



## **MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** Karen Thomas, Development Review Specialist

*JL* Joel Lawson, Associate Director, Development Review

**DATE:** April 28, 2025

**SUBJECT:** ZC 10-03E, Final Report: Modification Without Hearing/(Mod of Consequence): 901 H Street N.E. (Square 912, part of Lot 55).

### **I. BACKGROUND**

ZC Order 10-03 dated November 8, 2010, approved a consolidated Planned Unit Development (PUD), to allow redevelopment of the former shopping plaza site with a mixed-use building. As constructed, it is an eight-story mixed-use building of 419 residential units and 51,420 square feet of retail. Under the modified order, 10-03D approximately 5,365 square feet of ground floor space originally approved for retail was assigned to veterinary hospital use.

The Applicant is requesting a modification to permit a use not allowed by-right in the Regulations - a fast-food use and/or a fast-casual dining establishment. Restaurant use is permitted as a matter-of-right and fast-casual dining use is permitted as a special exception in this zone (NMU-RA/H-R). At this location, the Applicant is negotiating with a tenant which operates a sandwich shop, which offers a typical fast-casual dining service, as described in the submission.

Accordingly, this request includes changes to Decision No. A.2 of Z.C. Order No. 10-03, as amended by Z.C. Order No. 10-03D (additions in **bold and underlined**):

- The PUD shall have a maximum density of 5.0 FAR and a gross floor area of 435,265 **square** feet. Of that, the PUD shall have approximately 51,420 square feet of retail **and/or eating and drinking establishment uses, including fast-food restaurant** use, of which approximately 5,365 square feet may also be devoted to veterinary hospital use; and

The applicant is also requesting new special exception relief to permit the use as follows:

- Special exception relief pursuant to Subtitle H § 6007.1(e)(2) and Subtitle X § 901.2: A fast-food restaurant use is not permitted as a matter-of-right use under NMU-5A/H-R zoning.

Typically, a request for new relief from the zoning regulations would require the holding of a public hearing, as a Modification With Hearing. In this case, the proposed use is similar to ones permitted within the zone, and the ANC has indicated support so could be determined to be consistent with the intent of a modification without hearing, which is a “*a modification in which impact may be understood without witness testimony, including, but not limited to a proposed change to a condition in the final order*” (Z § 703.6)

### **II. RECOMMENDATION**

The Office of Planning recommends the Commission **approve** the requested Modification Without a Hearing and associated special exception relief, to permit a fast-food restaurant use in the mixed-use residential building in the NMU-5A H-R zone (formerly NC-17) at 901 H Street N.E.



### III. OP ANALYSIS

This Applicant has requested a change to the condition of the Order to include a fast-food establishment in the NMU-5A/H-R zone, which is permitted through special exception review. The Applicant has stated that some retail space has remained vacant since the PUD modification became effective in 2020, despite persistent marketing efforts to lease those spaces. As presented in the Applicant's statement of Exhibit 2, page 3 existing tenants include an Aldi grocery store (anticipated in Q2 2025), a fitness studio, a UPS outlet, an AT&T store, a nail salon, and a veterinary hospital, the latter as approved under Order 10-03D. Some retail spaces are still vacant and this request is intended for the anticipated tenant to occupy 1,900 square feet of vacant ground floor space.

The requested modification and zoning relief would not impair the intent of the Regulations or have an adverse effect on the decisions made by the Commission in the original and modified PUD under Order 10-03 as modified in Order 10-03(D), consistent with the PUD evaluation standards of current Regulations (ZR16) under Subtitle X § 304.3. Further, a fast-casual establishment would not be inconsistent with the intent of the H Street policies noted in the Comprehensive Plan of the approved PUD ([See Exhibit 2G](#)).

#### **Special Exception Relief subject to conditions of Subtitle H §6007.1 (e)(2), and pursuant to criteria of Subtitle X Chapter 9**

**Subtitle H §6007.1 (e)(2)** Fast food establishments or food delivery businesses shall be permitted, subject to the following conditions:

- (A) *The uses shall not be permitted in the MU-4/WP zone;*  
The proposed use is not in the MU-4/WP zone.
- (B) *No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of any R, RA, or RF zone unless separated therefrom by a street or alley;*  
The location of the use is not within twenty-five feet of the RF-1 zone at the rear of the property.
- (C) *If any lot line of the lot abuts an alley containing a zone 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;*  
The existing building extends the full width of the lot, and a brick wall is not required.
- (D) *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 an R, RA, or RF zone;*  
Trash derived from this use would use existing trash dumpsters on the developed property. Trash would be deposited in dumpsters within the building.
- (E) *The use shall not include a drive-through;*  
A drive-through is not included in the plans.

(F) *There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone boundary line for a residential zone; and*

Customer entrance(s) for the establishment would front H Street.

(G) *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.*

The proposed use is not anticipated to generate objectionable noise beyond that of a typical sandwich shop, with hours of operation not extending to late nights. As referenced prior, trash would be placed within existing dumpsters on the property, which was designed for commercial establishments on the ground floor. As a neighborhood serving establishment, the use should not incur excessive vehicle traffic to the site and the H Street corridor is well-served with several transportation and pedestrian options.

## **SUBTITLE X § 900: SPECIAL EXCEPTION STANDARDS**

Pursuant to 11-X § 303.13, in reviewing a request for special exception as part of a PUD, the Commission shall apply the special exception standards applicable to that relief.

901.2 (a) *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The proposed use is permitted by special exception in this zone. Permission of the use should not change the material facts upon which the original PUD was approved.

Changes to the design guidelines of the H Street N.E Strategic Development Plan are not anticipated through the establishment of the use on the ground floor of the mixed-use building. The use satisfies the applicable standards and as such would be in harmony with the general purpose and intent of the Regulations and Zoning Map.

901.2 (b) *Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*

The space for the proposed use would already include sound attenuation materials to mitigate noise impacts on abutting residential uses above the space. The parking demand and parking requirements would be satisfied by the existing on-site, below grade retail parking. The use of neighboring property should not be adversely affected by the sandwich shop.

901.3 (c) *Will meet special conditions as may be specified in this title.*

The conditions were satisfied as discussed prior under H § 6007.1

The proposed fast casual use would be consistent with the neighborhood-oriented focus of the zone district. Design changes to the exterior of the building or vehicular access are not proposed with this application. The building would continue to accommodate ground floor retail uses as approved and there would be no change to the building's approved overall height, bulk and density. Therefore, the plans remain consistent with the design guidelines of the H Street NE Strategic Development Plan and the design requirements, which were in effect at the time of approval of the original application and the current ZR16 Regulations.

## IV. AGENCY COMMENTS

The Applicant met with DDOT; DDOT had no objections and will submit a separate report. Other agencies will review the building permits and certificates of occupancy.

## V. ANC/COMMUNITY COMMENTS

ANC 6A voted unanimously to support the application at its scheduled meeting on April 10, 2025.

### GROUND FLOOR PLAN (As submitted by the Applicant):



[Approved Ground Floor Plan – ZC 10-03E Exhibit 2F](#)