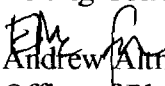


GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

Memorandum

TO: Zoning Commission
FROM:  Andrew Altman, Director
Office of Planning
DATE: October 24, 2002
SUBJECT: ZC # 02-06 – Text Amendment to the Neighborhood Commercial Overlay
District - Limitation for Eating and Drinking Establishments

INCLUDED USES

Based on a review of the Section 199 of 11DCMR, Zoning and the business codes for **Combined Business Tax Registration Application**, as published by the DC Business Resource Center, OP recommends the following categories of eating and drinking establishments be identified as subject to the regulations of the NC Overlay:

- Restaurant
- Fast Food Restaurant
- Deli, as principal use of building
- Bar or Cocktail Lounge
- Cabaret
- Food Carry-out as principal use
- Dinner Theater
- Tea or Coffee House
- Nightclub
- Buildings with the primary purpose of selling food that can be consumed without further preparation (*the intent of this definition is to include the vending building, but not vending machines*)

EXCLUDED USES

To clarify that accessory and principally retail uses are not to be subject to the regulations of the NC Overlay, OP also recommends that the following list of businesses and services be identified as such:

- Grocery Store
- Food and Beverage Stores
- Gas Station
- Off-premise ABC
- Food Carry Out
- Billiards Parlor

ZONING COMMISSION
District of Columbia
Case 02-06
Exhibit 39

ZONING COMMISSION
District of Columbia
CASE NO.02-06
EXHIBIT NO.39

Vending Machines
Farmers Market
Caterer or catering establishment
Convenience Stores
Commercial adjunct uses within a Hotel
Accessory uses customarily incidental and subordinate to a principal use within this category, and located within the same building as the principal use.

BY-RIGHT versus SPECIAL EXCEPTION

The problem of “dueling building permits” to apply for a matter-of-right Certificate of Occupancy (CO) is extremely difficult to address through the zoning regulations. It appears that an existing restaurant space may always have a marketing advantage because the building permit review time to upgrade or modify will almost always be shorter than the time to fit out a new restaurant. The building permits are however, logged in at DCRA with a date stamp and perhaps inclusion of the building permit filing date on the Certificate of Occupancy will equal the time issue between applicants.

After discussions with the Zoning Administrator (ZA), the following information is of note:

- 1) Certificates of Occupancy (CO) do not expire; there is a one time fee paid at the initial application for use of the property. A new property or business owner may apply to change the name of the business but is not required to obtain a new CO.
- 2) There is no obligation for a holder of a CO to actually operate the business.

In discussion with the ZA it was suggested that prior to any application for a new CO, name change or owner change to be approved by the ZA's office evidence must be submitted verifying that the property has operated as a restaurant business within the last 3 years. OP believes that such evidence should include applicable sales tax receipts. If an applicant cannot provide evidence of the paid taxes and the matter-of-right limit is reached then they are subject to special exception. The ZA will attend the October 28, 2003 Zoning Commission meeting to discuss the issue with the Commission.