

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-03E**

**Z.C. Case No. 10-03E
H Street Retail, LLC**

**(PUD Modification without Hearing @ Square 912, Lots 815 & 817 [901 H Street, N.E.])
May 8, 2025**

Pursuant to notice at its May 8, 2025 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of H Street Retail, LLC (the “Applicant”) for a Modification Without Hearing to the planned unit development (“PUD”) approved pursuant to Z.C. Order No. 10-03, as extended and modified by Z.C. Order Nos. 10-03A, 10-03B, and 10-03D, for property located at 901 H Street, N.E. (Square 912, Lots 815 and 817 (part of Record Lot 55)) (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

I. BACKGROUND

The Property

1. The Property is located at 901 H Street, N.E. (Square 912, Lots 815 and 817), on the south side of H Street, N.E., between 8th and 10th Streets, N.E., and has a total land area of approximately 87,053 square feet. The Property is zoned Neighborhood Mixed-Use (NMU)-5A/H-R, which is intended to permit mixed-use development at a moderate- to medium-density, with an emphasis on the provision of retail uses within the H Street, N.E. neighborhood (Subtitle H § 900.15).
2. Pursuant to the PUD approvals discussed in Findings of Facts (“FF”) Nos. 5-7 below, the Property is currently improved with a mixed-use building consisting of 419 residential units and ground floor retail and commercial space (the “Existing Building”).
3. The Existing Building includes a below-grade parking garage with 435 vehicle parking spaces, 126 of which are reserved for retail use. Access to the parking garage and loading facilities is located from an east-west private alley located on the Property at the rear of the Existing Building, accessed from 8th and 10th Streets, N.E. The primary pedestrian entrances to the residential lobby and ground-floor commercial spaces are located on H Street, N.E.
4. The Property is located along the H Street, N.E. corridor, which is a transit-rich, walkable, and mixed-use area. The surrounding neighborhood includes residential, office, retail, and

service uses. Union Station is located approximately 0.6 miles to the southwest of the Property, offering convenient access for residents and visitors. Metrobus, the D.C. Streetcar, and Capital Bikeshare stations are also located nearby.

Prior Zoning Commission Approvals

5. Pursuant to Z.C. Order No. 10-03, dated November 8, 2010, and effective January 14, 2011, the Commission approved a consolidated PUD for the Property under Chapters 24 and 30 of the 1958 Zoning Regulations (“ZR58”). The approved project was for a mixed-use building with a maximum building height of 90 feet and a maximum density of 5.0 floor area ratio (“FAR”), including approximately 380,560 square feet of residential space and 51,420 square feet of retail space. The original approval did not include a Zoning Map amendment for the Property, which was zoned C-2-B and located within the H Street Northeast Commercial Overlay District under ZR58.¹
6. Pursuant to Z.C. Order No. 10-03A, dated January 10, 2013, and effective March 8, 2013, the Commission granted a two-year extension of the time period in which to file a building permit application for the project; and pursuant to Z.C. Order No. 10-03B, dated January 11, 2016, and effective February 19, 2016, the Commission granted a one-year extension of the time period in which to begin construction of the project. The Applicant began construction of the Existing Building within the time period established by the second extension request, and the Existing Building was ultimately completed in accordance with the conditions set forth in Z.C. Order No. 10-03.
7. Pursuant to Z.C. Order No. 10-03D, dated January 30, 2020, and effective April 24, 2020, the Commission approved a modification to the approved PUD to permit veterinary hospital use in a portion of the ground floor retail space of the Existing Building.²

Parties and Notice

8. The only party to Z.C. Case No. 10-03 other than the Applicant was Advisory Neighborhood Commission (“ANC”) 6A, the “affected” ANC pursuant to Subtitle Z § 101.8.
9. On March 27, 2025, the Applicant served the Application on ANC 6A, the Single-Member District representative for ANC 6A02, the co-chairs of the ANC’s Economic Development and Zoning Committee, the Office of Planning (“OP”), and the District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application (Exhibit [“Ex.”] 2).

