and they were not part of
5 the working group. They are the ANC that did
6 not get notice. ANC-3C was part of the
7 working group as were members of the Cleveland
8 Park Citizens Association. I just wanted to
9 give that credit where it's due.

10 VICE CHAIRMAN HOOD: Okay. Thank
11 you, Ms. Steingasser.

12 Okay. Any other questions of the
13 Office of Planning?

14 Okay. And, again, I would ask
15 that maybe Office of Planning work with OAG
16 and Ms. Bushman so we can work with some --
17 fine tune some of our questions if that's
18 permissible. I'm sure it is so if they can do
19 that, that would be great.

20 Did we have any other Government
21 reports? Okay. All right.

22 Now, we'll go to our list of

1 witnesses. We're going to take the proponents
2 first.

3 Well, do we take the proponents
4 first or can we do them all -- both at the
5 same time? Okay.

6 Proponents first.

7 ACTING SECRETARY SCHELLIN: We
8 have the ANC on the list.

9 VICE CHAIRMAN HOOD: That's in a
10 contested case. We don't have parties. But
11 believe me --

12 ACTING SECRETARY SCHELLIN:
13 There's no parties so the ANC --

14 VICE CHAIRMAN HOOD: This list is
15 so short.

16 ACTING SECRETARY SCHELLIN: --
17 goes alone.

18 VICE CHAIRMAN HOOD: This list is
19 so short so it looked like everybody will be
20 first.

21 ACTING SECRETARY SCHELLIN: Right.

22 VICE CHAIRMAN HOOD: Do it like

1 this. Mr. Andrew Klein from the D.C.
2 Restaurant Association.

3 Mr. Williams, you don't want to
4 come up both times, do you, because you said
5 both. So, you can come up both at this time.
6 Okay. So, we'll take you now.

7 Mr. Lindsley Williams, Ms. Nancy
8 Macwood and how many seats do we have? Well,
9 let's just do three for now. And actually the
10 last three will be our last panel unless
11 there's someone else here. Mr. Espenschied
12 and others will be our last panel the next
13 time.

14 Okay. Each person sitting at the
15 table will have five minutes. It's not a hard
16 and fast rule, but will have five minutes.

17 Mr. Klein.

18 MR. KLEIN: Yes. Good evening.

19 I'm Andrew Klein. I'm the general
20 counsel of the Restaurant Association
21 Metropolitan Washington.

22 I come before you tonight

1 principally in support of the Text Amendment
2 that's been proposed. The Restaurant
3 Association is most concerned about clarify in
4 regulation and we believe that what's been
5 proposed goes a long way towards that.

6 I want to congratulate and thank
7 Mr. Fengler for what appears to be yeoman's
8 work on this. I mean, it's obvious that a lot
9 of thought and a lot of work has gone into the
10 original submission and also the Office of
11 Planning in terms of the work that they've
12 done.

13 And as I said, we are generally
14 supportive. We have one silly little change
15 and that is in the section that deals with
16 non-disposable plates, we think it should be
17 a little bit more expansive because we could
18 have soup restaurant, for example, that would
19 use bowls. So, a better term might be non-
20 disposable dinnerware. I think the concept is
21 the same, but to limit it to plates. And to
22 have a place inspected and fine out that

1 they're using bowls or trays or who knows what
2 will come down the pike in terms of
3 dinnerware. We think is a very simple change.

4 Our biggest concern is the
5 treatment of existing establishments, whether
6 it's under a new Text Amendment or the
7 existing regulations. This is a problem that
8 we have encountered over the course of the
9 last year and a half as there's been an effort
10 to enforce what's been on the books for over
11 30 years and principally we concede has not
12 been enforced.

13 There are a number of
14 establishments, food service establishments
15 that have certificates of occupancy. We've
16 heard about delicatessens and there are other
17 places that conceivably probably should have
18 been classified as fast food establishments
19 under the definition that was adopted, I
20 guess, in the late '70s.

21 And our difficulty is, these
22 establishments are operating and it's been the

1 practice and I think we hard mention of this
2 from the Office of Planning to revisit those
3 upon a sale or a transfer of the business.
4 And that creates a create deal of problems for
5 those in the business community.

6 A business person may have anyone
7 of a number of reasons for needing to get out
8 of their business or wanting to sell their
9 business. And when a purchaser comes in and
10 they're confronted with the possibility of
11 having to seek a special exception because
12 they were previously issued a certificate of
13 occupancy or the seller was issued a
14 certificate of occupancy that was inconsistent
15 with either these regulations or what's
16 currently on the books, that creates a great
17 deal of problem.

18 I have actually a prepared
19 statement which I'll pass at. And attached to
20 that you will see a certificate of occupancy
21 that was issued in connection with a transfer
22 of a business or the change of ownership. No

1 change in the nature of the operation, but
2 under the existing policy, there was a
3 revisit, a re-look at the nature of the
4 business. And as a result of that, the
5 purchaser of the business was issued a
6 certificate of occupancy that says,
7 delicatessen with accessory pizza in C2A with
8 no seats, existing eating establishment. One
9 year temporary certificate. Owner may need to
10 obtain special exception from Board of Zoning
11 Adjustment by May 10th, 2007.

