

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of Zoning

2008 APR -9 PM 12: 59



MEMORANDUM

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**To:** Office of Documents and Administrative Issuance

**From:** Sharon S. Schellin  
Secretary to the Zoning Commission

**Date:** April 9, 2008

**Re:** Publication for the Office of Zoning

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Please publish the following in the *D.C. Register* on April 18, 2008.

1. Z.C. Notice of Final Rulemaking & Order No. 07-28.

Attachments

ZONING COMMISSION  
District of Columbia

CASE NO. 07-28

EXHIBIT NO. 12

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ZONING COMMISSION  
District of Columbia  
CASE NO. 07-28  
EXHIBIT NO. 12

2008 APR -9 PM 1:00

## RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: ☐ EMERGENCY RULES  
☒ FINAL RULES ☐ PROPOSED RULES ☐ COMBINED

**DATE AND TIME RECEIVED**

Office of Documents use only

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: SHARON SCHELLIN

ADDRESS: 441 4<sup>th</sup> Street, N.W., Suite 210 South

TELEPHONE: 727-0340

**TITLE AND DESCRIPTION OF RULES:** Z.C. Case No 07-28: (Text Amendment – 11 DCMR) Text Amendments to amend §§ 701.4(aa), 701.4(q) and 721.3(s)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) §§ 701.4(q), 701.4(aa), and 721.3(s).

**FINAL RULES ONLY:** Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 55 DCR 1106 DATE: February 1, 2008

**COMPLETE CITATION** to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

**LEGAL CERTIFICATION:** I certify that I have reviewed the attached rulemaking, and, in my opinion, the substance of the text of the rules is legally sufficient.

DATE: APRIL 8, 2008

SIGNED:

*Alan Bergstein*

PHONE: (202) 442-9777

<input checked="" type="checkbox"/> FINAL	<input type="checkbox"/> CONDITIONAL	NAME: ALAN BERGSTEIN	TITLE: SECTION CHIEF
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**PROMULGATOR:** Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)

Zoning Commission For The District Of Columbia

Title:

**COMPLETE CITATION** to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules. Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF  
APPROVAL  
OF VOTE:

*3-10-08*

APPROVAL  
OF ATTEST:

*Sharon J. Schellin*  
Secretary to the Zoning

TITLE: Commission

PHONE: (202) 727-0340

Office of Documents  
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THIS NOTICE  
PUBLISHED AT:

VOL:

DCR:

DATE:

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**and**

**Z.C. ORDER NO. 07-28**

**Z.C. Case No. 07-28**

**(Text Amendment – 11 DCMR)**

**Text Amendments to Amend §§ 701.4(q), 701.4(aa), and 721.3(s)**

**March 10, 2008**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendments to §§ 701.4(q), 701.4(aa), and 721.3(s) of the Zoning Regulations (Title 11 DCMR).

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on February 1, 2008, at 55 DCR 1106. The Commission took final action to adopt the amendments at a public meeting on March 10, 2008. This final rulemaking is effective upon publication in the *D.C. Register*.

**Existing Regulations**

In the C-1 Zone District, “restaurants” and “prepared food shops with no more than 18 seats for patrons and no drive-through,” are permitted as matter-of-right uses. “Fast food establishments” and “food delivery services” are not permitted as a matter-of-right. In C-2 Zone Districts, fast food establishments and food delivery services are permitted as matter-of-right uses, but are subject to the criteria listed in § 721.3(s) of the Zoning Regulations.

**Description of Text Amendment**

The text amendments permit prepared food shops with more than 18 seats, and fast food establishments without drive-throughs as matter-of-right uses in the C-1 portion of Square 5912. The text amendments also exempt fast food establishments in Square 5912 from the requirements of §§ 721.3(s)(1)-(2).

### **Relationship to the Comprehensive Plan**

The amendments are not inconsistent with the District Elements for the Comprehensive Plan for the National Capital, and are fully consistent with the following provision of the Plan:

***Policy LU-2.4.1: Promotion of Commercial Centers***

Promote the vitality of the District's commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city's role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents.

***Policy ED-3.1.1: Neighborhood Commercial Vitality***

Promote the vitality and diversity of Washington's neighborhood commercial areas by retaining existing businesses, attracting new businesses, and improving the mix of goods and services available to residents.