II. THE APPLICATION

10. On March 27, 2025, the Applicant filed the Application requesting a Modification Without Hearing to the approved PUD, pursuant to Subtitle Z § 703.1, seeking to modify Decision No.

¹ The C-2-B zone became the NC-17 zone by virtue of Z.C. Order No. 08-06A and then became the NMU-5A/H-R zone by virtue of Z.C. Order No. 18-16/19-27-19-27B.

² Z.C. Case No. 10-03D was originally filed as a Modification of Consequence (Z.C. Case No. 10-03C), which was subsequently re-filed as a Modification of Significance pursuant to the Zoning Regulations in effect at that time.

A.2 of Z.C. Order No. 10-03, as amended by Z.C. Order No. 10-03D, to authorize a fast food restaurant use within the ground floor retail space of the Existing Building. The Application stated that no new construction or enlargement of the Existing Building was required or requested (Ex. 1-2G).

11. The Application included a request for special exception relief pursuant to Subtitle H § 6007.1(e)(2) and Subtitle X § 901.2, because fast food restaurant use is only permitted in the Property's NMU-5A/H-R zoning as a special exception subject to conditions (Ex. 2).

Requested Modification

12. The Application noted that the portion of the ground floor targeted for the fast-food restaurant use has been vacant since construction of the Existing Building was completed in 2020. The Application also explained that, despite the Applicant's diligent efforts to market the space for retail uses permitted under the original PUD, those efforts had not been successful. The proposed modification would activate the long-vacant space and advance the mixed-use vision for the H Street, N.E. corridor (*Id.*, Ex. 2F).
13. The Application included an analysis of how the modification would meet the PUD evaluation standards, including how the modification would not change the following conclusions made by the Commission in Z.C. Order No. 10-03:
 - The Commission found the PUD was “not inconsistent with the Comprehensive Plan” and would “promote the orderly development of the Subject Property” in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia” (Z.C. Order No. 10-03, Conclusion of Law No. 11). The Commission cited to Finding of Fact [“FF”] Nos. 30-33 in Z.C. Order No. 10-03 for its overall findings as to the Project’s consistency with the Comprehensive Plan’s guiding principles, major elements, and Future Land Use Map (“FLUM”) designation;
 - The Commission found the “impact of the project on the surrounding area [was] not unacceptable” and the application could “be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated” (Z.C. Order No. 10-03, Conclusions of Law Nos. 5-6). The Commission also found specifically that the “project will not result in adverse traffic impacts” and would “have less of an impact on the roadway network than a matter-of-right project” (Z.C. Order No. 10-03, Conclusions of Law No. 7);
 - The Commission also found that a number of “benefits and amenities [would] be created as a result of the PUD” including housing and affordable housing, historic preservation, employment benefits, environmental benefits, transportation features, and superior urban design, architecture, landscaping and open space that would implement the design guidelines of the H Street, N.E. Strategic Development Plan (Z.C. Order No. 10-03, FF No. 29). The Commission also acknowledged additional benefits and amenities, including the “provision of ground floor, neighborhood-serving retail space” and the building’s substantial set back at the corner of 8th and H Streets (*Id.*); and
 - The Commission found the applicant’s “request for flexibility from the Zoning Regulations [was] consistent with the Comprehensive Plan” and the “project benefits

and amenities [were] reasonable trade-offs for the requested development flexibility” (Z.C. Order No. 10-03, Conclusion of Law No. 10).
(Ex. 2)

14. The Application included an evaluation demonstrating that the proposed fast food restaurant use would not affect the project’s consistency with the Comprehensive Plan, citing the following reasons, among others:

- The Property is designated as Mixed Use Medium Density Commercial/Medium Density Residential on the FLUM, a designation that has remained unchanged since the PUD was originally approved. The Application asserted that the proposed modification to allow fast food restaurant use is consistent with the FLUM’s vision for a balanced mix of commercial and residential uses at the Property;
- The Generalized Policy Map (“GPM”) designates the Property as a Main Street Mixed Use Corridor, which is defined by a concentration of older storefronts along traditional commercial corridors (10-A DCMR § 225.14). The proposed modification to permit fast food restaurant use at the Property is not inconsistent with this designation, as it would be located along the H Street, N.E. corridor, which is planned for mixed-use activity, and would enhance the corridor’s active streetscape by introducing additional ground-floor commercial activity within the Existing Building;
- The proposed modification would advance District policies related to economic development, particularly those focused on revitalizing the H Street, N.E. corridor between 7th and 12th Streets, N.E. This area is identified as the “Central Retail District” in the H Street, N.E. Strategic Development Plan, where retail uses are encouraged to be strengthened, consolidated, and diversified to provide residents, shoppers, and visitors with a broader range of goods and services; and
- The proposed modification would further Comprehensive Plan policies related to racial equity including those under the Land Use Element, Transportation Element, Economic Development Element, and Capitol Hill Area Element.

(Ex. 2, 2G)

15. The Application further asserted that the modification was not inconsistent with the Comprehensive Plan and would lead to favorable outcomes when evaluated through a racial equity lens. The proposed fast food restaurant use would not displace any existing businesses or residents, would offer a high-quality dining experience and affordable meals in an accessible, transit-oriented location, and would provide job opportunities for local residents, including entry-level positions that could serve as a pathway to long-term career advancement. The Application also summarized the Applicant’s community outreach and engagement efforts to the ANC and community stakeholders to present the request and gather feedback (*Id.*).

16. The Application explained that the proposed fast food restaurant use would not result in any unacceptable impacts. The use is consistent with the project’s other non-residential components and complements the mixed-use character of the Existing Building and surrounding neighborhood. The majority of customers would be expected to arrive on foot or by public transit, with limited vehicle traffic anticipated. For those who do drive,

sufficient parking would be available in the Existing Building's below-grade garage, which contains 126 retail-designated spaces. The proposed use would occupy currently vacant ground floor commercial space, enhancing street-level activity and improving safety along the H Street, N.E. corridor through added lighting, visibility, and pedestrian presence. The use would not result in adverse impacts related to noise, odors, trash, lighting, or hours of operation. All loading and waste management would remain internal to the building. The use would not include live entertainment, amplified music, or other features that could create objectionable conditions for neighboring properties (Ex. 2).

17. Finally, the Application explained that there were no changes proposed to the previously approved PUD public benefits and amenities, or development incentives requested, and that there were no unacceptable adverse impacts. Accordingly, the PUD's public benefits and project amenities did not require reevaluation (*Id.*).

Special Exception Relief Requested

18. The Application provided justifications in support of its request for special exception relief pursuant to Subtitle H § 6007.1(e)(2) and Subtitle X § 901.2 (*Id.*).
19. With respect to the special exception conditions for a fast food restaurant under Subtitle H § 6007.1(e)(2)(A)–(G), the Application asserted that it met the conditions because: (i) the Property is not located in the MU-4/WP zone; (ii) the proposed use would not occupy any portion of the ground floor within 25 feet of the RF-1 or RA-4 zone boundary to the south of the Property; (iii) no continuous brick wall is required because the Existing Building spans the full width of the Property; (iv) no new refuse dumpsters are proposed; (v) no drive-through component is proposed; (vi) the only customer entrance will front H Street, N.E.; and (vii) the use would not generate objectionable conditions related to odors, noise, hours of operation, or exterior lighting, and has been designed to be compatible with its urban setting (*Id.*).
20. With respect to the general special exception criteria under Subtitle X § 901.2, the Application asserted that the proposed fast food restaurant use met the criteria because: (i) it would contribute to the mix of uses within the Existing Building without any new construction or enlargement that would render the Existing Building incompatible with existing zoning or the character of the H Street, N.E. corridor, and is in harmony with the intent of the NMU-5A/H-R zone to support mixed-use development and retail uses; and (ii) it would not adversely affect neighboring properties because it is adequately buffered from nearby residential zones by a private alley that spans the full width of the Property at the rear, would implement responsible waste management practices, and would not generate objectionable conditions related to noise, odor, exterior lighting, or hours of operation (*Id.*).

