



Testimony of Kenan Jarboe, ANC 6B
ZC Case #06-23, Text Amendment – Eating Establishment Definition
April 19, 2007

My name is Kenan Jarboe. I am ANC Commissioner for 6B05 and am here this evening to testify on behalf of ANC 6B.

At its regularly scheduled and properly noticed meeting on April 10, 2007, with a quorum present, ANC 6B voted unanimously (10-0) to support the proposed text amendment with certain recommendations. I understand that you may not have received our report. I would ask that you consider my testimony as the ANC's report.

ANC 6B wishes to express its gratitude to ANC 6A and the Office of Planning for all the hard work they have done in proposing a new approach for defining and differentiating among the various eating establishment categories that should be allowed in the DC zoning regulations. There is ample evidence that the need for clarification in the zoning regulation is necessary and that ANC 6A has been instrumental in leading this revision effort, especially in identifying the different determining factors for matter-of-right establishments and those requiring a special exception.

The proposed amendment would eliminate the current definition of "fast food restaurant" and replace it with a more specific definition of "fast food establishment." The new definition eliminates the ambiguous reliance on the size of the serving area and the self-certification of the breakdown between carry-out and on site consumption. The amendment also creates a category of "prepared food shop" to cover delicatessens, coffee shops and ice cream parlors. "Prepared food" is defined as assembled, but not cooked, on premise.

While supporting these changes, ANC 6B has three concerns. First, under the proposal "Prepared Food Shops" would be matter-of-right establishments as long as they have 12 or fewer seats (the proposed changes to §701.4, §712.1 and §721.3). This seems to encourage the carry-out activities of such establishments and may discourage the addition of seats. The ANC would like to find a way to encourage such establishments to stress on-site consumption rather than the type of carry-out activities associated with noise and litter. Many coffee shop establishments in our neighborhood have more than 12 seats. While we understand the desire to prevent these establishments from growing into large de-facto fast food establishments, the threshold may be too low. Thus, we would recommend changing the requirement so that up to 18 seats would be matter-of-right.

One other concern was the de facto elimination of the category of “cafeteria.” While the category of “prepared food establishment” captures some delicatessens, coffee shops and ice cream parlors, it does not cover cafeteria, cafes or lunch counters. There are a number of cafeteria or buffet-style operations which are similar in many ways to a restaurant, but would be considered as a fast food establishment under the proposed changes, mainly because they use disposable utensils and/or they require payment before consumption. Cafeterias should be added to the proposal with a clear and concise definition different from a restaurant or fast food establishment.

Finally the ANC notes that clear guidance will be needed as to the criteria for approving or denying an application for a special exception. The proposed amendment will likely have the effect of categorizing many more types of establishments as “fast food establishments” thereby triggering the special exception requirements. However, the proposal does not change the current criteria under §733 of the Zoning Regulations, which seem more relevant to the older definition of a fast food restaurant than to the nuances of the new category. For example, §733.3 requires a 6 foot high brick wall at the back of the lot if it abuts a Residence District and §733.4 requires that refuse dumpsters shall be housed in a three sided brick enclosure. While these may not seem to be extraordinarily problematic, they could absolutely prohibit certain establishments in our neighborhoods which are exactly like some of the existing establishments which we support. Some of these requirements may be necessary and appropriate in certain circumstances, but may prove to be an absolute burden in others. For example, there a number of establishments in our neighborhood that would now be considered a “fast food establishment” but would find it impossible to build a 6 foot high three sided brick trash enclosure. Some flexibility and discretion is needed.

In addition, there is no guidance given as to criteria for approving or denying a special exception application for a prepared food shop with more than 12 seats (the new proposed §712) It simply refers to §3104.

Thus, the ANC believes that further analysis of §733 of the Zoning Regulations are needed before the proposal is approved. As part of that analysis, the ANC recommends that the current mandatory criteria under §733, such as be made discretionary to BZA as part of the special exception. We would also note that §2101.1 places a higher level of parking requirements on fast food establishments with a side yard than without. It is unclear to us why such a differentiation should exist.

In summary, ANC 6B supports the proposed amendments, with the recommendations that the number of seats for prepared food establishment as a matter of right be raised to 18, that a category of cafeteria be added separate from that of a fast food establishment, and that the criteria for special exceptions for fast food establishments in C-2-A districts be made clearer and more discretionary.

Thank you.