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657289	Submitted to ODAI	Notices, Opinions	Zoning Commission Corrected Notice of Final Rulemaking & Order No. 10-18 (Text Amendment to Chapter 17, §§ 1703 & 1711, to Allow Additional Flexibility for Fast Food Establishments & Prepared Food Shops within Square 375, Lot 127)	12/31/2010 Vol 57/53	12/23/2010 09:04:43
657192	Submitted to ODAI	Final Rulemaking	Zoning Commission Corrected Notice of Final Rulemaking & Order No. 10-18 (Text Amendment to Chapter 17, §§ 1703 & 1711, to Allow Additional Flexibility for Fast Food Establishments & Prepared Food Shops within Square 375, Lot 127)	12/31/2010 Vol 57/53	12/23/2010 09:03:58

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ZONING COMMISSION
District of Columbia
CASE NO. 10-18
EXHIBIT 18

ZONING COMMISSION
District of Columbia
CASE NO.10-18
EXHIBIT NO.18

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
CORRECTED¹ NOTICE OF FINAL RULEMAKING

AND

Z.C. ORDER NO. 10-18

Z.C. Case No. 10-18

(Text Amendment to Chapter 17, §§ 1703 & 1711, to Allow Additional Flexibility for Fast Food Establishments & Prepared Food Shops within Square 375, Lot 127)

November 29, 2010

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; D.C. Official Code § 6-641.01 (2008 Repl.)), hereby gives notice that it took final rulemaking action to adopt amendments to §§ 1703 and 1711 of the Zoning Regulations (Title 11 DCMR). The amendments allow additional flexibility for fast food establishments and prepared food shops within Lot 127 of Square 375 (the "Subject Property"). The notice of proposed rulemaking had referred to the Subject Property as "lot 823 in Square 375, measured as 115 feet parallel to 10th Street N.W. from G Street, N.W. to G Place, N.W." However, the Subject Property is more accurately referred to as "Lot 127 in Square 375" and so the description has been changed in the final rules.

Specifically, the amendments allow prepared food shops or fast food establishments (excluding drive-through) on the Subject Property to satisfy the mandatory requirement of § 1703.3(d) that the preferred uses listed in § 1711 comprise not less than fifty percent (50%) of the gross floor area required by § 1703.3(a) be devoted to preferred uses. This is accomplished by adding "prepared food shop" and "fast food establishment (excluding drive-through)" to the list of preferred uses contained in § 1711. In addition § 1703.3(b) is amended to allow fast food establishments and prepared food shops on the Subject Property to occupy more than twenty percent (20%) of the required gross floor area on the ground floor. However, no drive-through will be permitted for such fast food establishments. Finally, the Commission eliminated a reference to the measurement of Lot 127.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 22, 2010, at 57 DCR 10003. No comments were received. At the recommendation of the Office of the Attorney General the adopted text has been revised to include the drive-through prohibition in § 1703.3(b) as well as § 1711.

Neither of these changes affects the substance of the amendments as proposed. The amendments will become effective upon the publication of this notice in the *D.C. Register*.

Procedures Leading to Adoption of Amendments

On July 12, 2010, the Office of Zoning received a report from the Office of Planning ("OP") requesting a text amendment to allow additional flexibility for fast food establishments and prepared food shops within Square 375. This case was set down for a hearing on July 12, 2010.

¹ Section 1711.1 on p. 4 of this Order was corrected by inserting the underlined subsection that was previously omitted.

As originally advertised, the amendments applied to all of Square 375. However, in its hearing report dated October 4, 2010, OP recommended limiting the amendment to only Lot 127 in Square 375 in order to minimize competition with arts uses. OP noted that all the other lots within the square are constructed.

A properly noticed public hearing was held on October 14, 2010, after which the Commission voted to accept OP's recommendation and authorized the referral of the revised text to the National Capital Planning Commission ("NCPC") and the publication of a notice of proposed rulemaking in the *DC Register*.

NCPC, through a delegated action dated October 28, 2010, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 14.)

At a properly noticed public meeting held on November 29, 2010, the Commission took final action to adopt text amendments as proposed, subject to the revision described above.

