

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Jessica Raabe Bloomfield
202.469.5272
jessica.bloomfield@hklaw.com

Christopher S. Cohen
202.469.5127
christopher.cohen@hklaw.com

March 27, 2025

VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street NW, Suite 210-S
Washington, DC 20001

**Re: Application for Modification Without Hearing
Zoning Commission Order Nos. 10-03 *et seq.*
901 H Street NE (Square 912, Lots 815 and 817 (part of Record Lot 55))**

Dear Members of the Zoning Commission:

On behalf of H Street Retail, LLC (the “**Applicant**”), and pursuant to Subtitle Z § 703.6 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“**DCMR**” or the “**Zoning Regulations**”) we hereby submit this application for a Modification Without Hearing to the consolidated planned unit development (“**PUD**”) approved pursuant to Z.C. Order No. 10-03, as extended and modified. The property subject to this application is known as 901 H Street, NE (Square 912, Lots 815 and 817 (part of Record Lot 55)) (the “**Property**”).

As set forth herein, the Applicant proposes to modify Decision No. A.2 of Z.C. Order No. 10-03D to authorize fast food restaurant use within the existing ground floor retail space of the PUD. This application is properly filed as a Modification Without Hearing because its “impact may be understood without witness testimony” and because it requests a “change to a condition in the final order.” *See* 11-Z DCMR § 703.6. Determination that a modification can be approved without witness testimony is within the Commission’s discretion. *Id.* The application also requests special exception relief pursuant to Subtitle H § 6007.1(e)(2) and Subtitle X § 901.2, because fast food restaurant use is not permitted as a matter of right in the Property’s NMU-5A/H-R zoning.

Pursuant to Subtitle Z § 703.13, a request for a Modification Without Hearing shall be filed with the Office of Zoning at least 35 days prior to the public meeting at which the request is to be considered. Consistent with this required timeframe, **the Applicant respectfully requests that the application be placed on the Zoning Commission’s public meeting scheduled for May 8, 2025,** which is greater than 35 days from the date of this filing.

ZONING COMMISSION
District of Columbia
CASE NO.10-03E
EXHIBIT NO.2

Attached hereto as Exhibit A is a letter from the Applicant authorizing Holland & Knight LLP to file and process the application. Attached hereto as Exhibit B is Zoning Commission Form 100 – Application Signature Page. The required filing fee of \$2,080.00 will be provided via check made payable to the D.C. Treasurer.¹

I. Community Engagement

The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 6A. Prior to filing the application the Applicant engaged with ANC 6A to present the proposal and describe the proposed ground floor use modification. On March 19, 2025, the Applicant presented the application at the regularly-scheduled meeting of the ANC’s Economic Development and Zoning (“**EDZ**”) Committee, which voted in favor of the application and to relay its support to the full ANC. On March 26, 2025, the Applicant met individually with Commissioner Velasquez, the Single-Member District (“**SMD**”) representative for the Property (6A02) to discuss EDZ Committee’s support and seek additional feedback. The Applicant is scheduled to present the application at the ANC’s regularly scheduled and duly noticed public meeting on April 10, 2025, and will update the record, as appropriate, before the Zoning Commission considers this application at a public meeting.

II. The Property and Prior Zoning Commission Approvals

The Property is located on the south side of H Street, NE, between 8th and 10th Streets, NE, and has a total land area of approximately 87,053 square feet. As shown on the Zoning Map (Exhibit C), 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 NE Neighborhood. 11-H DCMR § 900.15.

Pursuant to Z.C. Order No. 10-03, dated November 8, 2010, and effective on January 14, 2011 (Exhibit D), the Zoning Commission (“**Commission**”) approved a consolidated PUD to develop the Property with a mixed-use building comprised of residential and retail uses (the “**Project**”). The approval was rendered under the 1958 Zoning Regulations (“**ZR58**”), at which time the Property was zoned HS/C-2-B. The Project was approved to have a maximum building height of 90 feet and a maximum density of 5.0 floor area ratio (“**FAR**”), with approximately 380,560 square feet devoted to residential use and approximately 51,420 square feet devoted to retail use.

