

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**Application of Nando's of H Street, LLC
411 H Street, NE**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background

Nando's of H Street, LLC ("Nando's" or "Applicant") proposes to establish a fast food establishment/restaurant in an existing building located at 411 H Street, NE, Washington, D.C. (Square 809, Lot 69). The retail space will contain approximately 4,550 square feet of gross leasable area and will seat approximately 138 patrons on two levels. The property is located in the HS-H/C-2-A District on the south side of H Street between 4th Street to the west and 5th Street to the east.

II. Relief Requested

The housing sub-area of the H Street Neighborhood Commercial Overlay ("H-HS Overlay") permits fast food establishments through special exception relief, pursuant to sections 1304.1, 1320.4(c), and 1325.1 of the Zoning Regulations. Although Nando's is considered a restaurant in virtually every other jurisdiction, because its patrons pay for their meal prior to consuming it, the Zoning Regulations, as presently codified, deem it a fast food establishment due to the timing of payment by patrons. Consequently, Nando's is required to seek special exception relief under section 1320.4(c) of the Zoning Regulations in accordance with the provisions of section 1304.1 and 1325.1 of the Zoning Regulations. Nando's meets the standards for special exception relief as described below.

III. Special Exception Relief

A. The NC Overlay – Section 1304.1

Section 1304.1 of the Zoning Regulations provides that the Board of Zoning Adjustment may grant special exception relief from the Neighborhood Commercial ("NC") Overlay provisions, including the H-HS Overlay, subject to the following requirements:

1. 1304.1(a): *The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity.*

a. Consistency with the Purposes of the NC Overlay

The excepted fast-food establishment use will substantially advance the stated purposes of the NC Overlay District. The NC Overlay is designed to encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement, consistent with the Comprehensive Plan. See 11 DCMR § 1300.3(a). In this case, the proposed Nando's eating establishment will occupy the first and second levels of two existing and adjacent buildings. This segment of the H Street corridor is a pedestrian-friendly destination for neighborhood-serving retail and restaurant establishments. Because Nando's is in every way a restaurant, with the exception of the timing of payment, it will be consistent with the attributes of the commercial segment of H Street. Nando's will not adversely affect the safe and efficient conditions for pedestrian and vehicular movement along H Street, NE or along the alley to the rear of the property.

Furthermore, Nando's will provide a new eating establishment use and offer a new “fast casual” restaurant-type that will bring variety to the existing building and block. See 11 DCMR § 1300.3(b). Nando's will offer a healthy menu of food choices in a hip, casual restaurant atmosphere. It is designed to appeal to the needs of the surrounding area’s residents, workers, and visitors by offering an attractive, family friendly dining experience that is affordable to moderate income households.

Because Nando's will be locating in an existing tenant space, the provisions of section 1300.3(c) pertaining to limitations on the maximum height of new buildings are not implicated.

b. Consistency with the Purposes of the H Street Overlay

The proposed eating establishment will also substantially advance the purposes of the H Street Overlay District. The purposes of the H Street Overlay are to implement the policies and goals of the Comprehensive Plan and H Street NE Strategic Development Plan; encourage residential uses along the H Street corridor; encourage the clustering of uses into unique destination districts along the corridor, particularly the provision of affordable units and reuse of upper floors; establish design guidelines for new and rehabilitated buildings that are consistent with the historic character and scale of the overlay district; and encourage the reuse of existing buildings along the corridor. See 11 DCMR § 1320.2.¹

The Comprehensive Plan incorporates the policies and goals of the H Street NE Small Area Plan under the policy focus area for Capitol Hill known as the H Street/Benning Road Focus Area. 10A DCMR § 1511.2. The Small Area Plan lays out a vision for H Street corridor as a great neighborhood shopping street, serving resident needs, providing connections to the larger city, and improving the livability of the surrounding community. The Plan recommended the development of four thematic areas along the H Street corridor, designed to guide community, private sector, and public agency action and investments. *Id.* Nando’s site is located within the western gateway area, which extends on H Street between North Capitol Street and 7th Street, NE. As noted in the Comprehensive Plan, this area is to be an “urban

¹ The purposes of the H Street Overlay set forth in section 1320.2(f) are inapplicable to this site.

living” district between 2nd Street and 7th Street, NE, “intended for medium to high density residential development, with limited ground floor retail uses.” 10A DCMR § 1511.6(a). The introduction of eating establishments, such as Nando’s, along the H Street, NE Corridor supports these policies and goals of these Plans, fulfilling demand for family-friendly, casual eating establishments in the area. They also help revitalize existing vacant space, and doing so making the area more attractive to new residential development. Nando’s will help increase the competitiveness of existing businesses and attract new investment by supporting commerce in the western gateway area to create an “urban living” environment.