12 Now, I don't know what this means
13 frankly. And obviously it causes a great deal
14 of concern to those people that come into the
15 District or are in the District and have
16 invested money in businesses. Those that
17 seeks to sell their businesses are concerned
18 about this and buyers are concerned.

19 In practice what is meant is a
20 dramatic change in the way business
21 transactions are handled. Previously, when a
22 business was sold one could go in, transfer

1 the certificate of occupancy over the counter
2 and walk out the same day by paying the fee
3 and going to the various desks with a newly
4 transferred certificate of occupancy.

5 Indeed the building code
6 regulations specifically provide that. And
7 the building code regulations are the only
8 ones that deal with the transfer of a
9 certificate of occupancy.

10 12 DCMR Section 110.1.2 states
11 that for changes in ownership, I'm going to
12 paraphrase, of structures, land or other
13 businesses with existing valid certificates of
14 occupancy, a certificate of occupancy shall be
15 issued in the name of the new owner without
16 reinspection provided that there's no change
17 in use.

18 Now, what's been happening is, the
19 zoning inspector has indeed been doing
20 inspections in violation, we think, of 12
21 110.1.2. We believe this is a procedure that
22 needs to stop and this is an issue that needs

1 to be revisited as we morph yet to new
2 regulations.

3 But, overall, as I said, we don't
4 have a real problem with what's been proposed.

5 VICE CHAIRMAN HOOD: And you're
6 going to be submitting that?

7 MR. KLEIN: Yes. We'll submit it.
8 Absolutely.

9 VICE CHAIRMAN HOOD: Thank you,
10 Mr. Klein.

11 MR. KLEIN: Thank you.

12 VICE CHAIRMAN HOOD: I made a
13 mistake. Mr. Macwood -- you don't have to move
14 but if you can just hold your seat.

15 I'm going to ask Commissioner
16 Jarboe also if we will come and join.

17 COMMISSIONER JARBOE: I can wait.

18 VICE CHAIRMAN HOOD: No, but you
19 are a proponent so we wanted to -- we don't
20 want to mix it all up and be confused.

21 If everybody is like me, they're
22 already confused but I don't want to confuse

1 anymore than I have to.

2 Mr. Williams, Mr. Jarboe, if you
3 could go and then we'll ask the proponents
4 questions and then I think that's all we have.
5 So, forgive me, Ms. Macwood, but you can stay
6 at the table.

7 Mr. Williams.

8 MR. WILLIAMS: Good evening, Mr.
9 Hood and members of Commission.

10 My name is Linsley Williams.

11 And what I did in preparing for
12 this case as you can probably see is to take
13 up the Office of Zoning's formal notice of
14 hearing and try to go through it and critique
15 it. Basically, I joined myself with the
16 previous speaker as being one that is
17 conceptually in support but I always have gone
18 through and tried to identify a number of
19 areas where I feel that some sharpening of the
20 provisions is in order.

21 I come sort of in jest here
22 thinking about trying to bring a young child

1 to an ice cream parlor and be told. No. You
2 can't have the hot fudge sundae because it's
3 cooked. It's got warm stuff on it. And
4 that's just not where we need to go as a city
5 is to ban hot fudge from an ice cream parlor.

6 I have marked up the provisions in
7 a way that I hope you'll find helpful.

8 On page 2 I've suggested and this
9 is the discussion of microwaves and some sort
10 of minor cooking in the context of prepared
11 foods because it seems to me that if something
12 is not overwhelming in the presence whether
13 it's a rice cooker or a cheese warmer or
14 something like that it can be tolerated. It
15 doesn't formally change the character of the
16 critter.

17 On page 3, I've taken a pretty
18 heavy pen to the food delivery service trying
19 to suggest that it doesn't matter whether it
20 goes out for delivery by motor vehicle. It
21 simple might be delivered out and sometimes
22 it's being done by the employee of the

1 establishment and sometimes being done by
2 somebody they have a relationship with or
3 sometimes it's just handed over to somebody
4 else.

5 The end of the paper you'll see a
6 little remark that says goes to
7 www.taxitakeout.com. That's a business that
8 is separate and apart from anybody else. And
9 what they do is go on instruction from a
10 customer to a restaurant and pick up some
11 takeout food. It is a food delivery service.
12 it's just not what you're talking about in
13 your regulations.

14 I've given you a little
15 grammatical chide in the definition of
16 restaurant on that page.

17 More important on page 4, members
18 of the Commission, I think it's time and I
19 think the notice is adequate here to look at
20 the question of whether or not we need any
21 drive-in restaurants in the city. I don't
22 think we have any and I'm not sure they're an

1 appropriate use anymore in today's situation.
2 But there is a reference to it and I would
3 look to see whether or not you couldn't take
4 it out and have a better city.