III. RESPONSES TO THE APPLICATION

OP Report

21. On April 29, 2025, OP submitted a report (the "OP Report") stating that it "recommends the Commission approve the requested Modification Without a Hearing and associated special exception relief" to permit a fast-food restaurant use in the Existing Building (Ex. 4, p. 1).

22. The OP Report stated that “[t]ypically, a request for a new relief from the zoning regulations would require the holding of a public hearing.” However, OP considered the proposed use to be similar to others permitted within the NMU-5A/H-R zone and noted that “the ANC has indicated support” such that the request could be deemed consistent with the intent of a Modification Without Hearing (*Id.*).
23. The OP Report concluded that the requested special exception meets the criteria for fast food restaurant use under Subtitle H § 6007.1(e)(2) and the general special exception criteria under Subtitle X § 901.2 (Ex. 4, p. 2-3).
24. The OP Report concluded that the requested modification “would not impair the intent of the [Zoning] Regulations or have an adverse effect on the decisions made by the Commission” when it approved the original PUD or the subsequent modification in Z.C. Order No. 10-03D. OP also referenced the Applicant’s Comprehensive Plan analysis and agreed that the proposed use “would not be inconsistent with the intent of the H Street policies noted in the Comprehensive Plan[.]” (Ex. 4, p. 2).
25. The OP Report concluded that the proposed use “would be consistent with the neighborhood-oriented focus” of the NMU-5A/H-R zone, and that it “is not anticipated to generate objectionable noise.” OP further stated that “[a]s a neighborhood-serving establishment, the use should not incur excessive vehicle traffic to the site,” and noted that the H Street, N.E. corridor is well served by multiple transportation and pedestrian options (Ex. 4, p. 3).

ANC Report

26. On May 2, 2025, ANC 6A submitted a letter stating that at a regularly scheduled and properly noticed meeting on April 10, 2025, the ANC voted 6-0-0 to support the Application (the “ANC Report”) (Ex. 5). The ANC Report noted that the Applicant had “proactively presented” its request to the ANC’s Economic Development and Zoning Committee and had met with the Single-Member District Commissioner for ANC 6A02 to discuss constituent concerns. The ANC’s support was conditioned on the Commission including the following additional language in Decision A.2. to address the ANC’s concerns regarding “fast food” use, which is included in this order:

If any new uses are adopted under the eating and drinking establishment use category as defined under Subtitle B §§ 100.2 and 200.2(i) by an amendment to the Zoning Regulations after the effective date of this Order, such newly adopted uses shall be considered matter-of-right uses within the PUD, except that following such amendment, the establishment of a new fast-food restaurant or a new fast food drive-through shall require review and approval by the Zoning Commission.

27. On May 2, 2025, the Applicant submitted a letter agreeing to the additional condition language proposed by ANC 6A in the ANC Report, as discussed above in FF No. 26 (Ex. 6).

