



BZA Application No. 21144

Taco Bell of America, LLC

411 8th Street, SE (Lot 16 in Square 902)

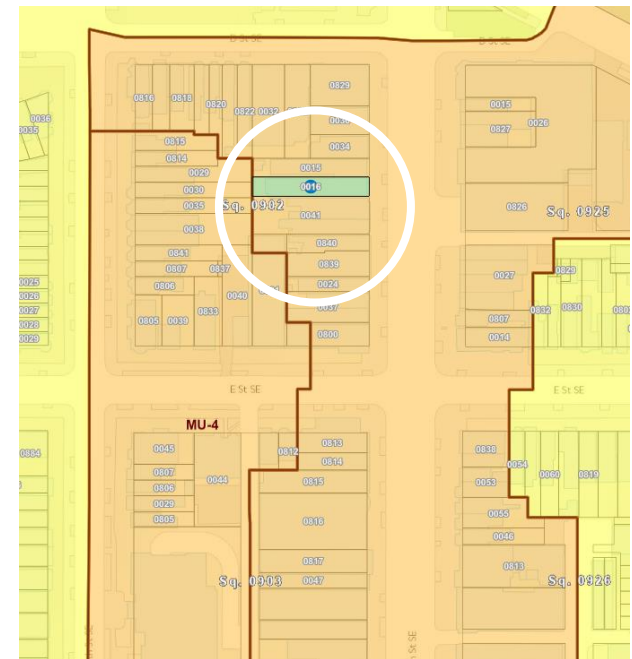
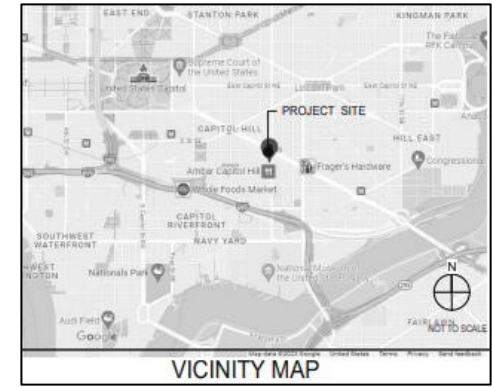
Board of Zoning Adjustment Public Hearing

July 3, 2024

Holland & Knight

The Property

- Located at 411 8th Street, SE, within historic commercial area known as Barracks Row.
- Improved with an attached, two-story brick building. Formerly occupied by a yoga studio.
- **MU-4/CHC Zone:**
 - Encourages **adaptive reuse** of existing buildings.
 - **Concentrates non-residential uses** in commercial zones to protect surrounding residential character.



The Property



Application Overview

- Seeking the Board's approval of the following relief:
 - Special exception to permit a **fast food restaurant** (Taco Bell) in the MU-4/CHC zone pursuant Sub. U § 513.1(e) and Sub. X § 901.2
 - Added Relief: Special exception to permit the proposed **configuration of rooftop structures** pursuant to Sub. C § 1506.1.
- Reconfiguring first floor of existing building to accommodate proposed operations:
 - Designed for pick-up orders and eating and drinking off-site.
 - Installing specific equipment and **controlling operations to address neighbor feedback** and mitigate any adverse impacts.

District Agency Reviews and Community Feedback

- **Office of Planning (Ex. 29)**
 - Recommends approval of all special exception relief requested
 - Not opposed to proposed conditions
 - No objection to request for minor design flexibility
 - No objection from DDOT
- **Advisory Neighborhood Commission 6B (Ex. 28, 28A)**
 - Unanimous vote in support at special call meeting on 6/25/2024
 - Conditioned on BZA “incorporating...the conditions agreed to by the Applicant and Property Owner...and the residential and commercial neighbors on Square 902...as outlined in BZA Exhibit 22B[.]”
- **Party Status Requests (Ex. 25, 25A and Ex. 26, 26A)**
- **Square 902 Neighbors (Ex. 30)**
 - Support application subject to conditions negotiated w/ Applicant

Community Outreach



Since initial filing, Applicant has had multiple meetings and phone calls with owner of 414 7th Street, SE (adjacent property) and other surrounding neighbors.