5 I would also suggest that in the
6 area of prepared food shops, whether the
7 number is 12, 18, 19 or any other number it
8 seems to me that it's not a question of having
9 seats, it's a question of having room for
10 whatever number of patrons is involved.
11 Because they would be stand-up patrons.

12 There's a typo in the repealers --
13 or in subsection D. The reference is 721T.
14 The first one is wrong. It simply belongs to
15 S. And I've suggested that you also take out
16 the drive-ins in that area.

17 Likewise in the waterfront I've
18 asked the question of whether you want to
19 exclude drive-ins and perhaps after that I've
20 looked at the question of what do you want to
21 do in the Reed Cook Overlay.

22 To my way of thinking, and I will

1 never try to speak for that community. I will
2 tell you that. But I will say that you've got
3 a question that needs to be asked or are you
4 trying to exclude the ice cream parlor, the
5 coffee shop and so on from the Reed Cook
6 Overlay? I think that's an important question
7 and it's not clear to me what is going to be
8 the effect of this.

9 Finally, I would simply note that
10 at the end I've identified some places where
11 restaurants, fast food restaurants and the
12 like are cited in other parts of the
13 regulations that weren't addressed in the
14 capture of the OP review.

15 There's omissions in Chapters 13
16 in the NC Overlay and I believe there is also
17 a missed opportunity to look at what you want
18 to do in the Southeast Federal Center overlay
19 and I would suggest that those be examined.

20 But going back to Andy's position,
21 there is a huge population of CFOs right now,
22 be they restaurants, fast food restaurant,

1 delis and whatever and it sounds like
2 something I said two weeks ago. We need the
3 savings clause. We need to make sure that
4 what is in place when it's staying with the
5 same owner in the same place and it's not
6 changing, that it's allowed to just continue
7 on or else we're going to have a line that
8 will be as if they were giving away free ice
9 cream in Georgetown at DCRA except there won't
10 be pleasant smiles on the people coming in or
11 going out. It's just going to be awful.

12 And so we need to figure out some
13 way to have a savings clause to keep the
14 existing community stable and in business,
15 whatever their business is and as they come to
16 sell, modify their premises or whatever, they
17 can get a transfer license. They can get a
18 building permit and get a new license. And
19 we'll get caught up in the time. But trying
20 to get to perfection through achieving new
21 definitions right away is a sure recipe,
22 that's a cooking term, for disaster.

1 Thank you.

2 VICE CHAIRMAN HOOD: Mr. Jarboe.

3 COMMISSIONER JARBOE: Thank you,
4 Mr. Chairman.

5 My name is Ken Jarboe. I am
6 Commissioner for 6B05 and I'm here
7 representing ANC-6B.

8 I believe we distributed our
9 report. I know a letter came that kind of
10 outlined some of our concerns -- a one-page
11 letter, but I'd hope you would take my
12 testimony as more elaboration of the report.

13 At our properly noticed meeting on
14 April 10th, we did with a quorum present. We
15 voted unanimously to support the Text
16 Amendment with certain recommendations. And
17 I'm going to go from my prepared script right
18 now and just talk about what some of those
19 recommendations are and then come back to that
20 last point.

21 First of all, we need to do
22 something about this. This isn't something we

1 can just put off and study further. The
2 Zoning Administrator is moving ahead with
3 enforcing the old and current definition. We
4 already had a deli up on Capitol Hill that it
5 took about six months to get their CFO because
6 the Zoning Administrator was trying to figure
7 out what a deli is.

8 So, we need to get these
9 regulations, whatever they are in place now
10 because the old definitions simply don't work.
11 We're running into too many problems.

12 With that said, there are three
13 minor -- well, two minor and one major problem
14 that we have. We're the ones that came up
15 with the 18 seats, mostly because a lot of the
16 coffee shops on Capitol Hill have more than 12
17 seats and I would hate to see that model.
18 Eighteen seems to be about the right number
19 where you have a viable coffee shop, at least
20 on Capitol Hill. And shouldn't have to
21 trigger the special exception.

22 The second part is, we would

1 really like you to go back and figure out what
2 a cafeteria is and stick the definition of a
3 cafeteria back in. There are a whole series
4 of business models, the buffet style model.

5 The one we're familiar with is the
6 Sizzling Express. The Sizzling Express on
7 Capitol Hill is the neighborhood cafeteria.
8 Under this definition, they would be a fast
9 food restaurant, which may or may not be a
10 problem, but at least there is a business
11 model there between fast food restaurant and
12 restaurant that you may want to look at.

13 The more important issue is the
14 interaction of these regulations with what
15 hasn't been change in the regs and that is the
16 current criteria for granting a special
17 exception.

18 With these new regulations and
19 with -- even with the old regulations given
20 some of the BZA ruling, a lot more
21 establishments are going to be required to
22 come to BZA and get a special exception. I

1 mean, let's face it. That's what we're doing
2 here.

3 So, it's very important that we
4 have very, very clear guidelines as to what
5 criteria are used for granting special
6 exceptions.

7 The problem is, Section 733, that
8 is the current guidelines has a lot of
9 mandatory clauses in there that may or may not
10 be appropriate for this no nuanced definition.

