

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Z.C. ORDER NO. 10-03D

Z.C. Case No. 10-03D

H Street Residential, LLC

(Modification of Significance to Approved Consolidated PUD @ Square 912, Lot 55)

January 30, 2020

At its properly noticed public hearing held on January 30, 2020, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of H Street Residential, LLC (the “Applicant”) for a modification of significance to permit a veterinary hospital use in the planned unit development (“PUD”) originally approved by Z.C. Order No. 10-03 (the “Original Order”) for Lot 55 in Square 912 (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”] to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Notice

1. On October 24, 2019, the Office of Zoning (“OZ”) sent notice of the public hearing to: (Exhibit [“Ex.”] 18.)
 - Advisory Neighborhood Commissions (“ANC”) 6A and 6C, the “affected” ANCs pursuant to Subtitle Z § 101.8;
 - The ANC Single Member District (“SMD”) 6A01;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The District Department of Consumer and Regulatory Affairs (“DCRA”);
 - The Ward 6 Councilmember;
 - The At-Large Councilmembers; and
 - Property owners within 200 feet of the Property.
2. OZ published a description of the proposed development and the notice of the public hearing in this matter in the *D.C. Register* on November 8, 2019. (Ex. 9, 10.)
3. The Applicant requested to waive Subtitle Z § 400.9 in order to hold a public meeting less than 35 days after the Application was filed. (Ex. 3.)

Waiver

3. The Applicant requested to waive Subtitle Z § 400.9 in order to hold a public meeting less than 35 days after the Application was filed. (Ex. 3.)

4. Pursuant to Subtitle Z § 400.10, the Applicant provided evidence that the affected ANCs and OP agreed to support the waiver request. (Ex. 3K2, 3L, 10.)

Background

5. Pursuant to the Original Order, the Commission granted approval for a consolidated PUD (the “Approved PUD”) to develop the Property with a mixed-use building comprised of retail and residential uses.¹
6. Pursuant to Z.C. Order No. 10-03A, the Commission granted a two-year extension of the time period to file a building permit application for the Approved PUD.
7. Pursuant to Z.C. Order No. 10-03B, the Commission granted a further one-year extension of the time period to begin construction of the Approved PUD.
8. The Applicant filed Z.C. Case No. 10-03C, requesting a modification of consequence to request approval to permit a veterinary hospital use and a special exception to permit a veterinary hospital use in an NC-17 zone. When the Commission determined at its public meeting on July 29, 2019, that this was properly a modification of significance, the Applicant withdrew Z.C. Case No. 10-03C and filed this Application.

Parties

9. The only parties to Z.C Case No. 10-03, other than the Applicant, were ANCs 6A and 6C, the “affected” ANCs pursuant to Subtitle Z § 101.8.

The Application

10. On October 16, 2019, the Applicant filed the Application requesting a modification of significance to the Approved PUD to authorize:
 - Modifications to the plans and conditions approved by the Original Order to replace the retail uses originally approved for a portion of the ground floor with a veterinary hospital use of 5,365 square feet directly abutting (i.e., directly below) four residential units and portions of three others; and (Ex. 3 at 5.)
 - Special exception relief from the requirement of Subtitle H § 1101.4(g)(1)(C), that a matter-of-right veterinary use not directly abut a residential use pursuant to Subtitle H §§ 1200 and 1202 and Subtitle X § 901.
11. The Application stated that the proposed veterinary hospital use will meet the special exception requirements of Subtitle H § 1200 as follows:
 - The proposed use will substantially advance the purposes of the NC zones to provide a stable mixed-use area with a range of commercial and multiple dwelling unit residential uses, by creating a new service establishment at ground level on the commercial H Street, N.E. corridor. The veterinary hospital will be located and designed such that it

¹ The PUD was approved under the 1958 Zoning Regulations.

will not create any objectionable conditions to adjacent properties related to animal odor, noise, or waste. The Application noted that the veterinary hospital will offer limited grooming, sale of pet supplies, and supervised daytime care of pets during business hours, but will not board or hospitalize animals overnight or after hours; (Subtitle H § 1200.1(a).)