Updated plans and requests for special exception relief have been **informed by neighbor feedback** and reflect Applicant's efforts to **implement solutions to mitigate adverse impacts** related to noise, odor, and pest control.



Applicant presented application to ANC 6B P&Z Committee on June 6, 2024, and to full ANC on June 11, 2024. ANC voted in unanimous support at its Special Call Meeting on June 25, 2024.

Proposed Conditions for Inclusion in Final BZA Order (Ex. 22B)

1. **Approved Plans.** The fast food restaurant shall be constructed and operated in accordance with the plans filed in the record as Exhibit 22D (the “**Approved Plans**”).
2. **Term Limit and Applicant’s Good Faith Commitment.** This approval shall be for a term of TEN (10) YEARS, beginning on the date upon which this order becomes final (the “**Term**”). Throughout the Term, Applicant commits to working in good faith with the community to address, improve, remedy, and/or resolve (i) concerns related to operations; and/or (ii) shortcomings in fulfilling the intent of the conditions which are to mitigate noise, odors and pests. For purposes of this condition, the Applicant designates Saleh Uddin as its primary point of contact (phone: 703-981-0987 / email: salehuddin@3754@gmail.com). In the event of continuing mechanical noise issues, Applicant shall engage ArtUSA to assist in resolving such issues.
3. **Deliveries.** Deliveries to the site shall be restricted to Monday through Friday, between 10:00 am to 4:00 pm.
4. **Hours of Operation.** Applicant’s hours of operation may be from 7:00 am to 12:00 am (midnight), seven days a week. The walk-up service window may be open daily until 3:00 am but will only accommodate third party delivery services and mobile order pick-ups.

Proposed Conditions for Inclusion in Final BZA Order (Ex. 22B)

5. **Restaurant Trash and Recycling Pick-Ups.** Trash and recycling pick-ups shall occur no earlier than 7:00 am. Trash shall be picked up six (6) days a week. Recycling shall be picked up five (5) days per week. All trash pick-ups shall be from the abutting 8th Street, S.E. curb.
6. **Maintenance of Abutting Public Space.** During the hours of operation permitted by Condition No. 4, including upon opening and closing, the abutting public space at the front of the building shall be monitored for trash, litter, and/or debris, and any such debris removed. The abutting public space shall be kept in clean condition. A hose bib will be provided for regular cleaning and maintenance, as noted on Sheet A2.0 of the Approved Plans.
7. **Indoor Cooler.** As specified in Sheet A2.0 of the Approved Plans, an indoor, walk-in style cooler, shall be used exclusively for the storage of all trash, recycling, and used cooking oil and grease.
8. **Condensers and Compressors.** As specified in Sheet A2.0 of the Approved Plans, all condensers and compressors shall be located inside the leased portion of the building and shall not be located on the roof. These items include, but are not limited to, Pepsi, ICEE, food freezer/cooler and the trash/recycling cooler condensing units.
9. **HVAC.** As shown and specified on Sheets A3.0 and A5.0 of the Approved Plans, HVAC units shall be located on the roof of the building. No mechanical equipment beyond that specified in Exhibit D to Exhibit 22B in the record (the “**Prototype Packet**”) will be added to the roof of the building for any restaurant use. When replacement of HVAC equipment is required, the replacement equipment will be no louder than the acoustical measures specified in the Prototype Packet.

Proposed Conditions for Inclusion in Final BZA Order (Ex. 22B)

