

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 734

Case No. 89-21

(Food Delivery Service)

April 12, 1993

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on November 27, 1989. At that hearing session, the Zoning Commission considered a proposal of the District of Columbia Office of Planning (OP) to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, pursuant to 11 DCMR 102. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

During the mid-1980s, a trend began in the establishment of pizza delivery businesses in the District of Columbia. The type of operation that many of these businesses had raised concerns among some residents in several neighborhoods where these businesses were established. Many residents believed that these pizza delivery businesses, which were approved as a "delicatessen", were actually "fast-food restaurants."

The Zoning Regulations do not define "delicatessen," nor do they indicate in what zone district a delicatessen is first permitted. Pursuant to 11 DCMR 199.2(g), Webster's Unabridged Dictionary defines "delicatessen", as follows:

1. Ready-to-eat food products (as cooked or processed meats, cheeses, prepared salads, canned foods, preserves, relishes); and
2. A store where delicatessen are sold either to be taken out or to be eaten on the premises (as in sandwiches).

The Zoning Regulations first permit fast-food restaurants, as a matter-of-right, in C-2-B and C-2-C zone districts, provided that certain spacing and screening criteria are met. The Zoning Regulations define fast-food restaurants, as follows:

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

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and used for customer queuing self-service for carry out and on-premises consumption is greater than ten percent (10%) of the total 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
- 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).

Some of these pizza delivery businesses were locating in C-1 and C-2-A zone districts. Many C-1 and C-2-A zone districts in the city are mapped contiguous to low-density residential zone districts. The Comprehensive Plan for the National Capital contemplates that those areas of the city that have a low-density commercial land use designation be zoned C-1 or C-2-A.

On November 13, 1989, Advisory Neighborhood Commission (ANC)-6B filed an appeal before the Board of Zoning Adjustment (BZA). The appeal sought to overturn the decision of the Zoning Administrator, who approved the issuance of a building permit and certificate of occupancy to allow for the establishment of a Domino's Pizza delivery business in a C-2-A zone district at 1500 Pennsylvania Avenue, S.E.

ANC-6B believed that the pizza delivery establishment should not have been approved as a delicatessen but should have been considered a fast-food restaurant. The latter is not a permitted use in a C-2-A zone district.

By Appeal No. 14738 dated June 27, 1990, the BZA denied the appeal of ANC-6B and sustained the decision of the Zoning Administrator to issue the building permit and certificate of occupancy for the Domino Pizza at 1500 Pennsylvania Avenue, S.E.

The BZA expressed reservations about the Zoning Administrator's use of DCMR Title 23 for the interpretation of words not defined in DCMR Title 11; in this instance, the definition of "delicatessen." 11 DCMR explicitly directs that reference should be made to Webster's Unabridged Dictionary for words that are undefined in DCMR Title 11.

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The BZA, however, concluded the following:

"It is not clear that the reference to Title 23 for a definition of delicatessen produced an erroneous result. That is, in light of the inherent and troubling ambiguity of the definition of fast-food restaurant, the Board concludes that it was reasonable for the Zoning Administrator to refer to Title 23 in an effort to resolve that ambiguity. The Zoning Administrator reasonably determined that the pizza franchise is properly classified as a delicatessen, and is therefore not a fast food restaurant."

Meanwhile in early 1989 and before the BZA decision in Appeal No. 14738, Domino's Pizza also expressed an interest in locating one of its businesses in the Palisades neighborhood of the city; initially at 5105 and later at 5443 MacArthur Boulevard, N.W., both properties of which were in the C-1 zone district.

The Zoning Commission received a petition from more than 300 persons, and letters from the Palisades Citizens Association, ANC-3D, Councilmember James Nathanson, Council Chairman David Clarke, the Francis Scott Key PTA, and more than 60 persons in opposition to Domino's proposal to establish a pizza delivery in the Palisades neighborhood.

