

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 460

Case No, 83-6

(Fast Food Restaurant Provisions of the Regulations)

May 13, 1985

EMERGENCY ORDER

Whereas, on May 3, 1983, Advisory Neighborhood Commission (ANC)-1B filed a petition which requested the Zoning Commission to consider amending the text of the Zoning Regulations regarding fast food restaurants; and

Whereas, the District of Columbia Office of Planning (OP), by memoranda dated August 5 and October 12, 1983, reviewed the ANC-1B petition and proposed amendments to the text of the Regulations of its own, regarding fast food restaurants; and

Whereas, on March 19 & 26, and April 2 & 19, 1984, the Zoning Commission of the District of Columbia conducted public hearings on proposals from ANC-1B and the OP in order to provide for maximum Latitude for Commission consideration; and

Whereas, the Zoning Commission heard testimony at the public hearing, and received petitions, letters, and statements from a full range of interested and concerned persons, including the citizen, business, and government sectors; and

Whereas, the Zoning Commission was persuaded that the establishment of fast food restaurants in certain commercial districts had a substantial adverse affect on neighboring residential areas; and

Whereas , at meetings on June 11, July 9, November 5, and December 10, 1984, and April 8 and Kay 13, 1985, the Zoning Commission considered Case No. 83-6 for proposed and final actions; and

Whereas, the Zoning Commission published notices of proposed rulemaking in the D.C. Register on Sep-tember 7, 1984, and March 1, 1985, and solicited written comments from interested persons; and

Whereas , as a result of some of those comments, the Zoning Commission made some substantive revisions to the proposed regulations to provide for more effective enforcement and to make the regulations legally sufficient; and

Whereas, on May 13, 1985 the Office of the Corporation Counsel , the Office of Planning, and the Zoning Administrator informed the Zoning Commission that, since the previous meeting of April 8, 1985, where the Zoning Commission decided to defer final action pending review and clarification of the proposed regulations, there had been an unusual increase in the number of applications for permits to build fast food restaurants in the C-1 and C-2-A Districts; and

Whereas, certain of the revisions to the proposal considered by the Commission on May 13, 1985, were determined preliminarily to be substantive but necessary to the effective implementation of the proposed regulations, thereby requiring that an additional notice of proposed rulemaking be published in the D.C. Register; and

Whereas, the publication of a notice of proposed rulemaking and the eventual final action on such a proposal will take forty-five to sixty days; and

Whereas, applications for permits to build filed before the revised proposed regulations take effect are entitled to be considered under the present regulations; and

Whereas, the time required to take final action would allow an additional unknown number of permit applications to be filed and granted before the revised regulations could take effect; and

Whereas, the increase in the number of permit applications was viewed by the Zoning Commission to be motivated in part to circumvent the proposed regulations; and

Whereas, the granting of permits prior to the effective date of the proposed regulations would effectively thwart the thrust and intent of the revised proposed regulations by allowing the lawful establishment of fast food restaurants in areas which would be limited by the revised proposed regulations; and

Whereas, the Zoning Commission has determined that the proposed revised regulations are necessary to protect the health, safety and general welfare of the District of Columbia: and

Whereas, Section 1 of the Zoning Act (Act of June 20, 1938, 52 stat. 797, also cited as Section 5-413 of the D.C. Code) establishes the authority of the Zoning Commission "to promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia;" and

Whereas, Section 1-1506 of the District of Columbia Code authorizes the Zoning Commission to take emergency action for a period not to exceed 120 days "for the immediate preservation of the public peace, health, safety, welfare or morals,"

Now Therefore, the Zoning Commission resolves that an emergency exists, and that it is necessary to take immediate action to prevent fast food restaurants from locating as a matter-of-right in lower density commercial districts, adjacent to residential districts. It is therefore ordered that the Zoning Regulations of the District of Columbia are amended as set forth below. The amendments set forth below reference the format and numbering system of 11 DCMR Zoning, dated May, 1984. The numbers contained in brackets reference the numbering system of the Provisional Edition of 11 DCMR, dated August, 1983. The specific amendments to the Regulations are as follows:

1. Amend §199.9 [Section 1202] by adding the following new definitions:

Restaurant - A place of business where food, drinks or refreshments are prepared and sold to customers primarily for consumption on the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria or other similar business, but shall not include a fast food restaurant. In a restaurant, any facilities for carry-out shall be clearly subordinate to the principal use providing prepared foods for consumption on the premises.