- The Application does not propose any changes to the exterior of the building of the Approved PUD, that was carefully designed and articulated to be consistent with the character and fabric of the H Street, N.E. corridor; (*See* Finding of Fact (“FF”) No. 29(a) of the Original Order; Ex. 3 at 8-9; Subtitle H § 1200.1(b).)
- An exceptional circumstance exists because the NC-17 zone permits a veterinary hospital use as a matter of right, but locating one on the ground floor of a mixed-use building requires special exception relief from the location requirements governing proximity to residential uses; (Subtitle H § 1200.1(c).)
- The proposed use does not necessitate changes to the approved vehicular access and egress provisions of the Approved PUD; (Subtitle H § 1200.1(d).)
- Per the Applicant’s transportation memorandum (Ex. 3D), the proposed use will require fewer parking spaces and generate fewer trips during peak afternoon travel hours, with only minimal increase in morning peak hour trips; and (Ex. 3D; Subtitle H § 1200.1(e).)
- The veterinary hospital space has been designed to mitigate potential noise impacts to the abutting residential uses. The Application asserts that the mitigations will result in lower sound levels than those generated by a typical retail tenant. The Application also stated that the veterinary hospital use will have no external facilities. (Subtitle H § 1200.1(e).)

Applicant’s Public Hearing Testimony

12. At the public hearing held on January 30, 2020, the Applicant provided a presentation describing the proposed services provided in the veterinary hospital space, supported by two experts:

- George Spano of Acoustics2, accepted by the Commission as an expert in Acoustics Engineering; and
- Erwin Andres of Gorove Slade Associates, accepted by the Commission as an expert in Transportation.

(January 30, 2020 Public Hearing Transcript [“Jan. 30 Tr.”] at 3-6.)

13. In response to concern about potential noise impacts raised by a neighbor, Leslie Mick, the Applicant explained that there would be no overnight boarding of animals; that the dogs

would not be taken on walks in the neighborhood; that there was no exterior space for the animals, only a play area inside the veterinary hospital; and that sound mitigation measures taken by the Applicant would ensure that noise from the proposed use would be no louder to abutting residents outside the building than a regular retail use. The Applicant also stated that the location would house 26 to 29 dogs. (Jan. 30 Tr. at 11-15.)

Responses to the Application

OP Reports

14. On October 25, 2019, OP submitted a report (“OP Setdown Report”) recommending that the Commission set down the Application for a public hearing on the requested modifications and special exception. (Ex. 10.)
15. On January 17, 2020, OP submitted a report (the “OP Final Report”) recommending that the Commission approve the Application. (Ex. 23.) The OP Final Report stated that the Application met the matter-of-right standards for an animal care use, except that the proposed veterinary hospital would abut a residential use and would therefore require special exception relief from Subtitle H § 1101.4(g)(1)(C). The OP Final Report concluded that the Application had provided sufficient evidence that it met the standards for special exception relief.

DDOT Report

16. On January 9, 2020, DDOT submitted a report (the “DDOT Report”) stating that it had no objection to the approval of the Application, based on DDOT’s determination that:
 - The Applicant’s trip generation analysis correctly concluded that the veterinary hospital use might lead to a minor increase in vehicle trips during the weekday morning peak hours, but that it would also lead to a reduction in vehicle trips during the weekday evening peak hours; and
 - The proposed use might result in changes to pick-up and drop-off patterns and availability of on-street parking, but these impacts would be minor. (Ex. 22.)

ANC 6A Report

17. ANC 6A submitted a written report (the “ANC 6A Report”) stating that at its duly noticed public meeting of September 12, 2019, at which a quorum was present, it voted to support the Application because the addition of a veterinarian and pet services company would provide a desired service to the community and the ANC concluded that the Applicant had taken precautions to mitigate any negative impacts. (Ex. 14F.)

ANC 6C Report

18. ANC 6C submitted a written report (the “ANC 6C Report”) stating that at its duly noticed public meeting of November 13, 2019, at which a quorum was present, it voted to support the Application, noting that the Applicant had offered detailed information about soundproofing and the anticipated lack of acoustic impact on nearby residents, including those upstairs from the proposed use. (Ex. 12.)