10. **Kitchen Exhaust Fan.** As shown and specified on Sheets A3.0 and A5.0 of the Approved Plans, the kitchen exhaust fan shall be located on the roof of the building. Deflectors attached to the exhaust fan shall direct discharge toward the east. No mechanical equipment beyond that specified in the Prototype Packet will be added to the roof of the building for any restaurant use. When replacement of the kitchen exhaust fan is required, it shall involve a fan no louder than the acoustical measures specified in the Prototype Packet.
11. **Rooftop Sound Barriers.** Applicant has retained ArtUSA for installation of rooftop sound barriers as shown and specified on Sheets A3.0 and A5.0 of the Approved Plans. Sound barrier materials, including ArtWhisper sound absorbing material, shall be repaired and replaced when the materials begin to deteriorate.
12. **Maintenance of Mechanical Equipment.** The HVAC units and kitchen exhaust fan located on the rooftop shall be maintained in good working order via a maintenance contract including, at minimum, four (4) annual service inspections.
13. **Non-Use of Rear Courtyard.** The rear courtyard shall not be used by employees or for storage purposes. No rear egress shall be made available from the building and rear doors will be alarmed. No outdoor seating will be provided for customers.

Proposed Conditions for Inclusion in Final BZA Order (Ex. 22B)

14. **Condition of Rear Courtyard**. The rear courtyard shall be maintained in good condition. Among other measures, commercially reasonable efforts shall be used to keep the courtyard free of debris, keep the existing drainage system clear and unobstructed, and rid the courtyard space of any rodent burrows and all rodent harborage.
15. **Pest Control**. Applicant shall use commercially reasonable efforts to conduct all operations in accordance with Exhibit E to Exhibit 22B, titled “Pest Prevention Guide” (Sheet G3.0).
16. **Landscaping**. Any pruning or trimming of trees on adjacent properties will only be done with the prior consent of the adjacent property owners.

Proposed Conditions for Inclusion in Final BZA Order (Ex. 22B)

Owner-Related Conditions

17. **No Restaurant Use on Second Floor.** The owner of the property shall not lease the second floor of the building to a restaurant, prepared food shop, or fast food restaurant, so long as this order is valid, and the conditions of this approval are in full force and effect.
18. **Soundproofing for Additional HVAC Units.** The owner of the property agrees that in the event any additional HVAC units are installed for a future tenant in the second floor, including upon the rooftop of the existing building or in the rear courtyard, said HVAC units will require the installation of rooftop sound barriers, or comparable soundproofing material, manufactured by ArtUSA or, if ArtUSA is no longer in business, another sound mitigation company of equal experience and expertise.

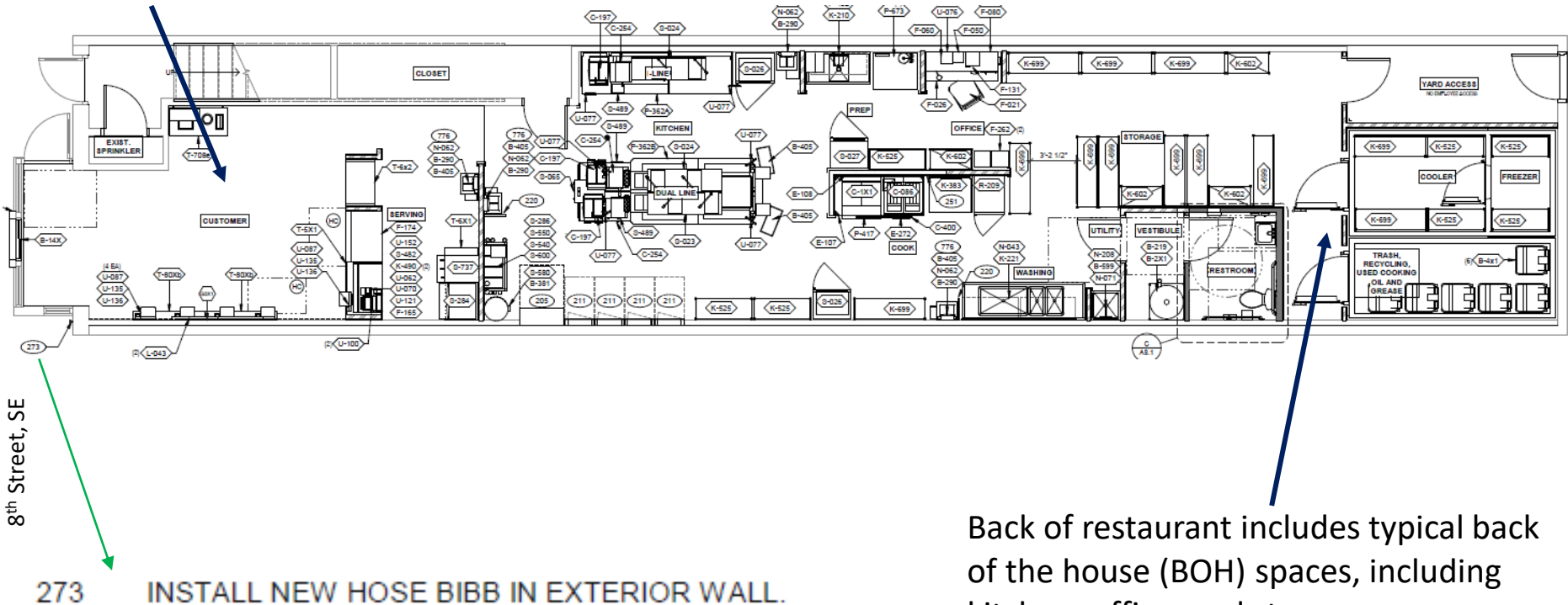
Proposed Conditions for Inclusion in Final BZA Order (Ex. 22B)