11 For example, let me find my piece
12 of paper here.

13 You know, no part of the use shall
14 be located within 25 feet of a residential
15 district unless separated from a street or
16 alley. Well, that means you can't have one of
17 these. It's not discretionary on the part of
18 the special exception process. You simply
19 can't have it.

20 You have to build a six-foot high
21 12 inch thick wall. You have to put a three-
22 sided brick enclosure equal to the height of

1 the dumpster or six feet high around your
2 trash receptacles.

3 You cannot have a drive-through.
4 We actually do have some drive-throughs up on
5 Capitol Hill believe it or not. Whether we
6 want them or not, that's another thing.

7 There's all of these shalls in
8 here that frankly once you start combining the
9 tighter definition of who has to get a special
10 exception with those shalls, you end up
11 potentially absolutely excluding certain
12 establishments that we would, in fact, like to
13 have and I'll give you an example again on
14 Capitol Hill. Market Lunch and Eastern
15 Market.

16 Market Lunch and Eastern Market
17 has a long counter. They use disposable
18 utensils and you pay before you eat. Now,
19 half of their business or some major part is
20 carry-out. A lot of it's eat in. They are a
21 fast food restaurant under this definition.

22 There's no place to build a six-

1 foot fence -- brick wall around Eastern
2 Market. Right across the street is a small
3 establishment called Tortilla Cafe. Again, no
4 dishwasher. They would be absolutely in this
5 fast food restaurant category. But the
6 building they are in is well enough buffered
7 so that they don't have to do those things.

8 In sum, and just before I close
9 one quick point on that as well.

10 There's also this talk about
11 needing the special exception for if you have
12 over 12 or 18 seats. There's no guidance for
13 the prepared food shops as to what criteria
14 are used for the special exceptions for
15 prepared food shops that have over "X" number
16 of seats.

17 Just real quickly. I think we
18 would also agree with the need for a savings
19 clause. We see just a mental walk down all of
20 Capitol Hill. There's a lot of establishments
21 there who would now be fast food restaurants.
22 That's fine. We think that you should go

1 through the special exception process to do a
2 fast food restaurant. We don't think you
3 should retroactivity impose that on the
4 existing buildings.

5 Thank you.

6 VICE CHAIRMAN HOOD: Thank you.

7 And we're going over the time
8 tonight because I think this is very
9 informative, at least to me and I'm sure my
10 colleagues. We don't mind. We don't have a
11 long waiting list so everybody just indulge us
12 all.

13 Any questions of this panel?
14 These were the proponents.

15 Any questions?

16 I did have one.

17 Commissioner Jarboe, you said that
18 we do have a drive-in restaurant.

19 COMMISSIONER JARBOE: I was
20 mistaken. I thought they -- I misheard that
21 we have drive-throughs.

22 VICE CHAIRMAN HOOD: Oh, drive-

1 through.

2 COMMISSIONER JARBOE: We have
3 drive-throughs. And not --

4 VICE CHAIRMAN HOOD: Well, I
5 wanted to go by an example of one. Okay.

6 COMMISSIONER JARBOE: It's
7 actually in 6A. There's the Checkers
8 Restaurant upon Maryland Avenue has a drive-
9 through.

10 VICE CHAIRMAN HOOD: Okay. That's
11 a drive-through. Not drive-in?

12 COMMISSIONER JARBOE: Not drive-
13 in. But that's another one of these issues
14 where the regs are in conflict because you
15 define a fast food restaurant if you have a
16 drive-through, you're a fast food restaurant.
17 And then in section 377, you say you can't
18 have a drive-through.

19 VICE CHAIRMAN HOOD: Okay.

20 COMMISSIONER JARBOE: So, you've
21 just eliminated any discretion to put one in
22 whether it makes sense or not.

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1 VICE CHAIRMAN HOOD: Right. Got
2 you.

3 I had one other question.

4 Who mentioned the Sizzler? You
5 did, Commissioner Jarboe. The Sizzling
6 Express. And this goes back to my example up
7 in -- that's on Pennsylvania Avenue. Right?

8 COMMISSIONER JARBOE: Correct.

9 VICE CHAIRMAN HOOD: It's right
10 next to the Citibank?

11 COMMISSIONER JARBOE: Correct.

12 VICE CHAIRMAN HOOD: Yes. Been in
13 there.

14 You mentioned and they have what
15 they serve up there. But isn't it like -- let
16 me see, how do you describe it. Is it buffet
17 style?

18 COMMISSIONER JARBOE: Here's a
19 perfect example of who the business models are
20 moving so fast you can't keep up.

21 They have a grill where you can go
22 up and they have a board up there and you can

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1 order your sandwich. And you actually pay for
2 your sandwich before you even get it.

3 They have a hot -- a buffet style
4 that you can go and you buy it by the ounce.
5 Then they also have a bar with a liquor
6 license where they serve sushi on real plates.
7 So, it's sometimes on real plates, sometimes
8 on carry out.