Pursuant to Z.C. Order No. 10-03A, dated January 10, 2013, and effective on 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 on 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 Project within the time period established by the second extension request, and the Project was ultimately

¹ The filing fee has been calculated in accordance with Subtitle Z §§ 1600.4 and 1600.11, and Subtitle Y § 1600.1(b)(24).

completed according to the conditions set forth in Z.C. Order No. 10-03. A certificate of occupancy for the full building was issued on June 5, 2020 (CO2002216).

Pursuant to Z.C. Order No. 10-03D, dated January 30, 2020, and effective April 24, 2020 (Exhibit E), the Commission approved a modification to the approved PUD to permit veterinary hospital use in a portion of the ground floor retail space.²

Pursuant to the PUD approvals, the Property is currently improved with a mixed-use building with approximately 419 residential units and ground floor retail and commercial space. The ground floor commercial tenants include an Aldi grocery store (expected to open in Q2 2025), a Solidcore fitness studio, a UPS outlet, an AT&T store, a nail salon, and a veterinary hospital. Some of the retail space is also currently vacant. A copy of the ground floor plan approved in Z.C. Order No. 10-03 is attached hereto as Exhibit F.

The Project has 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 building, accessed from 8th and 10th Streets. The primary pedestrian entrances to the residential lobby and ground-floor commercial spaces are located on H Street.

The Property is situated on the H Street, NE corridor, a transit-rich, mixed-use, and highly walkable area. The surrounding neighborhood includes various residential, office, retail, and service establishments. Union Station is located approximately 0.6 miles to the southwest of the Property, providing convenient access for the building's residents and visitors. Metrobus, Streetcar, and Capital Bikeshare options are conveniently located in close proximity to the Property as well.

III. Proposed Modification to the Approved PUD for Fast Food Establishment Use

The Applicant requests a Modification Without Hearing to the approved PUD to permit fast food restaurant use as another permitted use within the ground floor retail areas of the PUD. The modification will be accomplished without any changes to the exterior of the existing building. The retail space designated for the proposed use has remained vacant since the PUD was completed in 2020. **The Applicant has been diligently marketing the ground floor space to other retail uses permitted by the PUD approval, but these efforts have not yielded success. The proposed use will not only stimulate much-needed activity at the ground floor of the Project, but will contribute to the thriving mixed-use environment envisioned for the H Street, NE corridor.**

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

While the proposed use is technically classified as a “fast food restaurant” under the Zoning Regulations,³ it is more analogous to a fast casual dining establishment or “quick service restaurant” (“QSR”), which successfully operate throughout the District. QSR is not a defined term under the Zoning Regulations and is therefore treated as a fast food restaurant for zoning purposes. While a more traditional “restaurant” use⁴ is permitted as a matter-of-right under the PUD and in the underlying NMU-5A/H-R zone, a fast food restaurant is permitted only as a special exception pursuant to Subtitle H § 6007.1(e)(2). Thus, this application is being filed to authorize QSR use at the Property.

The Applicant is working with a QSR establishment that wants to open at the Property as soon as possible. The anticipated tenant is a regionally-based sandwich shop with a track record of success. The QSR tenant would offer a welcome opportunity for the surrounding neighborhood, and for the District as a whole, given the current challenges facing fast casual restaurants and the broader restaurant industry.⁵ Moreover, permitting QSR use at the Property aligns with relevant Comprehensive Plan policies, particularly those that seek to revitalize the H Street Corridor between 7th and 12th Streets with appropriate ground floor retail. *See* 10-A DCMR § 1510.6; CH-2.2.1.

The proposed dining establishment will offer a typical fast casual dining experience. Customers will place their orders at a service counter and choose a table for dining-in. A server will then deliver food to their table. The dining area will offer a comfortable and welcoming atmosphere, featuring modern décor and creating a relaxed ambiance. The QSR’s menu is simple and uses locally sourced, high-quality ingredients to provide a true farm-to-table dining experience.

In order to allow the proposed QSR use at the Property, the Applicant proposes the following modifications to Decision No. A.2 of Z.C. Order No. 10-03, as amended by Z.C. Order No. 10-03D, as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):

³ “Fast Food, Restaurant” is defined as “[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.” 11-B DCMR § 100.2.