Approval-Related Conditions

19. **Minor Design Flexibility**. Applicant is granted minor design flexibility from the Approved Plans, including the configuration of the rooftop structures, to respond to feedback from and/or modifications required by the Historic Preservation Office and/or the Historic Preservation Review Board.
20. **Applicability**. All conditions hereinabove apply to any fast food restaurant operations at the Property, whether conducted by the Applicant or another first-floor tenant benefitting from this Order. As such, compliance with the conditions of this Order is also the responsibility of the property owner benefitting from this approval.

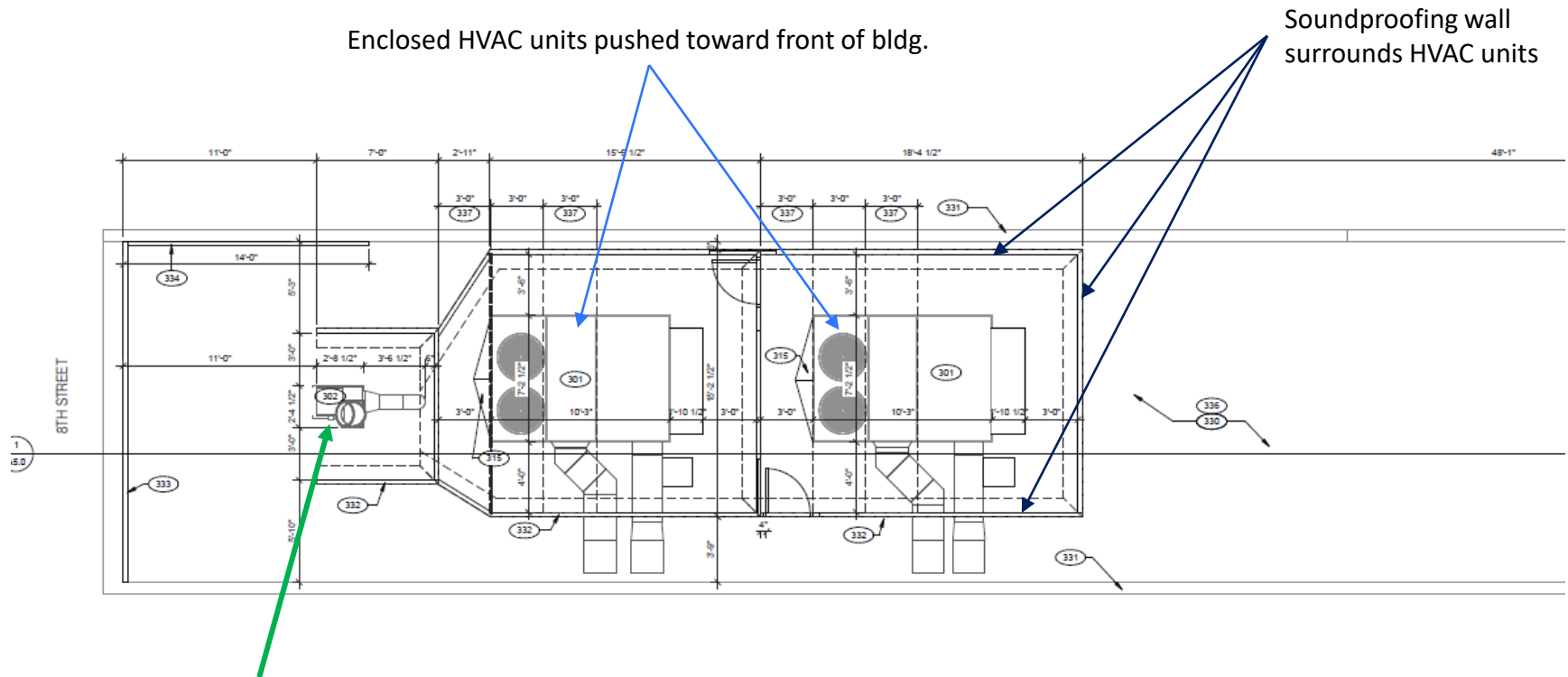
First Floor Plan

Front of restaurant outfitted as customer waiting area.



Back of restaurant includes typical back of the house (BOH) spaces, including kitchen, office, and storage space.

Proposed Rooftop Structures



Kitchen hood exhaust fan directs odor discharge toward 8th Street, SE.

Special Exception for Fast Food Restaurant Use

Subtitle B § 100.2: Definitions

Fast Food, Restaurant: A business, other than a prepared food shop, where food is prepared and served very quickly; and where 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. Characteristics of a fast food establishment may include:

- (a) Foods that are prepared by production-line techniques;
- (b) Foods that are standardized foodstuffs shipped to a franchised establishment from central locations;
- (c) The establishment includes trash receptacles located in the dining area for self-bussing of tables;
- (d) Seating for customers; and
- (e) Food served on disposable tableware.

Subtitle U § 513: Special Exception Uses (MU-Use Group E)