9 So, I guess that's a fast food
10 restaurant under this particular description.
11 Part of our problem with the old regulations
12 was we didn't know whether that was a fast
13 food restaurant or not. You couldn't tell by
14 the regulations because the current
15 regulations have this very convoluted
16 description of how many seats or the area and
17 frankly anything that's of any size that
18 serves carry out could be a fast food
19 restaurant under the current regulations or
20 not.

21 VICE CHAIRMAN HOOD: Okay.

22 COMMISSIONER JARBOE: And that's

1 part of the problem.

2 But if I could just elaborate on
3 Sizzling again.

4 They're in a very large building.
5 They have a huge building size dumpster out
6 back, an industrial size dumpster at the back
7 of the parking lot there. It is screened from
8 the residents on the other side of the street
9 by the parking lot and by the -- and by a row
10 of hedges.

11 To now come in and say simply
12 because you put Sizzling Express in your
13 building you have to build a six-foot wall and
14 build a brick enclosure for the trash, seems
15 to be exactly the unintended consequence that
16 would drive a business away. So, that's why
17 we're asking for that discretion as part of
18 the process.

19 VICE CHAIRMAN HOOD: Okay. Thank
20 you.

21 And, Mr. Klein, you're going to be
22 submitting something to us and, Mr. Williams,

1 I'm looking at your document. What you have
2 highlighted, additions to the language. Am I
3 correct? I just want to make sure I
4 understand?

5 MR. WILLIAMS: Yes. That's
6 generally the case. Sometimes there's a
7 double strike through that represents some of
8 the words that were originally advertised that
9 I believe could perhaps be put in other terms.

10 For example, on the 25 and 75
11 percent, I changed it from language that made
12 it sound like sales, the dollar amount, to
13 transactions because it seemed to me it would
14 just be easier to know it's an order going
15 out, it's an order staying in.

16 VICE CHAIRMAN HOOD: Okay. All
17 right.

18 Any other questions, colleagues?

19 Okay. I thank you three. And I'm
20 going to call up to join Ms. Macwood. Is it
21 Commissioner Espenschied or Peter. Peter
22 Espenschied. Are you an ANC Commissioner?

1 Mr. Espenschied. I have a name
2 here that I -- George Idelson? Okay. Thank
3 you, Mr. Idelson. And thank you, Ms.
4 Schellin, for telling me. Okay.

5 That's it? Is there anyone else
6 who would like to testify in opposition?

7 Okay. All right. This will be
8 our last panel and we're going to start with
9 Ms. Macwood who has been very patiently
10 waiting because I called her up with the wrong
11 group.

12 COMMISSIONER MACWOOD: That's
13 perfectly all right.

14 I'm Nancy Macwood, Chair of ANC-
15 3C, 3417 Woodley Road, NW.

16 Mr. Hood, Members of the
17 Commission, I'm testifying on behalf of ANC-3C
18 tonight. The ANC unanimously approved a
19 resolution that urges the Zoning Commission to
20 ask the Office of Planning to redraft this
21 Text Amendment in part to provide greater
22 clarities of implementation and

1 predictability.

2 I want to give you a few examples
3 of the problems we find with the proposed
4 definitions.

5 The definition of fast food
6 establishment we think is over broad in that
7 it would include movie theater because they
8 have counter service.

9 There's a waiver proposed for
10 incidental carry-out services at restaurants
11 and grocery stores, but not for other
12 establishments like movie theaters. We think
13 this and any other unintended applications of
14 this definition should be addressed.

15 Cooking on the premises is a
16 significant difference between a fast food
17 established and a prepared food shop. We
18 question whether cooking would provide a clear
19 distinction. And I'm happy to hear that
20 Travis is going to take a stab at trying to
21 define that.

22 Many sandwich shops as Mr.

1 Turnbull mentioned use microwaves. Is this
2 cooking? What if a sandwich shop has homemade
3 soups, melts cheese on sandwiches and cooks
4 bacon? The answers are important because in
5 some zoned districts, fast food businesses are
6 prohibited but prepared food shops may not be.

7 Confusion about what may
8 constitute cooking is extended to how the
9 proposed standard of principally devoted would
10 be interpreted in determining whether an
11 eating establishment is a prepared food shop.

12 As currently drafted, this is a
13 vague term and we don't think it will lead to
14 more efficiency and clarity in applying the
15 zoning rules.

16 When ANC-3C tried to apply the
17 proposed Text Amendment to our three
18 neighborhood commercial overlay districts, we
19 have the most overlay districts in the city.
20 We noted that the Text Amendment does not
21 propose to amend Section 1302.5, which
22 establishes that eating establishments are

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1 restricted uses in the overlays. Any new or
2 changed eating establishment terms and
3 definition should be incorporated into the
4 overlay provisions by amendment.

5 We think the submission was an
6 oversight and could be easily corrected but it
7 does need correcting.

8 The overlay goals and
9 administration are instructive in evaluating
10 the treatment of the proposed new prepared
11 food shops category. The overlays restrict
12 all eating establishments in part because they
13 contribute to traffic and parking demand in
14 neighborhood commercial areas. When the
15 maximum allowable concentration of these
16 eating establishments in the overlay area is
17 met any additional eating establishments can
18 locate only with the special exception.