Explanation for the need for flexibility on the Subject Property

The Commission notes that it is allowing for this flexibility because of exceptional conditions affecting Lot 127. The property owner has offered persuasive evidence that proposed ground floor retail space in this building will be difficult to market for many of the preferred uses found in §§ 1710 and 1711 due to its location and physical characteristics. The site was originally developed with a church and the redevelopment will incorporate the church into the new building at the ground floor; the ground floor will also include an office building lobby, leaving little space for required retail. Given the site conditions of the square and the redevelopment proposal for this site, the current regulations impose restrictive limitations on the use of the ground floor.

For these reasons the Commission concludes that adoption of these amendments establishes no basis for allowing this same flexibility for other properties within the DD Overlay.

Title 11 DCMR, ZONING, Chapter 17, **DOWNTOWN DEVELOPMENT OVERLAY**, is amended as follows.

Section 1703, **DOWNTOWN SHOPPING DISTRICT (RETAIL CORE)**, § 1703.3, is amended by inserting at the end of paragraph (b) the phrase “, except that on Lot 127 in Square 375, fast food establishments with no drive-through and prepared food shops shall not be subject to the twenty percent (20%) limit;”, so that the entire subsection reads as follows:

1703.3 Each new or altered building that faces or abuts a public street shall devote all of the ground floor leasable space to the retail and service uses listed in § 1710 or the arts and arts-related uses listed in § 1711; provided:

- (a) The gross floor area devoted to the retail, service, arts and arts-related uses listed in §§ 1710 and 1711 shall be no less than 0.5 FAR on the ground floor;
- (b) Not more than twenty percent (20%) of the required gross floor area on the ground floor shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices, prepared food shops, fast food establishments, printing or fast copy services, newsstands, dry cleaners, or any combination thereof, except that on Lot 127 in Square 375, fast food establishments with no drive-through and prepared food shops shall not be subject to the twenty percent (20%) limit;
- (c) This ground floor use requirement shall not apply to a building that is devoted entirely to hotel or apartment house use or to a church or other place of worship; and
- (d) In the applicable sector of the Downtown Arts District, that is, Squares 254, 290, 321, 347, 377, 376, and 375 (south of G Place), uses that are listed in § 1711 shall comprise not less than fifty percent (50%) of the gross floor area required to be devoted to preferred uses.

Section 1711, **ARTS USES AND ARTS-RELATED USES**, § 1711.1, is amended by inserting, in alphabetical order, new preferred uses “Fast Food Establishment (excluding drive-through),” and “Prepared food shops” so that the entire subsection reads as follows:

1711.1 For the purpose of this chapter, the following uses are preferred arts uses and arts-related retail and support uses:

- (a) Art Center;
- (b) Art Exhibition Area;
- (c) Art Gallery;
- (d) Art School, including school of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking;
- (e) Artist Live-Work Space;
- (f) Artist Studio;
- (g) Artists' Supply Store;
- (h) Arts Organizations, Administrative Offices of;

- (i) Arts Services, including set design, and restoration of art works;
- (j) Assembly Hall, Auditorium, Public Hall, or Other Performing Arts Space, including rehearsal/pre-production space or concert hall;
- (k) Book Store;
- (l) Cabaret;
- (m) Dance Hall, Discotheque, or Ballroom;
- (n) Dinner Theater;
- (o) Drinking Place, including bar, nightclub, or cocktail lounge;
- (p) Fast Food Establishment (excluding drive-through), only on Lot 127 in Square 375;
- (q) Legitimate Theater;
- (r) Movie Theater;
- (s) Museum;
- (t) Performing Arts Ticket Office or Booking Agency;
- (u) Photographic Studio;
- (v) Picture Framing Shop;
- (w) Prepared food shops, only on Lot 127 in Square 375;
- (x) Record Store, Musical Instruments Store;
- (y) Restaurant; and
- (z) Television and Radio Broadcast Studio.

On October 14, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at the conclusion of the public hearing by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, Peter G. May, and Michael G. Turnbull to approve).

On November 29, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **5-0-0**

(Anthony J. Hood, Konrad W. Schlater, Greg M. Selfridge, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become effective upon publication in the *D.C. Register*; that is on December 31, 2010.

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

Z.C. ORDER NO. 10-18

Z.C. Case No. 10-18

**(Text Amendment to Chapter 17, §§ 1703 & 1711, to Allow Additional Flexibility for Fast
Food Establishments & Prepared Food Shops within Square 375, Lot 127)**

November 29, 2010

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