***Policy FSS-1.1.8: Supermarkets and Services***

Attract additional supermarkets, family-style restaurants, full-service gas stations, and general merchandise stores to the Far Southeast/Southwest. The area's larger commercial sites should be marketed to potential investors, and economic and regulatory incentives should be used to attract business. The upgrading and renovation of the area's existing auto-oriented shopping centers is strongly encouraged.

***Action FSS-1.1.C: Retail Development***

Complete construction of the Camp Simms retail center by 2008 and support efforts to bring quality retail services to the site.

### **Initiation, Setdown, Public Hearing and Proposed Action**

The Office of Planning ("OP") initiated this rulemaking by filing a report dated October 5, 2007. The Commission set the case down for a public hearing at its October 15, 2007 regularly scheduled public meeting.

The Commission held the public hearing on December 13, 2007. OP testified in support of the text amendments. As part of its testimony, OP suggested a further change to the text advertised in the public hearing notice: that the Commission remove the proposed exemption from the dumpster enclosure requirements for Square 5912 found in § 721.3(s).

A representative of a developer, CHR LLC, testified in support of the amendments, stating they were vital to the completion of a project known as the The Shops at Park Village, which would

integrate an existing strip shopping center with a new shopping center to create a single retail center.

The Commission took proposed action at the conclusion of the December 13, 2007 hearing. The Notice of Proposed Rulemaking was published in the *D.C. Register* on February 1, 2008, at 55 DCR 1106, for a 30-day notice and comment period. Due to an oversight, the text published in the proposed rulemaking notice did not include the change suggested by OP regarding the dumpster enclosure requirements of § 721.3(s).

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, through a delegated action dated December 28, 2007, found that the proposed text amendments would not adversely affect the identified federal interests, not be inconsistent with the Comprehensive Plan for the National Capital.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

#### **Great Weight Given to ANC Issues and Concerns**

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's written recommendation. No written ANC recommendation was received in this case.

#### **Final Action**

At its properly noticed March 10, 2008 public meeting, the Commission took final action to approve the proposed text amendments with one change. The Commission corrected the oversight regarding the dumpster requirements of § 721.3(s).

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR. Added wording is shown in **bold and underlined**.

Chapter 7, COMMERCIAL DISTRICTS, is amended as follows:

A. By amending § 701, Uses as a matter of right (C-1) as follows:

- (1) Section 701.4(q) is amended to read as follows:
    - (q) Restaurant, but not including a fast food establishment, or a food delivery service. **A fast food establishment with no drive-through shall be permitted in Square 5912 as a matter of right.**
  - (2) Section 701.4(aa) is amended to read as follows:
    - (aa) Prepared food shop, with no more than 18 seats for patrons and no drive-through **except that no limitation on seats shall apply to a prepared food shop in Square 5912.**
- B. Section 721, Uses as a Matter of Right (C-2), § 721.3(s) is amended to read as follows:
- (s) Fast food establishment or food delivery service, only in a C-2-B or C-2-C District; provided:
    - (1) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District, unless separated therefrom by a street or alley;
    - (2) If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line;
    - (3) Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a Residence District; and
    - (4) The use shall not include a drive-through.

**Subparagraphs (1) and (2) shall not apply to a fast food establishment located in Square 5912.**

At the public hearing on December 13, 2007, the Zoning Commission voted to **APPROVE** the application for proposed action by a vote of 5-0-0 (Anthony J. Hood, Peter G. May, Gregory N. Jeffries, Curtis L. Etherly, Jr., and Michael G. Turnbull to approve).

**Z.C. ORDER No. 07-28**

**Z.C. CASE No. 07-28**

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The Order was **ADOPTED** by the Zoning Commission at its public meeting on March 10, 2008, by a vote of **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Michael G. Turnbull, and Peter G. May to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on **APR 18 2008**.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**and**

**Z.C. ORDER NO. 07-28**

**Z.C. Case No. 07-28**

**(Text Amendment – 11 DCMR)**

**Text Amendments to amend §§ 701.4(q), 701.4(aa) and 721.3(s)**

**March 10, 2008**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.