513.1 The following uses shall be permitted if approved by the Board of Zoning Adjustment as a special exception pursuant to **Subtitle X, Chapter 9** and subject to the applicable conditions for each use below:

...

- e) Fast food establishments or food delivery service eating and drinking establishments in any of the MU-4 zones, **subject to conditions**.

Special Exception for Fast Food Restaurant Use

ZR16 Provision (Subtitle X § 901.2)	Justification
<i>Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; [X-901.2(a)]</i>	<ul style="list-style-type: none"> • MU-4/CHC zone encourages the “adaptive use and reuse of existing buildings” and is intended to “concentrate non-residential uses in commercial zones in certain areas of Capitol Hill” to protect the residential character of the area. (11-G DCMR § 400.3) (emphasis added). • Given property’s location along Barrack’s Row and applicant’s proposal – i.e., no new construction or additions, proposed use aligns with the purposes of the MU-4/CHC zone.
<i>Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and [X-901.2(b)]</i>	<ul style="list-style-type: none"> • Application satisfies the conditions under Subtitle U § 513.1(e), which organically mitigate the impacts of a fast food restaurant operating by special exception in a mixed-use area. • In this case, the Applicant’s operations will also be subject to tailored conditions – i.e., the Proposed Conditions – that will minimize any adverse impacts to adjacent residences and commercial property owners, and directly address concerns raised by neighboring property owners. • Proposed Conditions directly address main concerns raised by community related to noise, odor, and pest prevention and additional commitments that will limit adverse impacts to neighboring property.
<i>Will meet such special conditions as may be specified in this title. [X-901.2(c)]</i>	See next slide.

