

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 679

Case No. 86-7

(Text Amendment - Bars in Commercial Districts
January 14, 1991)

Z. C. Case No. 86-7 is an initiative of the Zoning Commission for the District of Columbia to consider amendments to the text of District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, to regulate the number of eating and drinking establishments in commercial zones.

This proposal is a result of the concerns and issues raised by various community organizations with Alcoholic Beverage and Control (ABC) Board requesting a moratorium on new licenses to eating and drinking establishments. The moratorium would specifically affect such establishments in commercial zones, which are either away from downtown areas or near residential neighborhoods.

On June 5, 1989 the Zoning Commission held a public hearing to consider the following proposed amendments:

1. To define eating and drinking use; and
2. To regulate the percentage of eating and drinking uses in the C-1, C-2-A, C-2-B, C-3-A, C-3-B, W-1 and W-2 Districts.

At the public hearing, the Commission heard testimony in support and in opposition from representatives of the Department of Consumer and Regulatory Affairs, the Alcohol Beverage Control Board, and various individuals and organizations, including Advisory Neighborhood Commissions 2E and 3G. The Commission also received post-hearing submissions from various persons in support and in opposition to the proposal.

The major concerns raised at the hearing and in the correspondences received included, but were not limited to, the following:

1. Adverse impact on neighborhoods because of an increase in eating and drinking establishments; e.g., traffic circulation, parking, trash and garbage collection, late night noise, etc.;

2. Lack of neighborhood-serving commercial establishments; e.g., hardware, shoe repair and 5 & 10 stores, etc; and
3. Proposal being too restrictive to allow certain eating and drinking establishments to continue and thrive.

The Zoning Commission proposed to consider this case for decision at its monthly meeting held on September 11, 1989, anticipating that the ABC Board would provide the Commission with a status/update report in May, 1989.

The Office of Planning (OP), by memorandum dated May 26, 1989, indicated that OP staff met with a variety of concerned interests, including ABC Board staff members and representatives of the restaurant industry, and finds that there is no definitive resolution of all the issues raised. The memorandum further weighed the licensing control approach and the zoning approach as advertised in this case. The staff concluded that the application of both the licensing control measures and the zoning approach might lead to over-regulation, might compound the already complex licensing process, and might have a negative impact on administrative efficiency.

By a memorandum dated March 30, 1989, the District of Columbia Department of Consumer and Regulatory Affairs pointed out the effect the text amendment would have on customers and the District of Columbia zoning staff. It stressed the problem of enforcement, and the time consuming nature of the process. The memorandum also recommended that consideration be given to the process of voluntary agreements entered into between the ANCs, civic associations, residents, and establishments. The said agreements are incorporated into an ABC license which is then conditioned on the adherence to the terms of the agreements. It further recommended that more emphasis should be given to license control measures, such as a moratorium on the issuance of licenses, as opposed to the zoning approach.

By OP summary/abstract report dated August 23, 1989, OP stated that the moratoriums established by the ABC Board in Georgetown and Adams-Morgan areas are working very well. OP recommended that the case be dismissed.

On September 11, 1989, at its regular monthly meeting, the Zoning Commission deferred proposed action for twelve months in order to determine whether the ABC Board moratoriums would be effective in reducing the adverse impact that eating and drinking establishments were having on neighborhoods.

On November 19, 1990, at its regular monthly meeting, the Zoning Commission considered the disposition of the case including, but not limited to, OP's recommendation to dismiss the case, jurisdiction over control of the concentration of bars and restaurants, the apparent temporary nature of the ABC Board moratorium, and the Commission's ability to reassert itself and ensure control in case of laxity in the effectiveness of the moratoriums.

The Commission concurred with OP's study and recommendations and the ABC Board concern that over-regulation will have negative impact on the consumers and the business community in the restaurant industry.

The Zoning Commission determined that the moratorium and other license control devices are appropriate, and should remain in place for the foreseeable future.

The Commission strongly reiterated its view that the problems associated with the service of alcohol in establishments adjacent to residential neighborhoods is indeed a land use issue. The Commission views the licensing process as a separate function that concerns primarily the bases or requirements under which individual operators may conduct a use permitted under the Zoning Regulations.

However, for the reasons mentioned above, it appears that, properly administered, the licensing process can more easily be utilized to regulate the adverse effects of alcohol-serving establishments on residential neighborhoods than can the zoning process. That is not to say that the zoning process cannot also be utilized to control proper use of the land, a function which it performs on a continuing basis.

The Commission will therefore continue to monitor the situation and will expect reports annually, as a minimum, from the Office of Planning in that regard and herewith states its intention to re-examine the imposition of zoning restrictions in the event that regulation through the licensing process by the ABC Board should prove wanting in the future.

The Zoning Commission believes that its decision is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

Upon considerations of the reasons set forth herein, the Zoning Commission hereby orders that Case No. 86-7 be DISMISSED.

Vote of the Zoning Commission taken at the public meeting on November 19, 1990: 4-0 (George M. White, John G. Parsons, Maybelle Taylor Bennett, and Lloyd D. Smith, to dismiss; Tersh Boasberg, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at the public meeting on January 14, 1991, by a vote of 4-0 (John G. Parsons, Maybelle Taylor Bennett, and Lloyd D. Smith, to adopt, as corrected, and George M. White, to adopt by proxy - Tersh Boasberg, not voting, not having participated in the case).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on FEB 15 1991.



TERSHER BOASBERG
Chairman
Zoning Commission



EDWARD L. CURRY
Executive Director
Zoning Secretariat

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