The opposition expressed concerns and issues that included, but were not limited to, the following:

1. Safety of pedestrians including elementary school children;
2. Traffic congestion and parking problems;
3. Disruption of a cohesive and serene low-density neighborhood;
4. Adverse affect on property values;
5. Pressure on young and inexperienced drivers to speed because of the policy to deliver pizzas within 30 minutes;
6. Businesses like these are courier services;
7. C-1 and C-2 zone districts were intended for neighborhood-type traffic and users;
8. C-1 was never intended for high volume;
9. Pizza delivery businesses are not delicatessens;

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10. Adverse environmental impact including, noise, litter, obnoxious odors, and automobile emissions;
11. Hours of operation will attract crime;
12. Pizza delivery businesses should be regulated as fast-food restaurants; and
13. No drive-throughs should be permitted.

The District of Columbia Office of Planning (OP), by memorandum dated July 10, 1989, requested the Zoning Commission to amend the text of the Zoning Regulations to regulate the treatment of food delivery services in low-density commercial zone districts, and to define food delivery service, caterer (catering establishment), and delicatessen (carry-out).

On September 11, 1989 at its regular monthly meeting, the Zoning Commission authorized a public hearing on the OP initial and alternative proposals.

In addition to the aforementioned definitions, the initial OP proposal would prohibit food delivery services in the C-1 zone district; permit said use as a matter-of-right in the C-2 zone districts, subject to satisfying certain performance standards; and permit said use as a matter-of-right in the C-3, W, CR, and less restrictive districts.

The alternative OP proposal varied from the initial proposal in that food delivery services would be permitted in C-1 and C-2-A zone districts as a special exception requiring BZA approval; C-2-B and C-2-C zone districts would permit said use as a matter-of-right, subject to satisfying certain performance standards; and C-3, W, CR, and less restrictive zone districts would permit said use as a matter-of-right.

At the public hearing, the Zoning Commission heard testimony that included, but was not limited to, the Office of Planning, the Councilmember from Ward 3, Advisory Neighborhood Commissions 3D and 1B, the Palisades Citizens Association, a representative from Domino's Corporation, and five residents of the Palisades neighborhood.

The District of Columbia Office of Planning, by testimony presented at the public hearing, indicated that one of the objectives of the Comprehensive Plan for the National Capital is as follows:

"to protect low and medium density residential neighborhoods from uses that are incompatible with a residential neighborhood and from activities, particularly those of a commercial nature that generate excessive traffic, late-night activity, noise, litter, and other damaging impacts."

Testimony in support of the proposal at the public hearing reiterated the aforementioned concerns and issues in addition to the following:

1. Prohibit food delivery service uses in C-1 District;
2. Permit said uses as a special exception in C-2-A District;
3. Regulate the route that food delivery service vehicles would take when making deliveries;
4. Impact of the proposal on other locations in the city where food delivery services may want to locate; and
5. Inclusion of spacing requirements in the performance standards for locating food delivery services near schools.

A representative from Domino's testified at the public hearing in opposition to the proposal. He indicated that the C-1 District may be an appropriate zone district to locate its businesses because they provide a service to residential neighborhoods and others. He further indicated that Domino's does not attempt to characterize themselves of as a delicatessen in the city, but because Domino's is different, various jurisdictions will classify the use differently.

The Commission concurs with the position of OP, ANC-3D and 1B, the PCA and others, and believes that food delivery services should be regulated, in many ways like fast-food restaurants, to protect the affect they may have on low-density residential zoned areas. The Commission does not concur with the position of the Domino's Corporation.

The Commission is persuaded by OP to approve a parking requirement standard of one on-site parking space for each 500 square feet of floor area instead of one for each 250 square feet of floor area.

The Commission believes that after considering and balancing all of the issues and concerns for and against the proposal, its proposed decision in this case is appropriate.

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The Commission further believes that its proposed decision to regulate food delivery services 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.

The proposed decision to regulate food delivery services was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated February 24, 1993, found that the proposed text amendments would not adversely affect the Federal Establishment or other Federal interests in the National Capital and are not inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission has accorded ANCs 3D, and 1B the "great weight" consideration to which they are entitled.

A notice of proposed rulemaking was published in the District of Columbia Register on February 26, 1993 (40 DCR 1593). As a result of the publication of that notice, no comments were received.

On April 12, 1993 at its regular monthly meeting, the Zoning Commission considered a memorandum dated April 8, 1993 from the Secretary to the Zoning Commission. The memorandum requested a waiver of the Rules of Practice and Procedure to allow consideration of a request to clarify the notice of proposed rulemaking. The Commission granted a waiver of the rules.