Restaurant, fast food - A place of business devoted to the preparation and retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it has a drive-through. A restaurant will be considered a fast food restaurant if the floor space allocated and used for customer queuing self service for carry out and on-premises consumption is greater than ten percent (10%) of the total floor space on any one (1) floor which is accessible to the public, and it exhibits one (1) of the two (2) following characteristics:

- (a) At least sixty percent (60%) of the food items are already prepared or packaged before the customer places an order; and/or

- (b) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

This definition does not include an establishment known as retail grocery store, convenience store, ice cream parlor, delicatessen or other businesses selling food or beverages as an accessory use or for off-premises preparation and consumption.

Drive-through - A system designed to permit customers of a restaurant, fast food restaurant, bank, dry cleaning or other establishment to obtain goods or services by driving through the property and conducting the transaction while the customer remains within a motor vehicle. The system has two (2) major parts: a vehicular queuing lane or lanes, and one (1) or more service locations, **where customers** place orders or receive services, or both. No part of this definition shall be construed to apply to a gasoline service station,

2. Continue to permit a fast food restaurant in Waterfront Districts by amending existing §901.1(j) [Paragraph 4402.210] concerning private clubs and restaurants to read as follows:

901.1(j) [4402.210] Private club, restaurant or fast food restaurant, provided that a fast food restaurant shall not include a drive-through.

3. Continue to permit a fast food restaurant in CR Districts by amending existing §601.1(i) [Paragraph 4502.211] concerning private clubs and restaurants to read as follows:

601.1(i) [4502.211] Private club, restaurant or fast food restaurant, provided that a fast food restaurant shall not include a drive-through.

4. Prohibit a fast food restaurant in C-1 Districts by amending existing §701.4(q) [Sub-paragraph 5101.33q] concerning restaurants to read as follows:

701.4(q) [5101.33q] Restaurant, but not including a fast food restaurant or a drive-in restaurant.

5. Permit a fast food restaurant in C-2-A Districts as a special exception subject to review and approval by the Board of Zoning Adjustment by adding a new §733 [Paragraph 5102,483] as follows:

733 FAST FOOD RESTAURANTS IN C-2-A DISTRICTS

733.1 [5102.48] Fast food restaurant **shall** be permitted in a C-2-A District if approved by the Board of Zoning Adjustment, in accordance with the conditions specified

in §3108 [Section 8207] of chapter 31 of this title, subject to the provisions of this section.

- 733.2 [a] No part of the lot on which the use is located shall be within twenty-five feet (25') of a Residence District unless separated therefrom by a street or alley,
- 733.3 [b] If any lot line of the lot abuts an alley containing a zone boundary line for a Residence District, a continuous brick wall at least six feet (6') in height and twelve inches (12") thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building which extends for the full width of its lot.
- 733.4 [c] Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6'), whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a Residence District,
- 733.5 [d] The use shall not include a drive-through.
- 733.6 [e] There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone boundary line for a Residence District.
- 733.7 [f] The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation or other conditions.
- 733.8 [g] The use shall provide sufficient off-street parking, but no less than required by §2101.1 [Sub-section 7201.1], to accommodate the needs of patrons and employees.
- 733.3 [h] The use shall be located and designed so as to create no dangerous or other objectionable traffic conditions.
- 733.10 [i] There shall be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles or driveways on the site.
- 733.11 [j] The Board may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection or any other matter necessary to protect adjacent or nearby property,

733.12 Each application submitted under this section shall be referred 'cc the Office of Planning in accordance with the provisions of §725.