The Nando’s use will also substantially advance the purposes of the H-HS Overlay District. Incorporation of a new Nando’s restaurant on this segment of H Street will help improve the lively corridor and adaptively reuse two existing vacant buildings that currently detract from the streetscape. Nando’s will help establish the unique destination of H Street, NE by providing a new dining establishment that will appeal to the needs of the surrounding area’s residents, workers, and visitors.

c. *No Adverse Impacts to Neighboring Property and No Detrimental Effects*

Nando’s eating establishment use will likewise not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity of the site. As a fast casual restaurant, Nando’s is virtually indistinguishable from a restaurant use as defined under the Zoning Regulations, except that patrons pay for the meal before consuming it. Nando’s will operate and function like a restaurant, and will produce no more noise, refuse, or traffic than other restaurants operating in the same block. Additionally as a result of Nando’s commitment to this specific site, the property, previously and long vacant, will be revitalized and rehabilitated by the owner, ultimately becoming an asset to the community, rather than one that could be seen as a blight on this portion of the H Street corridor.

In addition, consistent with section 1320.2(b) of the Zoning Regulations, having a restaurant use, such as Nando’s, at the property will encourage the development of residential uses along this portion of H Street, NE by offering a diverse, affordable, and healthy dining option for families where few options presently exist. Nando’s family-friendly operation will not generate any late night music, entertainment, or other disturbances in the surrounding neighborhood. Furthermore, the Nando’s use is consistent with section 1320.2(e) of the Zoning Regulations, since it will reuse an existing building along the H Street, NE corridor. Consequently, Nando’s will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity. Rather, it will benefit the community by contributing to the variety of eating establishments in the H Street Overlay.

Based upon its manner of operation in other communities in the District, it can be expected that Nando’s will bring to the H Street, NE corridor a business operation that will provide employment opportunities, and to advance the sustainability initiatives of the District.

2. 1304.1(b): *Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, that justify the exception or waiver.*

As will be described in greater detail in the prehearing submission and at the hearing, the continuing effects of the economic recession have had a debilitating effect on small retail and restaurant establishments on and around the H Street NE corridor. Small businesses have failed, leaving ground floor space vacant, thus detracting from the quality and character of the streetscape and degrading the economic vitality of the neighborhood and the city as a whole. The building has been vacant for several years and is in a state of disrepair, undermining the quality of the neighborhood. Nando's leasing of the property has provided the owner with sufficient collateral to obtain funds to permit a total renovation of the building, which when completed will enhance this portion of the H Street, NE corridor. While H Street, NE has been a focus of redevelopment in the last several years, there are few quality, family friendly affordable dining options available to area residents.

3. 1304.1(c): *Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.*

There is no vehicle access from H Street, NE into the property, thus creating a pedestrian friendly environment, not be interrupted or hampered by crossing vehicular traffic. Any vehicle access to the property is only available at the rear of the property from the existing public alley. Since there is the limited open space at the rear of the property, vehicle use will necessarily be restricted. Thus due to the limited vehicular access to the property there is little opportunity for the principal pedestrian ways to be adversely impacted by use of the property for a Nando's restaurant, and no dangerous or otherwise objectionable traffic conditions along H Street, NE are likely arise due to the presence of Nando's at this location.

4. 1304.1(d): *The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district.*

The Nando's space has been attractively designed to be compatible with the existing streetscape and the surrounding H Street Overlay. Consequently, the Applicant does not anticipate the need for any additional conditions or design requirements for the successful operation of the eating establishment.

B. The H Street Overlay – Section 1325.1

Section 1325.1 of the Zoning Regulations provides that the Board of Zoning Adjustment may grant special exception relief from the requirements of the H Street Overlay District provided the following criteria are met:

1. 1325.1(a): *The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street, NE Strategic Development Plan.*

The proposed Nando's restaurant is consistent with the design intent of the H Street Overlay design requirements of section 1324, to the extent that they are applicable. Virtually all of the design requirements of the H Street Overlay District apply to new construction, residential uses, or parking structures, none of which apply to this application. See 11 DCMR §§ 1324.1 – 1324.7; 1324.11 – 1324.13. Under section 1324.8, each commercial use with frontage on H Street, NE, shall devote not less than 50 percent of the surface area of the streetwall at the ground level to display windows having clear or clear/low-emissivity glass, and to entrances to commercial uses or to the building. In this case, more than 50 percent of the ground level streetwall and commercial entrances are devoted to clear display windows. No security grilles are proposed and thus section 1324.9 is inapplicable. In compliance with section 1324.10, the commercial use has an individual public entrance directly accessible from the public sidewalk on H Street. Projection signs will comply with the height and location requirements of section 1324.14. Façade panels will not be placed in a location that interrupts windows or doors, and they will project no more than 12 inches from the face of the building, in full compliance with section 1324.15. Consistent with section 1324.16, no roof sign is proposed.

