	ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS MCLEAN GARDENS • WOODLEY PARK	
Single Member District Commissioners 01-Dia Black; 02- Gloria Day; 03-Stephanie Zobay 04-Avram Fechter; 05-Bruce Beckner; 06-Trudy Reeves 07- Richard Rothblum; 08-Catherine May; 09-Nancy MacWood	2737 DEVONSHIRE PLACE, NW WASHINGTON, DC 20008 Telephone: 202/232-2232 • Fax: 202/232-0667 Website http://www.anc3c.org	

**TESTIMONY OPPOSING TEXT AMENDMENT REGARDING EATING
ESTABLISHMENT DEFINITIONS, CASE NO. 06-23**

**Submitted by
Nancy J. MacWood, Chair, ANC 3C**

Madame Chair and members of the Commission, I am testifying on behalf of ANC 3C tonight. The ANC unanimously approved a resolution that urges the Zoning Commission to ask the Office of Planning to redraft this text amendment, in part, to provide greater clarity, ease of implementation, and predictability.

I want to give you a few examples of the problems we find with the proposed definitions. The definition of fast food establishment is overbroad in that it would include a movie theatre because they have counter service. There is a waiver for incidental carry out services at restaurants and grocery stores, but not for other establishments like movie theatres. We think this and any other unintended applications of this definition should be addressed.

Cooking on premise is the significant difference between a fast food establishment and a prepared food shop. We question whether cooking would provide a clear distinction. Many sandwich shops use microwaves --- is this cooking? What if a sandwich shop has homemade soups, melts cheese on sandwiches, and cooks bacon? The answers are important because in some zone districts fast food businesses are prohibited, but prepared food shops may not be.

Confusion about what may constitute cooking is extended to how the proposed standard of "principally devoted" would be interpreted in determining whether an eating establishment is a prepared food shop. As currently drafted, this is a vague term and we don't think it will lead to more efficiency and clarity in applying zoning rules.

When ANC 3C tried to apply the proposed text amendment to our three Neighborhood Commercial Overlay Districts we noted that the text amendment does not propose to amend Section 1302.5 which establishes that eating establishments are restricted uses in the overlays. Any new or changed eating establishment terms and definitions should be incorporated into the overlay provisions by amendment. We think this omission was an oversight and could be easily corrected, but it does need correcting.


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The overlay goals and administration are instructive in evaluating the treatment of the proposed new prepared food shops category. The overlays restrict all eating establishments in part because they contribute to traffic and parking demand in neighborhood commercial areas. When the maximum allowable concentration of these eating establishments in the overlay area is met, any additional eating establishments can locate only with a special exception. We think this limitation is fair and reasonable. We ask you to compare it to what is being proposed.

Citywide, the text amendment separates prepared food shops with a dozen seats from restaurants in C-1 and C-2-A zone districts and holds them to a stricter test, a special exception. From a policy viewpoint one has to question why prepared food shops that include carry outs, delis, and coffee shops are targeted while restaurants in neighborhood commercial areas, including those with carry out service, are not.

Equally curious is why 13 customer seats moves a prepared food shop from matter of right to special exception when a restaurant could locate as a matter of right with an unlimited number of seats. Special exceptions examine traffic, parking, noise and other quality of life issues that seem to apply to restaurants as well as carry outs and coffee shops. We don't question that eating establishments have an impact on neighborhood commercial areas; we know that they do. But we think there should be more analysis of the types of impacts based on the category of establishment. And if some categories are more problematic, then the remedy should be triggered by the real problem; we suspect it is not the presence of 13 customer seats.

For these reasons and others discussed in the ANC 3C resolution we recommend that the text amendment be returned to the Office of Planning for redrafting in consultation with the petitioner and ANC 3C, as well as with other ANCs and community organizations that would be specifically affected by the application of new definitions for eating establishments.

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ANC3C RESOLUTION NO. 2007-020

Resolution Regarding Proposed Zoning Text Amendment to Eating Establishment Definitions

WHEREAS the Zoning Commission for the District of Columbia has scheduled a hearing on proposed text amendments (Case No. 06-23) to revise the definitions of eating establishments; and

WHEREAS the Notice of Public Hearing implies that the changes are motivated by a desire to make it easier for the Zoning Administrator to determine whether or not a building permit application meets the criteria for a restaurant, fast food establishment, or a new category, prepared food shop; and

WHEREAS the proposed changes eliminate the category of carry-out and delicatessen and replace them with the new category of prepared food shop; and

WHEREAS ANC 3C has 3 Neighborhood Commercial Overlay Districts (NCODs) that restrict under certain circumstances restaurants, fast food restaurants, carry-outs, and delicatessens and therefore, these changes must be compatible with the continued implementation of the NCOD; and

WHEREAS ANC 3C believes that zoning changes should improve clarity, be easily implemented, and provide predictability;

THEREFORE BE IT RESOLVED that ANC 3C makes the following comments and poses the following questions regarding the proposed definitions:

1. The proposed new definition for a **Fast Food Establishment** would include a movie theatre under this definition because popcorn is cooked on premises, customers pay before eating the popcorn from a service counter with no seats, and the containers are disposable. The waiver for restaurants and grocery stores that have incidental carry out services is not extended to movie theatres. Theatres and other establishments that have counter service that is clearly subordinate to the principal use should not be deemed a fast food establishment.
2. The threshold factor for a **Fast Food Establishment** designation is that food is cooked on the premises and sold to customers. Does the term "cooked" include food that is microwaved, reheated like soup would be, or warmed like some sandwiches are? What if only some food is cooked and other food is not? Clarifying the intent of the word "cooked" is important because it is the primary characteristic that determines whether

an eating establishment is a Fast Food Establishment or a Prepared Food Shop and these categories have different zoning requirements.