⁴ “Restaurant” is defined as “[a] place of business that does not meet the definition of a “fast food establishment” or “prepared food shop,” where food, drinks or refreshments are prepared on the premises and sold to customers primarily for consumption on the premises. This term shall include, but not be limited to, an establishment known as a café, lunch counter, cafeteria, or other similar business, but shall not include a fast food restaurant. In a restaurant, any facilities for carry out shall be clearly subordinate to the principal use of providing prepared foods for consumption on the premises. A restaurant may include ancillary carry out sales, provided that there is no designated carry out counter or window, no drive through facility, and the carry out service is not an advertised element of the business.” 11-B DCMR § 100.2.

⁵ According to a recent survey of 217 Restaurant Association Metropolitan Washington members, 29% of respondents indicated that they are at least somewhat likely to close restaurants in the District. *See* Wash. Bus. Journal, “D.C. restaurants face grim outlook as closures hit record high in 2024”, *available at*: https://www.bizjournals.com/washington/news/2025/03/18/dc-restaurant-outlook-ramw-survey-shawn-townsend.html?utm_source=st&utm_medium=en&utm_campaign=me&utm_content=WA&ana=e_WA_me&j=39065705&senddate=2025-03-19&empos=p5.

- 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.

IV. Consistency with PUD Evaluation Standards

In deciding a PUD application, including an application to modify a PUD, the Commission shall “judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” 11-X DCMR § 304.3. The Commission “shall find that the proposed development: (i) [i]s not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) [d]oes not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) [i]ncludes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” 11-X DCMR § 304.4.

The Commission previously found that the Project met the PUD evaluation standards under ZR58 as follows:

- 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.” *See* Z.C. Order No. 10-03, Conclusion of Law (“CL”) No. 11. *See also* Z.C. Order No. 10-03, FF Nos. 30-33 for the Commission’s overall findings as to the Project’s consistency with the Comprehensive Plan’s guiding principles, major elements, and Future Land Use Map designations.
- 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.” *See* Z.C. Order No. 10-03, CL 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.” *See* Z.C. Order No. 10-03, CL No. 7.
- A number of “benefits and amenities will 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 NE Strategic Development Plan*. *See* 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.*

- The Applicant’s “request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan” and the “project benefits and amenities are reasonable trade-offs for the requested development flexibility. *See* Z.C. Order No. 10-03, CL No. 10.

The modification requested herein does not change the Commission’s previous conclusions, and the Project continues to be not inconsistent with the PUD evaluation standards as set forth below.

A. PUD Balancing Test (11-X DCMR § 304.3)

In deciding a PUD application, the Zoning Commission “shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” 11-X DCMR § 304.3. In this case, there are no changes to the previously-approved benefits and amenities nor to any development incentives requested. As described below, there will also be no adverse effects created by the QSR use. Accordingly, the PUD continues to meet the balancing test established in Subtitle X § 304.3.

B. Not Inconsistent with the Comprehensive Plan (11-X DCMR § 304.4(a))

Adding a new fast casual dining establishment along the H Street, NE corridor is not inconsistent with many Comprehensive Plan policies when evaluated through a racial equity lens. QSRs have become increasingly successful due to their ability to blend the convenience of traditional “fast food” with the quality of casual dining. Fast casual restaurants typically employ smaller staffs, using self-service to fill in the gaps and decrease labor costs. They provide both a welcoming in-house dining experience and a convenient takeaway option, which flexibility is ideal for many customers. Fast casual restaurants offer quality meals at a price point that is generally more affordable to a wide consumer base. These benefits make QSR use an attractive option for customers and business owners alike, and will lead to favorable outcomes when evaluated through a racial equity lens.

The proposed QSR use would fill approximately 1,900 square feet of vacant ground floor retail space without displacing any existing retail tenants. Filing the retail vacancy will improve the pedestrian experience, increase the mixed-use character of the neighborhood, and enhance the long-term vitality of this portion of the H Street corridor and surrounding blocks. Given the Property’s accessible and transit-oriented location, the proposed QSR use is well-positioned to serve local residents and visitors of the surrounding neighborhood, all in compliance with specific policies and goals set forth in the Comprehensive Plan.

A detailed evaluation of how the proposed QSR use is not inconsistent with the Comprehensive Plan and with other adopted public plans and policies related to the Property is attached hereto as Exhibit G.