6. Permit a fast food restaurant in C-2-B and C-2-C Districts as a matter-of-right, by adding a new §721.3(s) [Sub-paragraph 5102.33s] as follows:

721.3(t) [5102.33t] Fast food restaurant, only in a C-2-B or C-2-C District, provided that:

- (1) No part of the lot on which the use is Located shall be within twenty-five feet (25') of a Residence District unless separated therefrom by a street or alley;
- (2) If any lot line of the lot abuts an alley containing a zone boundary line for a Residence District, a continuous brick wall at least six feet (6') in height and twelve inches (12") thick shall be constructed and maintained on the lot along the length of that lot line;
- (3) Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6') , whichever is greater., The entrance to the enclosure shall include an opaque gate. The entrance shall not face a Residence District; and
- (4) The use shall not include a drive-through.

7. Permit fast food restaurants as a matter-of-right in C-3 and less restrictive districts by adding a new 5741.3(c) [Sub-paragraph 5103.333] as follows:

741.3(c) [5103.333] Fast food restaurant.

8. Permit a drive-through as an accessory use to a fast food restaurant, delicatessen cr carry-out in C-3, C-4 and C-5 (PAD) Districts by adding new §§742.4, 752.4 and 761.6 [Paragraphs 5103.54, 5104.54 and 5105.54] as follows:

742.4 [5103.54] A drive-through accessory to a fast food restaurant, delicatessen or carry-out shall be permitted in a C-3 District, subject to the special provisions for drive-thrcughs set forth in §2304 [Section 7405].

752.4 [5104.54] A drive-through accessory to a fast food restaurant, delicatessen or carry-out shall be permitted in a C-4 District, subject to the special provisions for drive-thrcughs set forth in §2304 [Section 7405].

761.6 [5105.54] A drive-through accessory to a fast food restaurant, delicatessen or carry-out shall be permitted in a C-5(PAD) District, subject to the special provisions for drive-throughs set forth in §2304 [Section 7405].

9. Permit a drive-through as an accessory use to a fast food restaurant, delicatessen or carry-out in a C-M or M District by adding new §§801.9 and 821.5 [Paragraphs 6101.38 and 6102.34] as follows:

801.9 [6101.38] A drive-through accessory to a fast food restaurant, delicatessen or carry-out shall be permitted in a C-M District, subject to the special provisions for drive-throughs set forth in §2304 [Section 7405].

821.5 [6102.34] A drive-through accessory to a fast food restaurant, delicatessen or carry-out shall be permitted in an M District, subject to the special provisions for drive-throughs set forth in §2304 [Section 7405].

10. Establish parking requirements for fast food restaurants by adding to the table of parking requirements in §2101.1 [Sub-section 7201.1] under the general category of "COMMERCIAL BUILDINGS," the following:

Fast food restaurant:

C-2, C-3-A:

In a building having a side yard	In excess of 1,500 square feet, one for each additional 100 square feet of gross floor area and cellar floor area
In a building having no side yard.....	Same as required for retail or service establishment in the district in which located
All other Districts	Same as required for retail or service establishment in the district in which located

11. Provide standards for drive-through uses by adding a new §2304 [Section 7405] as follows:

2304 [Section 7405] DRIVE-THROUGH USES

2304.1 [7405.1] A driveway serving as a vehicle queuing lane for a drive-through shall conform to the standards set forth in this section.

- 2304.2 [7405.11] The queuing lane shall provide a minimum of five (5) queuing lane spaces before the first service location and one (1) queuing lane space after the last service location before entering public space,
- 2304.3 [7405.12] Each queuing space shall be a minimum of ten feet (10') in width by nineteen feet (19') in length and shall constitute an exclusive queuing Lane,
- 2304.4 [7405.13] The queuing lane shall not be the only entry or exit lane on the premises.
- 2304.5 [7405.14] The queuing lane shall be paved and maintained with materials which form an all-weather impervious surface.
- 2304.6 [7405.15] No vehicular entrance or exit shall be within forty feet (40') of a street intersection as measured from the intersection of the curb lines extended.
- 2304.7 [7405.16] Any lighting used to illuminate the queuing lane shall be so arranged that all direct rays of that lighting are confined to the surface of the queuing lane.

The amendments shall take effect immediately, and shall remain in effect for 120 days, or until permanent amendments regarding fast-food restaurants are adopted by the Zoning Commission and become effective, whichever comes first,


MAYBELLE T. BENNETT
Chairperson
Zoning Commission


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