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Zoning Commission of the
District of Columbia
Suite 210
441 4th Street, NW
Washington, D.C. 20001

Re: Zoning Commission Case No. 08-06A
Proposed Definition of "Fast Food Establishments"; Proposed Chapter 1, Section
100.3 of the Pending Zoning Regulations Revision

Dear Members of the Zoning Commission:

We write to comment on the proposed definition of a "fast food establishment" under the proposed Zoning Regulations Revision ("ZRR") project. As now written, "fast casual" restaurants unnecessarily fall under the definition of a fast food establishment because customers pay for their meal before consuming it. In all other respects, the fast casual restaurant is just like other traditional restaurants. They serve meals on ceramic or other non-disposable dinnerware, a wait staff serves the meal and busses the table after the customer leaves, and the food is freshly prepared. We therefore request that the definition of "fast food establishment" be amended to delete the reference to payment for the meal prior to consuming it. This change would also parallel and coordinate with the definition of "restaurant" in the proposed text, which makes no reference to payment for food after it has been served and consumed as a condition for recognition of a food establishment as a "restaurant".

Section 100.3 of ZRR Chapter 1 proposes a revised definition of "fast food establishment" as follows:

A business, other than a "prepared food shop," where food is prepared and served very quickly. The food is typically made of preheated or precooked ingredients, served to the customer in a packaged form for carry-out/take-away although it may be eaten on site; and payment is made before the food is provided or consumed.

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Characteristics of a fast food establishment may include foods that are prepared by production-line techniques, foods that are standardized foodstuffs shipped to a franchised establishment from central locations, the establishment includes a drive-through, trash receptacles located in the dining area for self-bussing of tables, a lack of any seating, or food served on disposable tableware.

An establishment meeting this definition shall not be deemed to constitute any other use permitted under the authority of these regulations, except that a restaurant, grocery store, movie theater, or other use providing carry out sales that is clearly subordinate to its principal use shall not be deemed a fast-food establishment.

As we have discussed with the Office of Planning, the concept of "prepayment for food prior to delivery or consumption," as highlighted above in the text, poses a material impediment to those food establishments that identify themselves as a "fast casual dining" concept. These are operations where payment may be made in advance for food ordered, but where food is freshly prepared, often served to the customer at a table by wait staff, who clear the table after the customer departs. Fast casual food service does not typically involve disposal dinnerware. But for the payment feature, these "fast casual" dining operations would appear to be what typically would be identified as a "restaurant" and not the typical fast food establishment such as a "Wendy's", "MacDonald's" or "Burger King", the type of operation that the current zoning definition of fast food establishment definition sought to address. Fast casual dining operations are not high customer traffic operations, do not generate excessive amounts of trash, do not require storage and disposal of large quantities of cooking oils, and have no drive-through component.

The Board of Zoning Adjustment has often been confronted with requests for relief from the definition of "fast food establishment" so that a fast casual dining operation can be opened and treated as a "restaurant," in part so that the operation can obtain permission to occupy public space under 24 DCMR § 301.3. Where the Washington dining experience is becoming more informal, and in many ways offering opportunities to activate adjacent public space, the preclusion of "fast casual" operations in public space due to the Public Space's reliance on the "zoning" definition of "restaurant" effectively hampers the desire of the Comprehensive Plan to activate streetscapes and adjacent public spaces.

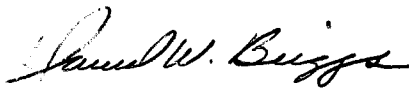
We note that the Board of Zoning Adjustment, in deliberating on a fast food establishment request in BZA Case No. 18210, commented that the ZRR should include a revision to the provisions for "fast food establishment" to exclude fast casual restaurants from the definition. See BZA Transcript in Case No. 18210, May 11, 2011, at 201.

We would suggest that the timing of payment for food is not a critical criteria for determining whether a food establishment is a "fast food" operation or a "restaurant". The other indicia in the proposed "fast food establishment" definition proposed and cited above are much more determinative as to whether a food service operation is "fast food" or a "restaurant". Deleting

the highlighted text above in the definition, as noted above, and keeping the definition of "restaurant" as also proposed in Section 100.3 of the Zoning Regulations proposal (without an "payment" component) will create a regulatory structure that will facilitate the many "fast casual" dining concept operations looking to locate in the District.

We appreciate your consideration of this request as you conduct your deliberations on the Zoning Regulations re-write.

Sincerely yours,



David W. Briggs



M. Carolyn Brown



Steven E. Sher

Director of Zoning and Land Use Services

cc: Jennifer Steingasser
District of Columbia Office of Planning
Joel Lawson
District of Columbia Office of Planning