C. No Unacceptable Project Impacts (11-X DCMR § 304.4(b))

The proposed modification will not result in unacceptable project impacts. The intensity of the QSR use is fully consistent with the Project's other non-residential uses, and complements the overall mixed-use character of the building and the immediate neighborhood. Importantly, there will be no adverse traffic impacts resulting from the QSR use. The majority of customers are expected to live or work in the surrounding area, including within the building itself, and are not expected to drive. The Property is located in a highly walkable, mixed-use, transit-accessible location, with convenient access to pedestrian- and bike-friendly facilities, Metrobus and Metrorail lines, the D.C. Streetcar, and Capitol Bikeshare stands. The Applicant anticipates that many customers will arrive on foot, particularly given the quick-service nature of the proposed QSR.

In the event that some patrons drive to the QSR, adequate parking is provided within the existing building. The minimum parking required for QSR use, which falls under the "eating and drinking establishments" use category, is 1.33 spaces per 1,000 square feet in excess of 3,000 square feet. 11-C DCMR § 701.5. Uses that fall under the "retail" use category are subject to the same parking ratio. *Id.* Therefore, the 126 retail parking spaces located within the building's underground parking garage will be able to easily accommodate the proposed QSR use.

Permitting a QSR use within the PUD will not bring undesirable activity to the Property or surrounding area. Quite the opposite, the proposed QSR use will occupy currently vacant ground floor space intended for commercial use and will enhance street-level activity with pedestrian-friendly design features. The QSR will improve safety along H Street by activating a dark vacant space with interior and exterior lighting and new activity. It will put additional eyes and ears on the street, increase pedestrian activity, and create an overall more welcoming and secure environment.

Furthermore, and as required by the applicable special exception criteria (Subtitle H § 6007.1(e)(2)(G) and Subtitle X § 901.2(b)), the QSR use will not adversely impact neighboring properties as a result of trash, odor, noise, lighting, hours of operation, or other factors. Similar to other existing QSRs along the H Street, NE corridor and throughout the District, the Applicant's anticipated tenant is focused on operational efficiency and the provision of a high-quality dining experience for its customers. The QSR will utilize existing trash dumpsters currently used by existing commercial tenants of the building, and which are entirely enclosed within the building. All trash from the QSR use will be carted through an internal corridor to the trash room and deposited into the dumpster. The dumpsters are trash compactors and are controlled by the Applicant. Grease lines to the QSR use are internal, with the building's grease interceptor located in the G1 garage level. As a result, no trash or unpleasant odors will be transmitted into the surrounding public space or onto private property.

Similar to trash, all loading facilities are internal to the existing building. Two retail loading docks are located at the rear, accessed from a private drive, with overhead doors. The proposed QSR use will not generate any excessive or additional loading activities.

The QSR will have standard hours of operation that will accommodate patrons for breakfast, lunch, and dinner. The QSR will not include live entertainment, amplified music, or any other type of enhanced attraction that would create objectionable conditions to other residents or tenants of the

building or within the surrounding area. Overall, the proposed use will be compatible with the mixed-use character of the Project and the surrounding neighborhood.

D. Public Benefits and Project Amenities (11-X DCMR § 304.4(c))

A PUD must include specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site. In this case, there are no changes to the previously-approved benefits and amenities nor any development incentives requested. Furthermore, there are no unacceptable impacts that would result from the PUD modification, as discussed above. Accordingly, the public benefits and project amenities do not need to be reevaluated.

V. Compliance with Special Exception Standards

The Property is located in the NMU-5A/H-R zone, which is one of two zones within the H Street Neighborhood Mixed-Use Retail Sub-District. 11-H DCMR § 900.12. The Property's use permissions align with those for NMU-Use Group B.⁶ 11-H DCMR § 6000.8. In the NMU-5A/HR zone, a fast food restaurant is permitted only if approved by special exception pursuant to the general criteria of Subtitle X § 901.2 and the standards of Subtitle H § 6007.1(e)(2). Therefore, the Applicant requests special exception relief to permit QSR use at the Property. As set forth herein, the application meets the applicable criteria for special exceptional approval.

