

**BEFORE THE ZONING COMMISSION  
OF THE DISTRICT OF COLUMBIA  
ON  
TEXT AMENDMENTS TO CHANGE  
EATING ESTABLISHMENT DEFINITIONS  
APRIL 19, 2007**

**Testimony of Andrew J. Kline, General Counsel  
Restaurant Association of Metropolitan Washington**

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**ZONING COMMISSION**  
CASE No. 06-23  
**ZONING COMMISSION**  
EXHIBIT No. 26  
District of Columbia  
CASE NO.06-23  
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**Good evening Members of the Zoning Commission. I am Andrew J. Kline, General Counsel to Restaurant Association Metropolitan Washington (“RAMW”). RAMW has no formal position for or against the proposed text amendments, but we do have concerns and comments.**

**As an organization, RAMW seeks regulatory requirements which are clear, understandable and fairly and evenly applied. With one minor change, the proposed text amendment seems to satisfy those requirements. The reference to “non-disposable plates” should be expanded to “non-disposable tableware.” Otherwise, an establishment which serves in non-disposable bowls, such as a sit down soup restaurant, will be classified as a fast food establishment. A seemingly minor problem, we admit, but one that should nonetheless be addressed.**

**RAMW is much more concerned about the treatment of existing food service businesses; how they have been treated in the last year or so, and how they will be treated going forward, whether or not the proposed text amendments are adopted.**

**Some historical perspective and business context is helpful in understanding our concern about the treatment of existing businesses. Up until about a year and a half ago, when a business was sold, the purchaser of the business could go to the Certificate of Occupancy branch and obtain**

**approval of an ownership change, “over the counter.” This is precisely the procedure set forth in the Building Code. 12 DCMR Section 110.1.2 states:**

**For changes in ownership of structures, land, or parts with an existing valid Certificate of Occupancy, a new Certificate of Occupancy shall be issued in the name of the new owner, (without reinspection), provided there is no change in use or increase in occupancy load.**

**Over the counter transfers of Certificates of Occupancy for food service establishments are no longer the norm. Instead, each application is individually reviewed by the Zoning Administrator to determine compliance with the fast food definition requirements contained in the existing zoning regulations. In addition, inspections are sometimes conducted, in direct violation of the Building Code, which contains the only regulations governing the transfer of Certificates of Occupancy. Since the change in policy concerning the transfer of Certificates of Occupancy for food service establishments, we have seen delays of weeks, and in some cases months, in obtaining the transfer of Certificates of Occupancy.**

**Businesses with existing Certificates of Occupancy should not be required to update those Certificates of Occupancy upon a transfer or otherwise, unless undergoing substantial renovations. Although we are certainly sympathetic to the position that the fast food definition contained in**

**the Zoning Regulations has largely been ignored for the last 30 years, we do not believe that business operators, who relied in good faith on the government to issue appropriate permits, should be penalized.**

**The procedure proposed in the Memorandum from the Director of the Office of Planning which requires updating of a Certificate of Occupancy upon transfer is unfair to business operators. Such a procedure eliminates certainty concerning what are presumed to be legitimately issued permits.**

**It is difficult for the purchaser of a business to proceed faced with the uncertainty involved in obtaining a special exception in those cases involving changes of ownership of businesses which may fall under the definition of fast food or prepared food shop. Furthermore, even when the transferred Certificate of Occupancy is finally issued, there is confusion.**

**An example illustrates the point. Attached to my written testimony is a Certificate of Occupancy which was issued to a food service establishment in connection with a change in ownership. As you can see, the Certificate is issued as “1 Year Temporary Certificate”. The Certificate of Occupancy further advises the “owner may need to obtain special exception from Board of Zoning Adjustment by May 10, 2007.”**

**How is a business owner supposed to proceed in light of the uncertainty represented by this Certificate of Occupancy. If he knew, prior to**

**purchasing the business that this was how his Certificate of Occupancy would be issued, should he proceed? Or will his entire investment be lost if he is unable to obtain special exception or relief? Under what circumstances is special exception relief necessary under the Certificate of Occupancy? What should this business owner do between now and May 10, 2007.**

**This is but one example of many if individual determination must be made with respect to the transfer of a Certificate of Occupancy related to a food service business. The work of the Zoning office cannot be completed in a timely matter. This is exactly what we have experienced over the course of the last year and a half.**

**The proposed changes to the Zoning Text do appear to clarify, simplify and modernize the food service definitions. Current owners, however, who have operated in accordance with the law as it has been administered over the last 30 years, should be able to retain their current Certificates of Occupancy. Likewise, transfers to new owners should be fortified, without undue burdens, as long as there is no substantial change in the business or the premises.**

**Thank you for allowing me to appear before you this evening.**

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## CERTIFICATE OF OCCUPANCY

PERMIT NO.

CO

THIS PERMIT IS VALID ONLY FOR THE PREMISES  
OF THE PROJECT ADDRESS

DATE : 5/9/2006

ADDRESS :

FLOOR(S):

PRCLID :

-0000-

(lot)

1ST FL.

WARD :

ZONE : C2A

PERMISSION IS HEREBY GRANTED TO :

TRADING AS:

**CORPORATION :**  
**ID No.:**

APPROVED USES :

PREVIOUS USES :

**OTHER - SEE DESCRIPTION**

**OTHER - SEE DESCRIPTION**

TYPE :

BZA NO. :

OCCUPIED SQ. FOOTAGE:

OCCUP. LOAD:

EXPIRATION DATE:

**CHANGE OF OWNERSHIP**

864

**NONE**

DESCRIPTION OF USE:

**DELICATESSEN W/ ACCESSORY PIZZA IN C-2-A WITH NO SEATS. EXISTING EATING ESTABLISHMENT.  
1 YEAR TEMPORARY CERTIFICATE. OWNER MAY NEED TO OBTAIN SPECIAL EXCEPTION FROM  
BOARD OF ZONING ADJUSTMENT BY MAY 10, 2007**

FEE:

**\$75.00**

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, VALID ONLY for the premise at the above address or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

**Patrick J. Canavan, Psy. D.**  
**DIRECTOR**

PERMIT CLERK:

**JOSEPH BEMBRY**