Special Exception for Fast Food Restaurant Use

ZR16 Provision (Subtitle U § 513.1(e) – Special Conditions)	Justification
<p><i>If the use is a single tenant in a detached building;</i></p> <p>A. <i>No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a R, RF, or RA zone, unless separated therefrom by a street or alley; and</i></p> <p>B. <i>If any lot line of the lot abuts an alley containing a zone district boundary line for a residential zone, 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. The brick wall shall not be required in the case of a building that extends for the full width of its lot;</i></p>	<ul style="list-style-type: none"> • Not applicable. • Existing building is a two-story row building.
<p><i>Any refuse dumpster used by the establishment shall be housed in a three (3)-sided 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 or be within ten feet (10 ft.) of a R, RF, or RA zone;</i></p>	<ul style="list-style-type: none"> • Not applicable; proposed use does not involve use of refuse dumpster. • All trash will be stored inside the building in a separate, conditioned room designated specifically for waste and recycling, and will be collected in accordance with the Proposed Conditions.
<p><i>The use shall not include a drive-through;</i></p>	<ul style="list-style-type: none"> • No drive-through component.
<p><i>The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions;</i></p>	<ul style="list-style-type: none"> • Proposed Conditions directly address neighbor feedback. • Proposed Conditions ensure use will be operated in acceptable manner. • Applicant has designated point of contact to help resolve concerns immediately and on an ongoing basis.
<p><i>The use shall provide sufficient off-street parking, but not less than that required by Subtitle C, Chapter 7 to accommodate the needs of patrons and employees;</i></p>	<ul style="list-style-type: none"> • No vehicle parking spaces required.
<p><i>The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and</i></p>	<ul style="list-style-type: none"> • Anticipated customer patterns won't generate objectional traffic conditions. • Applicant will work with Capitol Hill BID to resolve any traffic issues.
<p><i>The Board of Zoning Adjustment may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property;</i></p>	<ul style="list-style-type: none"> • Proposed Conditions function to protect adjacent/nearby property.

Special Exception to Permit Proposed Configuration of Rooftop Structures

Subtitle C § 1503: Enclosing Walls

1503.1 All penthouses and mechanical equipment shall be **in one (1) enclosure...**

Subtitle C § 1504: Setbacks

1504.1 Except as exempted by Subtitle C §§ 1504.2 to 1504.4, a penthouse or rooftop structure shall be set back from the edge of the roof upon which it is located, measured from a point where a line extending from the top of the roof intersects with the outside face of the building enclosing wall, as follows:

...

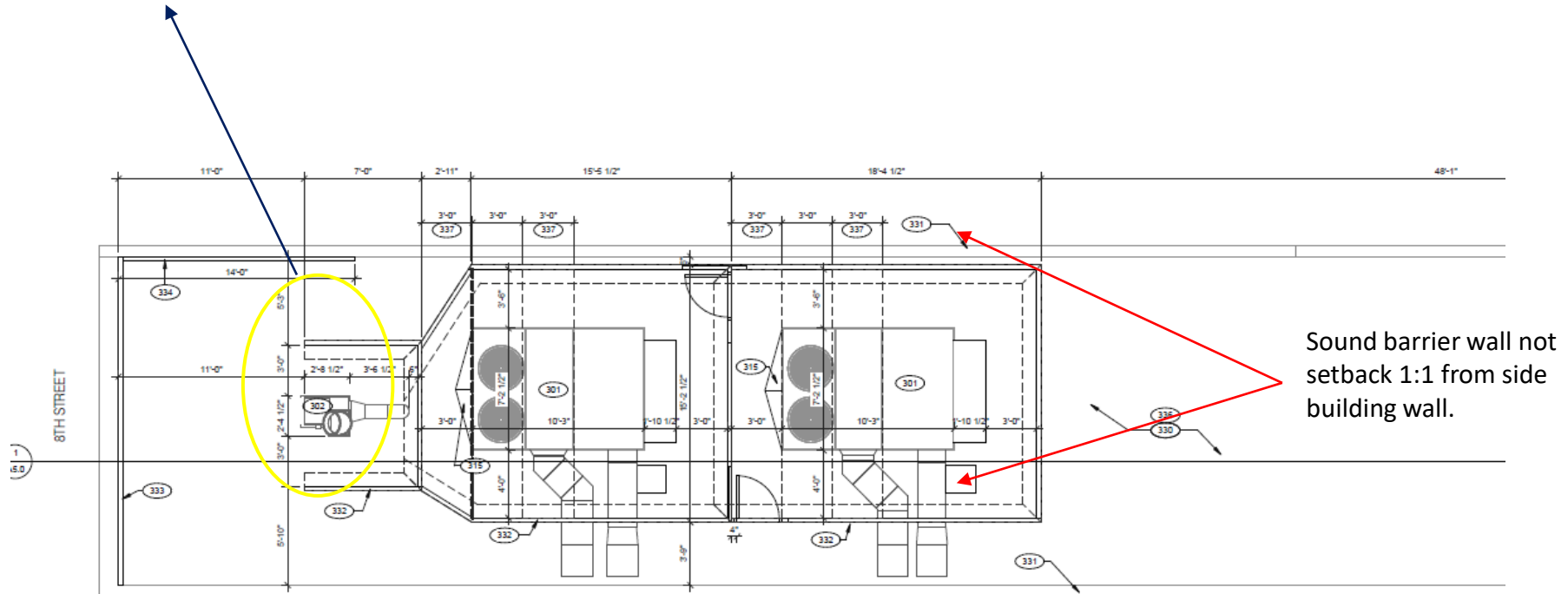
c) A distance equal to its height from a side building wall of the roof upon which it is located if:

...

- 4.** The adjacent property along the shared side lot line is improved with a building that is a designated landmark or contributing structure to a historic district with a height at least ten feet (10 ft.) below the maximum height permitted in its zone;

Special Exception to Permit Proposed Configuration of Rooftop Structures

No enclosure in front of exhaust fan.



Special Exception to Permit Proposed Configuration of Rooftop Structures

Subtitle C § 1506: Relief from Penthouse or Rooftop Structure Requirements

1506.1 Relief from the requirements of Subtitle C §§ 1503 and 1504 may be granted as a special exception by the Board of Zoning Adjustment subject to:

- (a) The special exception requirements of Subtitle X, Chapter 9;
- (b) The applicant's demonstration that reasonable effort has been made for the housing mechanical equipment, stairway, and elevator penthouses to comply with the required setbacks; and
- (c) The applicant's demonstration of at least one (1) of the following:
 - 1. The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;
 - 2. The relief requested would result in a better design of the penthouse or rooftop structure without appearing to be an extension of the building wall;
 - 3. The relief requested would result in a penthouse or rooftop structure that is visually less intrusive; or
 - 4. Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of Subtitle C § 115 building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable.

Special Exception to Permit Proposed Configuration of Rooftop Structures

ZR16 Provision (Subtitle C § 1506.1)	Justification
<i>The special exception requirements of Subtitle X, Chapter 9;</i>	<ul style="list-style-type: none"> • Exhaust fan is not typically required to be enclosed; however, it is required in this case because it is greater than 4 feet. Full enclosure would undermine its purpose – i.e., effective odor discharge toward 8th Street, SE. • Rooftop structures are only slightly visible from pedestrian level. • Sound barrier wall triggers non-compliance with required 1:1 side setback (assuming HVAC units were one consolidated piece of equipment) • Narrow lot width (20.75 ft.) hinders compliance with 1:1 side setback. • Recent zoning text amendment (ZC Order No. 14-13E) makes 1:1 side setback applicable; adjacent structures are lower than MOR height in MU-4/CHC zone.
<i>...reasonable effort has been made for the housing of mechanical equipment...</i>	<ul style="list-style-type: none"> • Proposed configuration is responsive to community feedback. • Rooftop structures identified as appropriate solutions to mitigate adverse impacts. • Exhaust fan complies with 1:1 front setback and is not visible from street. • Sound barrier wall complies with 1:1 front and rear setback.
<i>Strict application...would result in construction that is unduly restrictive...</i>	<ul style="list-style-type: none"> • Strict compliance restricts applicant's ability to fulfill commitments to community. • Cannot provide a 1:1 side setback and install an effective soundproofing wall. • Cannot enclose exhaust fan at the front, as doing so would obstruct odor discharge and undermine design of sound barrier wall.



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