A. Special Exception Use Conditions for Fast Food Restaurant in the NMU-5A/H-R Zone (Subtitle H § 6007.1(e)(2))

- 11-H DCMR § 6007.1(e)(2)(A): *The uses shall not be permitted in the MU-4/WP zone;*

Not applicable. The Property is not located in the MU-4/WP zone.

- 11-H DCMR § 6007.1(e)(2)(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 ground floor area that the QSR is expected to occupy is not within 25 feet of the RF-1 or RA-4 zone boundary that abut the PUD site to the south.

- 11-H DCMR § 6007.1(e)(2)(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;*

⁶ The Property is not subject to the provisions for Designated and Restricted Uses set forth in Subtitle H § 6001. Cf. Subtitle H § 900 *et seq.* with Subtitle H §§ 302, 402, 502, 602, 702, and 802.

A brick wall is not required because the existing building extends for the full width of the lot.

- 11-H DCMR § 6007.1(e)(2)(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;*

No new refuse dumpsters are proposed for the QSR use. All trash generated by the QSR will be collected in existing trash compactors located within the Project's dedicated trash room. The dumpsters will be located entirely within the existing building. Trash generated by the QSR will be carted through an internal corridor to the trash room and deposited directly into the dumpster.

- 11-H DCMR § 6007.1(e)(2)(E): *The use shall not include a drive-through;*

The proposed QSR use will not include a drive-through.

- 11-H DCMR § 6007.1(e)(2)(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*

The QSR use will not have customer entrances on the side or rear of the existing building. The customer entrance will be along H Street, NE.

- 11-H DCMR § 6007.1(e)(2)(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 QSR use will be designed and operated so as not to become objectionable to neighboring properties. The Applicant is the owner of the building and landlord to the other commercial and residential tenants. Thus, the Applicant has every incentive to ensure that the QSR use operates in a manner that does not create any deleterious effects to occupants of the building or residents of the surrounding area. The Applicant believes that the proposed QSR use will offer an appealing, clean, and convenient dining option for the surrounding community.

With respect to noise and odors, the QSR use will operate entirely within the existing building. Thus, no excessive noise or odors will be transmitted to the surrounding public spaces. Lighting provided for the QSR use will be consistent with the existing exterior lighting used for other commercial tenants of the building, and will not create adverse impacts on surrounding properties.

The expected hours of operation will be comparable to the Project's other tenants and other fast casual dining establishments along the H Street, NE corridor. With appropriate hours, customer activity is not expected to peak early in the morning or

late in the evening, reducing opportunities for loitering. Staff will also be trained and expected to monitor the premises at all times to ensure a safe environment for customers. No alcohol service will be offered with the QSR use.

All loading activities for the QSR use will occur within the Project's existing loading facilities adjacent to the private service alley at the rear of the Property. All trash generated by the QSR use will be stored within existing trash compactors located within the building.

Overall, the proposed use is intended to accommodate the needs and living patterns of urban residents. The anticipated customer base will be able to access the Property by foot, bike, or public transit, such that vehicular traffic generated by the proposed use should be relatively minimal.

In light of the foregoing, the proposed fast food restaurant use satisfies the special exception conditions set forth in Subtitle H § 6007.1(e)(2)(A).

B. General Special Exception Criteria (Subtitle X § 901.2)

Pursuant to Subtitle X § 901.2, the special exception request must be in harmony with the purpose and intent of the Zoning Regulations and Zoning Map, will not tend to affect adversely the use of neighboring property, and will meet such conditions as may be specified in the Zoning Regulations. As discussed above, the proposed use satisfies the special conditions applicable to a fast food restaurant in the NMU-5A/H-R zone.

The QSR use is also consistent with the purpose and intent of the NMU-5A/H-R zone. The zone is one of two H Street Northeast Neighborhood Mixed-Use Retail sub-district zones that encourage retail uses and a scale of development and a mixture of building uses that are generally compatible in scale with existing buildings. 11-H DCMR § 900.13. The requested modification will contribute to the mix of uses in the building and does not require any new construction or enlargement of the existing improvements. The QSR use aligns with the specific intent of the NMU-5A/H-R zone, which is to facilitate mixed-use development and the provision of retail uses. 11-H DCMR § 900.15. Moreover, the proposed use is generally encouraged in the NMU zones. Pursuant to 11-H DCMR § 6001.2(c), uses within the "eating and drinking establishments" use category are considered "designated uses." While the Property is not located within a designated use area, the proposed use is appropriate for the Property given the overall purpose of its zone designation. NMU zones are designed to provide for stable-mixed use areas permitted a range of commercial and multiple dwelling unit residential development in defined neighborhood commercial areas. 11-H DCMR § 101.1.