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make, without public hearing, modifications to approved contested case final orders and plans approved by such orders (modifications without hearing).
2. Subtitle Z § 703.6 describes a Modification Without Hearing as 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, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission. Determination that a modification can be approved without witness testimony is within the Commission’s discretion. A request to add or change a zoning map designation to an approved planned unit development shall not be considered without a hearing.”
3. The Commission concludes that the Application qualifies as a Modification Without Hearing pursuant to Subtitle Z § 703.6 because it seeks to revise a condition of the final order to permit fast food restaurant use. The Commission further finds that both the proposed modification and the request for special exception relief can be fully evaluated without the need for witness testimony and therefore may be approved without a public hearing.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.10 to serve the Application on all parties to the original proceeding—in this case ANC 6A—and OP, at the same time that the request was filed with the Office of Zoning.
5. The Commission concludes that the requirement of Subtitle Z § 703.12 to provide a minimum of 30 days for parties to respond to the Application has been met.
6. The Commission concludes that, in accordance with Subtitle Z § 703.13, this request for a Modification Without Hearing was filed with the Office of Zoning at least thirty-five (35) days prior to the public meeting at which the request was considered by the Commission. The Application was filed on March 27, 2025, and considered by the Commission at its May 8, 2025, public meeting.
7. The Commission finds the Application consistent with the intent of the original PUD approval of Z.C. Order No. 10-03 for the reasons set forth in FF Nos. 13-17 above.
8. Pursuant to Subtitle X § 303.13, an applicant may request, as part of a PUD, approval of any zoning relief that requires special exception approval. In such cases, the Commission shall apply the special exception standards applicable to the requested relief.
9. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board of Zoning Adjustment to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board of Zoning Adjustment, the special exceptions:

- Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map;
 - Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map; and
 - Will comply with the special conditions specified in the Zoning Regulations.
10. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application" (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973))).
11. The Commission concludes that the requested special exception to permit a fast food restaurant use at the Property satisfies the specific conditions set forth in Subtitle H § 6007.1(e)(2) and the general special exception criteria of Subtitle X, Chapter 9, for the following reasons, among others set forth in the Application and in FF Nos. 18-20:
- The proposed use aligns with the NMU-5A/H-R zone's intent to promote mixed-use development and retail opportunities that serve the surrounding neighborhood;
 - The fast food restaurant use will be managed in a manner that minimizes potential external impacts, including noise, odors, and lighting, through operational controls such as internalized waste management and loading functions located within the Existing Building; and
 - The Property is physically separated from nearby residential uses by a private alley, providing a sufficient buffer, and the scale and intensity of the proposed use are compatible with the active, transit-oriented nature of the H Street, N.E. mixed-use corridor.

"GREAT WEIGHT" TO RECOMMENDATIONS OF OP

12. The Commission must give "great weight" to the recommendations of the OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.9 (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016))).
13. The Commission finds OP's recommendation to approve the Application persuasive and concurs in that judgment.

"GREAT WEIGHT" TO WRITTEN REPORT OF THE ANC

14. The Commission must give "great weight" to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement,

the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978)).

15. The Commission recognizes ANC 6A’s support for the Application and agrees with the ANC’s request to incorporate additional language into Decision A.2. As set forth below, the Commission incorporated the requested language into this order.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant’s request for a Modification Without Hearing to the PUD approved pursuant to Z.C. Order No. 10-03, as extended and modified by Z.C. Order Nos. 10-03A, 10-03B, and 10-03D, to modify Decision No. A.2 to authorize a fast food restaurant use along with the Applicant’s associated request for special exception relief to permit fast food restaurant use at the Property, subject to the following conditions:

1. Decision No. A.2 of Z.C. Order No. 10-03, as modified by Z.C. Order No. 10-03D, is further modified as follows (additions in **bold** and underlined text):

A.2 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.

If any new uses are adopted under the eating and drinking establishment use category as defined under Subtitle B §§ 100.2 and 200.2(i) by an amendment to the Zoning Regulations after the effective date of this Order, such newly adopted uses shall be considered matter-of-right uses within the PUD, except that following such amendment, the establishment of a new fast food restaurant or a new fast food drive-through shall require review and approval by the Zoning Commission.

2. All other conditions in Z.C. Order No. 10-03, as extended and modified by Z.C. Order Nos. 10-03A, 10-03B, and 10-03D, remain unchanged and in effect.

Final Action

VOTE (May 8, 2025): 4-0-1

(Anthony J. Hood, Tammy Stidham, Robert E. Miller, and Joseph Imamura to approve; Gwen Wright, not present, not participating.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 10-03E shall become final and effective upon publication in the *District of Columbia Register*; that is, on June 27, 2025.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.