19 We think this limitation is fair
20 and reasonable and we ask you to compare it to
21 what is being proposed. City-wide the Text
22 Amendment separates prepared food shops with

1 a dozen seats from restaurants in C1 and C2A
2 zoned districts and holds them to a stricter
3 test, a special exception.

4 From a policy viewpoint, one has
5 to question why a prepared food shops that
6 include carryouts, delis and coffee shops are
7 targeted while restaurants in neighborhood
8 commercial areas including those with carryout
9 service are not.

10 Equally curious is why 13 customer
11 seats moves a prepared food shop from matter
12 of right to special exception when a
13 restaurant could locate as a matter of right
14 with an unlimited number of seats.

15 Special exceptions examine
16 traffic, parking, noise and other quality of
17 life issues that seem to apply to restaurants
18 as well as carryouts and coffee shops.

19 We don't question that eating
20 establishments have an impact on neighborhood
21 commercial areas. We know that they do.

22 I'd like to parenthetically add

1 that we have a coffee shop which is not low
2 impact. Even DDOT has talked to us about the
3 amount traffic that a particular coffee shop
4 generates and it doesn't seem to be related to
5 the seated customers.

6 But we think there should be more
7 analysis of the types of impacts based on the
8 category of establishment. And if some
9 categories are more problematic then the
10 remedy should be triggered by the real
11 problem. We suspect it is not the presence of
12 13 customer seats.

13 For these reasons and others
14 discussed in the resolution, we recommend that
15 the Text Amendment be returned to the Office
16 of Planning for redrafting in consultation
17 with the petitioner and ANC-3C as well as with
18 other ANC's and community organizations that
19 would be specifically affected by the
20 application of new definitions for eating
21 establishments.

22 Thank you very much.

1 VICE CHAIRMAN HOOD: You can hold
2 your seat which you've been nice enough to do
3 for awhile.

4 Mr. Espenschied.

5 Let me ask this. Mr. Espenschied,
6 you and Mr. Idelson are both representing
7 Cleveland Park. Who is going to take the five
8 minutes and who is going to take the -- who is
9 going to take the five minutes and who is
10 going to take the three minutes?

11 UNIDENTIFIED PERSON: I'll take
12 three minutes.

13 VICE CHAIRMAN HOOD: Turn your
14 microphones on. We want to make sure we get
15 you.

16 MR. IDELSON: Three minutes, I'm
17 sure will get me through this and then --

18 VICE CHAIRMAN HOOD: Mr.
19 Espenschied is going --

20 MR. IDELSON: Can handle
21 questions, specific questions as we both can.

22 VICE CHAIRMAN HOOD: Okay. Who

1 wants to begin?

2 MR. IDELSON: I shall begin.

3 VICE CHAIRMAN HOOD: Okay.

4 MR. IDELSON: Let me say that we
5 were part of the working group, although we
6 did not get involved in the drafting process
7 and we certainly commend the work of 6A which
8 petitioned you originally and we worked with
9 them.

10 Several years ago the Cleveland
11 Park Citizens Association petitioned this body
12 to amend the text of the Cleveland Park
13 Neighborhood Commercial Overlay to make it
14 clearer, more transparent and easier to
15 enforce. You may recall seeing us here.

16 The goal of the overlay is to
17 limit the impact of eating and drinking
18 establishments on traffic, parking, noise and
19 trash and also to keep rentals affordable for
20 the other kinds of businesses the neighborhood
21 needs and desires.

22 The overlay is important to us and

1 we have a stake in getting it right.
2 Regrettably, the Text Amendment you are now
3 considering works against that goal. The more
4 we analyze it, the more we feel it is
5 essentially unworkable and needs to be redone.

6 The problems begin with the
7 proposed introduction of a new use called
8 "prepared food shops" which is principally
9 devoted to the sale of prepared food, non-
10 alcoholic beverages or cold refreshments which
11 is intended to replace the concept of a
12 delicatessen and would also overlap carryouts
13 including pizza shops.

14 "Prepared food" is defined as food
15 that is assembled but not cooked on the
16 premises of a prepared food shop. The
17 entanglements and confusions that these
18 notions introduce arise largely from the use
19 of cooking as a pivotal criterion when
20 distinctions between heating, reheating,
21 microwaving, cooking, etcetera, make a
22 definition resting on this concept a hopeless

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1 tangle.

2 We commend to you the detailed
3 discussion of this issue in both the
4 resolution of the ANC-3C and the careful
5 analysis provided in the written comments of
6 the Woodley Park Community Association which
7 you have.

8 The draft does appear to depend on
9 the word "principally" in the definition of
10 prepared food shop to avoid obvious problems
11 since prepared food as defined would exclude
12 anything which a delicatessen cooks, heats or
13 reheats such as meatballs, egg salad, hot
14 pastrami or sushi which contains cooked rice.