The requested special exception will not tend to affect adversely the use of neighboring property. As described above, the application satisfies the conditions under Subtitle H § 6007.1(e)(2), which are intended to ensure that QSR use will not result in adverse impacts. For example, the QSR use will be adequately separated from nearby residential uses due to the private alley providing a buffer at the rear, and public streets otherwise abutting the Property to the north, east, and west. Additionally, the proposed use is geared toward an urban environment. There is no drive-through element, and the customer entrance will be located H Street, NE, which is an active, pedestrian-

oriented mixed-use corridor. Further, as the owner of the Property, the Applicant will ensure that any future QSR tenants design and operate the use in a manner that limits any objectionable conditions relating to noise, odor, light, hours of operation, trash management, and loading. Ultimately, the proposed use will operate much like other eating and drinking establishments throughout the District.

In summary, a fast-casual restaurant use will serve the community by enhancing the vibrancy of the H Street corridor, creating local job opportunities, and offering an affordable and convenient dining option for residents, workers, and visitors. By activating a vacant ground-floor space, the QSR will contribute to the corridor's continued revitalization, increasing foot traffic and supporting nearby small businesses. Its transit-accessible location ensures that it serves the surrounding community without adding to automobile dependency, reinforcing a pedestrian-friendly and walkable environment. Additionally, by prioritizing responsible waste management, operating during appropriate hours, and limiting any excessive noise, the restaurant will integrate seamlessly into the mixed-use setting while maintaining neighborhood compatibility. Overall, the QSR will strengthen the local economy, support workforce development, and enhance the corridor's role as a thriving, inclusive commercial hub.

VI. Application Properly Filed as a Modification Without Hearing

The term "Modification Without Hearing" is 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." 11-Z DCMR § 703.6 (emphasis added).

In this case, the Applicant proposes to modify Decision A.2 of Z.C. Order No. 10-03, as amended by Z.C. Order No. 10-03D, to permit QSR use in the ground floor of the constructed PUD. Because the proposed use is only permitted by special exception at the Property, the application also includes special exception relief. As set forth herein, the application meets the PUD evaluation standards and the criteria for special exception approval. Therefore, the application falls within the scope of a Modification Without Hearing and can be approved without witness testimony.

A request for a Modification Without Hearing must be served on all parties in the original proceeding and the Office of Planning at the same time that the request is filed with the Office of Zoning. 11-Z DCMR § 703.10. The only party to the original proceeding was the affected ANC 6A. Accordingly, the Applicant is also serving a copy of this application on ANC 6A at the same time that it is being filed with the Office of Zoning.

VII. Conclusion

The Applicant respectfully requests approval of this application for a Modification Without Hearing, including special exception relief to allow fast food restaurant use at the Property. The request is consistent with the Commission's findings when it approved the original PUD, and satisfies all the criteria applicable to the special exception request.

Sincerely,

HOLLAND & KNIGHT LLP

By: 
Jessica R. Bloomfield

By: 
Christopher S. Cohen

Exhibits

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2025, electronic copies of the foregoing application were served on the following at the email addresses stated below:

D.C. Office of Planning

Jennifer Steingasser: jennifer.steingasser@dc.gov

Joel Lawson: joel.lawson@dc.gov

District Department of Transportation

Erkin Ozberk

erkin.ozberk@dc.gov

Advisory Neighborhood Commission 6A

6A@anc.dc.gov

Commissioner Mike Velasquez

ANC 6A02

6A02@anc.dc.gov

Mikevanc6A@gmail.com

Commissioner Dave Wethington

6A05@anc.dc.gov

ANC 6A Chair as of the date of this filing

ANC 6A Economic Development and Zoning Committee

Joal Mendonsa, Co-Chair: joal.mendonsa@gmail.com

Michael Cushman, Co-Chair: michael.cushman@gmail.com



Christopher S. Cohen
Holland & Knight LLP