2. 1325.1(b): The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board.

The architectural design of the project will enhance the urban design features of the existing structures and within the immediate vicinity of the site. The buildings are not historic landmarks or located within an historic district, and thus no review by the Historic Preservation Review Board is required.

3. 1325.1(c): Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions.

This requirement regarding vehicular access and egress is the same as section 1304.1(c) of the NC Overlay described above.

4. 1325.1(d): Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences.

As discussed above under the NC Overlay requirements, parking and traffic conditions associated with the operation of the proposed use will not adversely affect adjacent or nearby residences.

5. 1325.1(e): Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences.

The proposed Nando's will not generate significant noise and thus will not adversely affect adjacent or nearby residences.

6. 1325.1(f): The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent with the design guidelines of the H Street, NE Strategic Development Plan.

The proposed signage is consistent with the size, type, scale, and location of other signs within the H Street corridor and is consistent with the design guidelines of the H Street NE Strategic Development Plan. The signage will be exclusively located above the show window, constructed of durable materials, and sensitively designed. The signage will not affect the display windows, will not consist of backlit box signs or neon product advertisements, will not block visibility into the fast food establishment, and will not be overly obtrusive.

C. Fast Food Establishments – Section 1320.4(c)

Section 1320.4 of the Zoning Regulations provides that fast food establishments are permitted in the HS Overlay only with special exception relief approved by the BZA.

1. 1320.4(c)(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.

In this case, the property abuts a 15 foot wide alley that runs east-west along the western 16.5 feet of the site's southern property line, and then turns south at a 90 degree angle, leaving 16.66 feet of the southern property line abutting the R-4 District. The east-west portion of the public alley is 13.33 feet wide; the north-south portion of the public alley is 10.08 feet wide. Therefore, as presently classified as a fast food establishment for zoning purposes, Nando's will be located within 25 feet of a residence district without the required separation created by a street or alley for the full width of the property. However, strict adherence to section 1320.4(c)(1) would prevent a fast food establishment from operating at the site at all, since the subject property directly abuts the R-4 District. As described above, Nando's is deemed a fast food restaurant due only to the time at which patrons pay for their food. Therefore, the proposed use complies with the spirit and intent of section 1320.4(c)(1).

2. 1320.4(c)(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 (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line.

Strict compliance with section 1320.4(c)(2) would require the Applicant to construct a three-sided brick enclosure wall at least six feet tall. The alley is only 13.33 feet wide and 10.08 feet wide for the east-west portion and north-south portion, respectively, which makes maneuverability extremely difficult under present conditions. If the Applicant was required to construct a continuous, six foot tall brick wall along the lot line abutting the alley, it would only exacerbate the tight conditions, impede maneuverability in the alley, and create additional problems for the abutting residents. Moreover, the brick enclosure would unduly burden property

owners of the buildings surrounding the subject site, who are not required to provide such a barrier, and which would unnecessarily impede their access to the alley.

3. 1320.4(c)(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 and shall not face a Residence District.

Similar to installing a brick wall along the lot line abutting the alley, creating a six foot tall refuse enclosure would impede maneuverability, exacerbate the tight conditions in this location, and disrupt safe and effective trash collection in the alley.

4. 1320.4(c)(4): This use shall occupy no more than twenty-five percent (25%) of the linear street frontage within the HS Overlay District as measured along the lots that face the designated roadway.

According to the estimates of the Office of the Zoning Administrator, fast food and food delivery establishments occupy approximately five percent of the linear street frontage within the HS Overlay's designated roadways. The introduction of Nando's on H Street will not cause the 25 percent cap to be exceeded.

IV. Conclusion

Pursuant to section 3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. Through the Applicant's written statement, and through testimony and evidence presented at the public hearing, the Applicant will further demonstrate how it meets its burden of proof to obtain the Board's approval of the requested relief.