15 However, the word "principally"
16 provides a huge loophole that would, for
17 example, allow for the sale of wine and
18 spirits, clearly not intended. On the other
19 hand, a delicatessen may well engage in
20 sufficient food heating of various sorts to
21 raise a question as to whether it can fit into
22 the definition of a prepared food shop. These

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1 ambiguities will confront the Zoning
2 Administrator or permit clerk with judgment
3 calls at many turns, exactly the kind of
4 situation that needs to be eliminated.

5 The Text Amendment depends so
6 essentially upon these defective definitions
7 as to make it unworkable and even
8 counterproductive.

9 But there are additional problems
10 with the proposed definition. For example,
11 one of the criteria for a fast food
12 establishment is that it does not have a
13 dishwashing machine. But, in fact, any
14 restaurant would need such equipment for
15 kitchen utensils and for containers used in
16 cooking and serving.

17 To eliminate how proversely the
18 Text Amendment would affect the administration
19 of overlays, we invite your attention to the
20 fact that McDonald's by installing a single
21 seat in front of a service counter would meet
22 the criteria for claiming that it is not a

1 fast food restaurant.

2 Another outcome of the Text
3 Amendment that would undermine the overlay
4 concept is the jumbling together of categories
5 that need to be regulated separately.

6 For example, prepared food shops
7 is apparently intended to include
8 delicatessens which we do not want included in
9 the restricted category, together with coffee
10 shops, which clearly we do need to be
11 included.

12 The Cleveland Park Citizens
13 Association endorses the resolutions of ANC-3C
14 and the written comments of the Woodley Park
15 Community Association. We strongly recommend
16 that the Text Amendment be withdrawn and
17 redrafted de novo in close consultation with
18 interested ANCs and community associations.

19 VICE CHAIRMAN HOOD: Okay. Mr.
20 Idelson, thank you.

21 Mr. Espenschied.

22 MR. ESPENSCHIED: Mr. Chairman, I

1 was --

2 VICE CHAIRMAN HOOD: You want to
3 turn your microphone on and, Mr. Idelson, you
4 can turn yours off.

5 MR. ESPENSCHIED: I was intending
6 to be available for answering questions. I
7 don't have additional testimony beyond what
8 Mr. Idelson has read. This was our joint
9 testimony on behalf of the Cleveland Park
10 Citizens Association.

11 VICE CHAIRMAN HOOD: Okay. Well,
12 Mr. Idelson, you have two minutes.

13 MR. IDELSON: Well, you know, it
14 seems to me that clarity is essentially
15 important in this because if the permitting
16 clerk cannot understand what the zoning
17 regulations reads, nothing is ever going to
18 work.

19 That was the whole goal of our
20 Text Amendment. We would try to reduce it
21 down to licenses. As you may recall, we said
22 since we care only about eating and drinking

1 establishments, we said simply if it had a
2 restaurant license it was a restaurant. And
3 if it had a tavern license it was a tavern.
4 And that was as simple as that.

5 Unfortunately, our Text Amendment
6 is sort of dangling in the balance of the
7 Zoning Commission at the moment and that's why
8 we got involved in this. We did our best to
9 lend out experience with overlays in the hopes
10 that we could get on with this and then get to
11 our Text Amendment.

12 It may be that -- I mean,
13 definitions are clearly important and overlays
14 have to be able to pick and choose which ones
15 they want. That means they have to be very
16 clear and very precise and it's that simple.
17 And if it takes more definitions to do it,
18 maybe that's the answer. Maybe trying to put
19 too much into a given definition may be what
20 causes some of these problems and maybe more
21 definitions might help.

22 VICE CHAIRMAN HOOD: I thank you

1 three.

2 Colleagues, any questions? Okay.

3 Mr. Idelson, let's talk about the
4 McDonald's for a moment. And I know anything
5 can happen and people do what they want to do
6 to meet a definition.

7 You said McDonald's could possibly
8 put in a seat and call themselves a
9 restaurant. Do you think -- I'm just asking
10 because I'm probably going to answer my own
11 questions, but do you think they would
12 actually do that?

13 MR. IDELSON: Well, we do think
14 that clarify is essential and that lawyers are
15 clever. And it's got to be really simple and
16 enforceable. That's all. And enforcement has
17 been the problem with it right from the
18 beginning. Our overlay was written in 1989.
19 And not until recently has it begun to be
20 enforced. So, you can see why we feel so
21 strongly about that. And we have determined
22 that careless language was part of the cause.

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1 VICE CHAIRMAN HOOD: Okay.

2 MR. IDELSON: Dysfunctionality of
3 DCRA was yet another. And so we have very
4 strong feelings about simplicity, clarity and
5 something that a permit clerk can make the
6 right decision upon without having to judge
7 whether this is partly this and party that.
8 And that's the way the overlays tend to be
9 written.

10 VICE CHAIRMAN HOOD: There are
11 other characteristics that come into play
12 also. What is it? Non-disposable? So, they
13 may meet one, but I think in one submittal, I
14 noticed the OP report had like three or four
15 of the characteristics.