The memorandum sought clarification about the inclusion of the phrase "food delivery service" in 11 DCMR 601.1(i), 741.3(c), and 901.1(j), and clarification about the phrase "gross floor area and cellar floor area" in 11 DCMR 2101.1.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of amendments to the District of Columbia Municipal Regulations, Title 11, Zoning, to regulate "food delivery services". The specific amendments to the Zoning Regulations are as follows:

1. Add the following definitions to section 199:

**Food delivery service** - A restaurant , delicatessen or fast food restaurant in which the principal use is delivery of prepared food by motor vehicle to customers located off the business premises. Seating and tables for customers may or may not be provided for on-premises consumption, but if

present are clearly subordinate to the principal use of delivering prepared food to off-site customers. Any establishment that derives more than seventy-five percent (75%) of its sales from delivery orders will be considered a food delivery service in all cases. This definition does not include catering establishments.

**Caterer, catering establishment** - A person or business that prepares and provides food or beverages or both, along with the necessary accessories for serving these products, for ordinary home consumption. The food and beverages are provided for events that are located off the business establishment's premises. Any establishment that receives more than seventy-five percent (75%) of its sales from orders placed less than three (3) hours prior to delivery or pick-up will not be considered a catering establishment.

2. Prohibit food delivery service from the C-1 District by adding, "or a food delivery service" to paragraph 701.4(q). This paragraph would then read as follows:

701.4(q) Restaurant, but not including a fast food restaurant, drive-in restaurant, or a food delivery service.

3. Allow food delivery service in the C-2-A District as a special exception, by adding a new section 734, to read as follows:

**734 FOOD DELIVERY SERVICE IN C-2-A DISTRICTS**

734.1 Food delivery service shall be permitted in the C-2-A District if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Subsection 3108 of chapter 31 of this title, subject to the provisions of this section.

734.2 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.

734.3 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') high 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 that extends for the full width of its lot.

- 734.4 Any refuse dumpster 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.
- 734.5 The use shall not include a drive-through.
- 734.6 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.
- 734.7 The use shall provide sufficient off-street parking, but not less than required by Subsection 2101.1, to accommodate the needs of patrons and employees.
- 734.8 The use shall be located and designed so as to create no dangerous or other objectionable traffic conditions.
- 734.9 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.
- 734.10 Each application submitted under this section shall be referred to the Office of Planning in accordance with the provisions of Subsection 725.
4. Permit food delivery service as a matter-of-right with performance standards in C-2-B and C-2-C districts, by amending paragraph 721.3(s), to read as follows:
- 721.3(s) Fast food restaurant or food delivery service, only in a C-2-B or C-2-C district; Provided, that the following requirements are met:
- (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.
5. Continue to permit food delivery service as a matter-of-right in the W, CR, C-3, and less restrictive zones by adding "food delivery service" to paragraphs 901.1(j) for the W districts, 601.1(i) for the CR District, and 741.3(c) for the C-3 Districts, to read as follows:
- 601.1(i) Private Club, restaurant, fast food restaurant, or
  - 901.1(j) food delivery service; Provided, that a fast food restaurant or food delivery service shall not include a drive-through.
  - 741.3(c) Fast food restaurant or food delivery service; Provided, that in a C-3-A District, 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.
6. Amend Subsection 2101.1 (Number of parking spaces required) to read as follows:

Uses	Number of Parking Spaces Required
Food Delivery Service: C-2, C-3-A, C-3-B, W, CR, and other Districts in which the use is permitted.	1 for each 500 square feet of gross floor area and cellar floor area.

Vote of the Zoning Commission taken at the public meeting on January 8, 1990: 5-0 (Tersh Boasberg, Lloyd D. Smith, Maybelle Taylor Bennett, and John G. Parsons, to approve and William L. Ensign, to approve by absentee vote)

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This order was adopted by the Zoning Commission at the public meeting on April 12, 1993 by a vote of 5-0 (William L. Ensign, Tersh Boasberg, and Maybelle Taylor Bennett, to adopt as amended, and John G. Parsons and Lloyd D. Smith, to adopt by absentee vote).

In accordance with 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; this is on,

JUN 11 1993

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
MADELIENE H. ROBINSON  
Director  
Office of Zoning

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