

Government of the District of Columbia
Office of Zoning



MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Jerrily R. Kress, FAIA *JRK*
Director

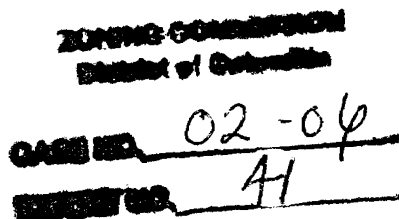
DATE: May 17, 2005

SUBJECT: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on May 27, 2005:

1. Z.C. Order No. 04-19 (Case No. 04-19);
2. Z.C. Notice of Public Hearing (Case No. 01-28TE);
3. Z.C. Notice of Public Hearing (Case No. 02-06);
4. Z.C. Notice of Public Hearing (Case No. 04-35); and
5. Z.C. Notice of Proposed Rulemaking (Case No. 04-31).

Attachments



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, September 8, 2005, @ 6:30 P.M.**
 Office of Zoning (Hearing Room)
 441 4th Street, N.W., - Suite 220-South
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

**Case No. 02-06 (Text Amendments to Neighborhood Commercial Overlay District:
Limitation For Eating Or Drinking Establishments)**

THIS CASE IS OF INTEREST TO ANCs 3C & 6B

The Zoning Commission of the District of Columbia hereby gives notice of its intent to hold an additional public hearing at the above-stated date, time and place concerning Zoning Commission Case No. 02-06.

This amendment responds to application processing concerns brought to Zoning Commission's attention by the Zoning Administrator and the Department of Consumer and Regulatory Affairs. It is intended to provide uniform procedures for determining linear street frontage usage by eating and drinking establishments in the Neighborhood Commercial Overlay Districts.

The record in this proceeding reflects that the administrative process of determining such usage has proven to be complex and burdensome for the agency. It also leaves neighborhoods at a constant tipping point between when these establishments are allowed by special exception or by right. In recognition of these circumstances, the Commission wishes to hear public testimony concerning whether it would be preferable to no longer make the status of these uses dependent upon a measurement, but, instead, designate whether the uses are permitted by right or through special exception approval with respect to each existing and proposed NC Overlay District. Testimony should not advocate for matter of right or special exception status within a particular location. The Commission will only go on to hear such recommendations if, after a decision meeting, it elects to proceed with this alternative.

Because this approach would be an alternative to the current procedures, the Commission also invites testimony with respect to the following amendments to section 1302.5 of the Zoning Regulations. Additions to the existing text of 11 DCMR § 1302.5 are shown in bold and deletions in strikethrough.

- 1302.5 Restaurants, fast food restaurants, delicatessens, ~~carry-outs~~, **bar or cocktail lounges**, and similar eating or drinking establishments, **occupying all or part of the ground floor level of a building**, shall be subject to the following limitations:
- (a) These uses shall occupy no more than twenty-five percent (25%) of the linear street frontage within a particular NC Overlay District, as measured along the lots that face designated roadways in the particular district;
 - (b) **The linear square footage of each designated roadway shall be based upon the certified and recorded plats in the Office of the Surveyor, measured to the Zone District Boundary line of each commercial zone district within the overlay;**
 - (c) **The total linear street frontage for eating or drinking establishments shall be based on the existing records of Certificates of Occupancy for such uses, by address, verified through field observations;**
 - (d) **If an eating or drinking establishment occupies all or part of the ground floor level of a corner lot facing two or more designated roadways, the linear street frontage for each designated roadway shall be included for purposes of determining compliance with § 1302.5(a);**
 - (e) **An eating or drinking establishment that occupies the same premises as a gas station, grocery store, billiard parlor, or other non-eating or drinking establishment shall be subject to the twenty-five percent (25%) linear street frontage limitation within a particular NC Overlay District if the eating or drinking establishment use is reflected upon or is required to be reflected upon the Certificate of Occupancy and the eating or drinking use occupies all or part of the ground floor level;**
 - (f) **The linear street footage of a property shall be excluded from the measurement of eating and drinking establishment uses if the property has not been used as an eating or drinking establishment for three (3) years; or until a certification of occupancy is issued for a different use, whichever occurs first;**
 - (g) **Notwithstanding the foregoing, the linear street footage of a property included in the measurement of eating and drinking establishments on [the effective date of this amendment], which is not being used for that or any other purpose on that date, shall continue to be included in the measurement for ____ year(s) after [the effective date of this amendment] or until a certification of occupancy is issued for a different use, whichever occurs first;**

- (h) If the measurement of linear street frontage occupied by eating and drinking establishments is not updated after a one-year period, it shall be assumed that the linear street frontage occupied by eating and drinking establishments exceeds the applicable percentage limitation, until a subsequent update indicates otherwise;
- (i) In the absence of evidence to the contrary, the Zoning Administrator may assume that an eating or drinking establishment use was discontinued on the date on which the Department of Consumer and Regulatory Affairs first observed the discontinued use;
- (j) An applicant for a certificate of occupancy for an eating or drinking establishment who wishes to have the property's street frontage included in the measurement of such uses shall demonstrate, to the satisfaction of the Zoning Administrator, that the property has been used as a lawful eating or drinking establishment at some time during the three-year period preceding the date of the application;
- (k) Whenever the measured linear street frontage devoted to existing eating or drinking establishment uses equals or exceeds the applicable percentage limitation, no new certificates of occupancy may be issued for: (i) new eating or drinking establishments that would occupy any or all of the street frontage of the ground floor level of a building; or (ii) the expansion of an existing eating or drinking establishment that occupies such space, unless the square footage to be occupied by the new or expanded use is already included with the measurement of such uses;
- (l) Whenever existing linear street frontage devoted to eating or drinking establishment use is less than the applicable percentage, no certificate of occupancy shall be issued for a proposed eating or drinking establishment use if the addition of the total linear street frontage to be occupied would cause the applicable percentage limitation for the NC Overlay District to be exceeded; and
- (m) Except for a fast food restaurant, such uses may be applied to fulfill the requirements of § 1302.4; provided, that when such uses are so applied, they shall remain subject to the provisions of paragraph (a)-(l) of this subsection.

The public hearing on this case will be conducted in accordance with the provisions of Section 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

**NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 02-06
PAGE 4**

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary to the Zoning Commission, Office of Zoning, Suite 210, 441 4th Street, N.W., Washington, D.C., 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

CAROL J. MITTEN, ANTHONY J. HOOD, GREGORY JEFFRIES, JOHN G. PARSONS, AND KEVIN HILDEBRAND, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR, OFFICE OF ZONING.