16 So, there are still some stuff
17 there for clarity as you say. I'm exploring
18 this with you because I also want to make sure
19 hopefully that we move forward to clarity to
20 make it as easy as possible for the ZA or the
21 BZA to be able to make a determination if they
22 don't meet the threshold.

1 But, I'm just trying to make sure
2 that clarity is there also. But, you know,
3 there are other characteristics there and I'm
4 just wondering if those -- they may meet that
5 measure, but there are three other
6 characteristics, for example.

7 MR. ESPENSCHIED: May I weigh in
8 on that?

9 VICE CHAIRMAN HOOD: Sure.

10 MR. ESPENSCHIED: We are looking
11 at this trying to take the viewpoint which we
12 would have to allow within the advice of a
13 regulatory layer who said. If I were advising
14 my client, this is what I would do. And that
15 is what drew our attention to the fact that
16 McDonald's could install a seat there. They
17 could say it's for any purpose. But the fact
18 would be that if the element is satisfied when
19 the building permit plans to fit the service
20 counter without seeing, as it says in the
21 proposal, then you would not have a service
22 counter without seating. And so that element

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1 that needs to be in a fast food establishment
2 wouldn't be satisfied.

3 As far as Item C is concerned. A
4 is obviously out of the question here so we're
5 talking then just about C. And then if there
6 is no dishwasher, you are presumed to be
7 dealing with disposable plates. But the fact
8 is, that virtually every food establishment of
9 every kind has a dishwasher because they need
10 that for kitchen utensils for their cooking
11 equipment and so on.

12 So using that as a criterion is
13 going to lead you frankly to not be able to
14 have items C be a point of reference.

15 Now, similarly with the trash
16 receptacles, that unfortunately is so readily
17 subject to abuse. Obviously in permit plans
18 you can either put one in or take one out as
19 the regulatory rules lead you to want to do it
20 and you can change that at any point.

21 So, this just isn't any -- there's
22 nothing irregular to it. It's so readily

1 subject to abuse and legal abuse. You know,
2 a person putting a seat there isn't doing
3 something illegal. But he's changing how he
4 deals with the requirements.

5 VICE CHAIRMAN HOOD: Okay. That's
6 all I have.

7 That's okay. That's all I have
8 for now.

9 Colleagues, any other questions of
10 him?

11 Ms. Macwood, weren't you on the
12 task force or whatever you guys called it?

13 COMMISSIONER MACWOOD: I went to
14 the first meeting, I believe, and I think I
15 was invited to the second one. I had a
16 conflict and I wasn't aware of any meetings
17 after that.

18 VICE CHAIRMAN HOOD: Okay.

19 MR. ESPENSCHIED: We were all
20 there to start with, but we never saw the
21 drafts.

22 VICE CHAIRMAN HOOD: What I would

1 like to do. Thank you.

2 What I would like to do is -- I
3 have a list of things that I want to thank the
4 staff for helping me how we're going to end
5 this hearing.

6 I have some options here and I
7 think it's some options. I would like to keep
8 the record open for specific reports only. I
9 think ANC's and Cleveland Park you weighed in.
10 We have your submittals as I stated earlier
11 because we got a lot of it today. We're going
12 to need to digest it.

13 Mr. Parker has agreed to a
14 comparison report across the board of
15 everything that's been submitted, because it's
16 not a wide cadre across the city what we have
17 here. And everyone has been properly noticed.

18 So, what I would like to do is to
19 keep the record open for specific reports.

20 ANC-6A, the Restaurant
21 Association. I think we got that the night or
22 so. So, we're good with the restaurant. And

1 Office of Planning, which is Mr. Parker saw
2 the problem piece is what I call it.

3 ACTING SECRETARY SCHELLIN: And
4 also ANC-6C. I know you said 6A.

5 VICE CHAIRMAN HOOD: Yes.

6 ACTING SECRETARY SCHELLIN: And 6C
7 made the request to leave it open for at least
8 30 days.

9 VICE CHAIRMAN HOOD: Was 6A
10 leaving it open? What was 6A.

11 ACTING SECRETARY SCHELLIN: 6A was
12 the petitioner.

13 VICE CHAIRMAN HOOD: Yes. Right.

14 ACTING SECRETARY SCHELLIN: He had
15 to leave.

16 VICE CHAIRMAN HOOD: Why don't we
17 leave it open to 6A? Oh, we meant 6C? Okay.
18 6C. So, we're looking for something from 6C
19 because they've asked for it and the Office of
20 Planning supplemental.

21 And that's all we're going to have
22 coming in. We're going to leave the record

1 open until 3:00 p.m. on May the 25th. it's
2 actually more tan 30 days and it covers ANC-
3 6C's request.

4 Thank you, Mrs. Schellin. She
5 writes the little stickies to keep me on
6 target.

7 And also possibly this will be
8 considered at our June meeting. Okay.

9 With that, I want to thank
10 everyone else for all of their committed hard
11 work. It's well appreciated.

12 And with this, this hearing with
13 the exception of things that we're leaving the
14 record open, is adjourned.

15 (Whereupon, the above matter was
16 concluded at 8:24 p.m.)

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