3. The proposed **Prepared Food Shop** definition is broader and less specific than the definition for a **Fast Food Establishment**. An establishment deemed a prepared food shop has to be “principally devoted” to sale of prepared food, or non-alcoholic beverages, or cold refreshments. It is unclear what “principally devoted” means. Would it be based on revenue, square footage, or some other test? What is certain is that such a term would require interpretation and that most likely would not improve the efficiency of the Zoning Administrator’s review of building permit applications.
4. The notable characteristic of the **prepared food** definition is that it is assembled, but not cooked, on the premises. Does this mean that a microwave could not be used, that reheating could not occur, or that cheese could not be melted on a sandwich? There are numerous instances where there is overlap of assembly without cooking and assembly with some cooking. Most sandwich shops do both. The text amendment categories need further definition to avoid definitions that do not clearly reference and distinguish the type of services offered at District eating establishments. Using cooking as the distinguishing characteristic may lead to more rather than less confusion.
5. The proposed **Drive-through** definition eliminates restaurants from the list of establishments that could use service. Section 1303.1 expressly prohibits this type of accessory use in the NCODs. ANC 3C sees no reason to eliminate restaurants from the definition since it is conceivable that as more and more restaurants offer carry-out service a drive-through service could be utilized. We want the prohibition to remain in NCODs and thus, the definition should remain the same. We also note that in Sections 701.4(q) and 721.3(r) the term drive-in restaurant is used instead of drive-through restaurant. This is most likely a drafting error and easily correctible.
6. All of the ANC 3C NCODs will be impacted by the proposed changes. Currently, the NCOD limits restaurants, carry-outs, delicatessens, fast food restaurants, and bars to 25% of the linear street frontage in the designated area. The text amendment proposes to eliminate the categories of carry-outs and delis, although it doesn’t expressly say this, and replace them with the category of prepared food shops. It is proposed that this new category will be matter of right in C-1 and C-2-A zone districts, which is the designation for the majority of our NCODs, as long as there are 12 or fewer chairs for customers. But the text amendment does not amend Section 1302.5 to replace the NCOD restriction on carry-outs and delis with a restriction on prepared food shops. This section must be amended to preserve the goals and purpose of the overlays and to avoid a proliferation of this type of eating or drinking establishment.
7. The proposed text amendment would create a new special exception category for **Prepared Food Shops** with seating for more than 12 customers. Section 1304 already authorizes a special exception remedy for all NCOD restricted uses. If a restricted use eating or drinking establishment wants to locate in a NCOD area and the 25% allowance has been met or exceeded, there is an opportunity to seek a special exception to locate notwithstanding that the limit has been met. Under the text amendment proposal every establishment in the prepared food shop category would have to seek a special exception when they have more than 12 seats customers. How would this requirement interface with the NCOD requirement that all eating and drinking establishments have to seek a special exception when the 25% linear feet occupancy has been met? Would the applicant have to seek two special exceptions? Presumably, a prepared food shop that could locate as a matter of right now in the NCOD would pursuant to the proposed text amendment have to seek a special exception if it had more than 12 seats.

8. ANC 3C would like to see more analysis of the criteria of seating as the trigger for a special exception for Prepared Food Shops. There seems to be an assumption being made that it is the number of seated customers rather than the use that brings problems of parking, traffic and noise. ANC 3C questions these assumptions since one of our coffee shops accounts for most of the traffic and parking in its commercial area during morning rush hour when there are many more customers using carry out services than are staying to drink coffee. We would also like to know if chairs in sidewalk cafes will be counted toward the 12 chair threshold.
9. There is a drafting error in 3.(d)(i) where Subsection 721.3 (t) should be (s)
10. It should be noted at this time there is an inconsistency in the current zoning regulations that pertains to this text amendment. In Section 1302.2 the designated uses in the NCODs is listed and the list incorporates the retail and service uses listed in Sections 701.1 or 701.4. Indeed, in NCOD C-1 zone districts only the uses listed in the Sections 701.1 or 701.4, plus libraries, are authorized. Section 701.4(q) reads "Restaurant, but not including a fast food restaurant, drive-in restaurant, or a food delivery service". This clearly eliminates fast food or drive-in restaurants and food delivery services from locating in any NCOD area. Yet, Section 1302.5 includes fast food restaurants as a restricted use in the NCOD and Section 1307.5 expressly prohibits fast food restaurants in the Woodley Park NCOD. ANC 3C recommends that the Office of Planning consult with ANC 3C and other ANCs and community organizations that have NCODs on an appropriate way to handle this inconsistency.
11. It would simplify the responsibility of the Zoning Administrator if the zoning categories for eating establishments were consistent with the business license terms. This could be accomplished by listing the business license categories under the appropriate definition.

BE IT FURTHER RESOLVED that for these reasons and others ANC 3C recommends that the Zoning Commission ask the Office of Planning to redraft this text amendment in consultation with the petitioner and with other interested and potentially impacted ANCs and community organizations.

BE IT FURTHER RESOLVED that the Chair or her designee is authorized to represent the Commission on this matter.

Attested by



Nancy J. MacWood

Chair, on April 17, 2007

This resolution was approved by a vote of 8-0 on April 16, 2007 at a public meeting of ANC 3C at which a quorum (a minimum of 5 of 9 commissioners) was present.