Other Responses

19. At the public hearing held on January 30, 2020, Leslie Mick, who lives across the street from the Property, testified that she was concerned about the noise due to her residence's proximity to the proposed use. Upon hearing the Applicant's testimony about its mitigations to limit potential noise impacts, Ms. Micks confirmed that she felt more comfortable about the proposed use. (Jan. 30 Tr. at 10-11, 15.)

CONCLUSIONS OF LAW

1. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - (a) *Results in a project superior to what would result from the matter-of-right standards;*
 - (b) *Offers a commendable number or quality of meaningful public benefits; and*
 - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
2. Pursuant to Subtitle X § 304.4, the Commission shall evaluate a proposed PUD to determine that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does 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) *Includes 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.*
3. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANCs 6A and 6C.
4. Subtitle Z § 704.4 stipulates that the scope of a hearing on a modification of significance "shall be limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision."
5. The Commission concludes that the Application is consistent with the Approved PUD, as authorized by the Original Order, because the modification is minor, does not change the exterior of the Approved PUD, and does not change the Commission's analysis in granting the Approved PUD under Subtitle X § 304.4. The Application proposed no changes affecting the Approved PUD's:

- Consistency with the Comprehensive Plan;
- Mitigation or balancing any potential adverse impacts to ensure no unacceptable impacts; or
- Proffered public benefits.

6. Subtitle X § 303.13 authorizes the Commission to grant special exception relief as part of a PUD, upon demonstration of compliance with the special exception standards.

Special Exception Review Standards

7. The Commission is authorized to grant special exceptions where, in the judgment of the Commissions, the special exceptions:

- (a) *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*
- (b) *Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*
- (c) *Will meet such special conditions as may be specified in this title.*

8. For the Application's requested special exception relief from Subtitle H § 1101.4(g)(1)(C), the specific conditions are those of Subtitle H §§ 1200 and 1202.

Specific Special Exception Criteria – Veterinary Hospital Use (Subtitle H §§ 1200 and 1202)

9. The Commission concludes that the Application satisfies the specific special exception criteria of Subtitle H §§ 1200 and 1202 as detailed below.

10. The Commission concludes that the Application meets the criteria for a veterinary hospital use in a NC zone as allowed as a matter of right by Subtitle H §§ 1101.2 and 1101.4, except for the provision of Subtitle H § 1101.4(g)(1)(C), as follows:

- (A) The proposed veterinary hospital will devote less than 50% of the gross floor area to boarding animals; (FF No. 11.)
- (B) The proposed veterinary hospital has been designed to minimize objectionable conditions to adjacent properties resulting from animal noise, odor, or waste, including by use of soundproofing materials, a waste removal system connected to water and sewer lines or waste collection in closed containers, and an HVAC system designed to mitigate any potential odors created by the veterinary hospital use; (FF Nos. 11, 13; Jan. 30 Tr. at 5.)
- (C) [the subject of the Application];
- (D) The Application does not propose external yards or other facilities for the keeping of animals; and (FF Nos. 11, 13; Jan. Tr. at 12.)
- (E) Pet boarding, pet grooming, and the sale of pet supplies are accessory uses secondary to the primary veterinary hospital use, will take up less than half the

square footage of the space, and will not produce the majority of the income from the location. (FF No. 11.)

11. The Commission concludes that the Application meets the criteria of Subtitle H § 1200.1 for special exception relief from Subtitle H § 1101.4(g)(1)(C) as detailed below:

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

The excepted use or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC zones, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity by encouraging the establishment of a variety of retail and personal service establishments at ground level to meet the needs of surrounding area residents; (FF No. 11; Ex. 3 at 8.)

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

The Application proposes no changes to the exterior design of the project approved by the Approved PUD, which was determined to enhance the urban design features of the immediate vicinity of its location; (FF No. 11.)

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

The proposed location of the otherwise matter-of-right veterinary hospital use in a mixed-use building constitutes exceptional circumstances justifying the relief; (FF No. 11.)

(d) *Vehicular access and egress are located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.*

The Application proposes no change to the vehicular access and egress approved by the Approved PUD which was determined to be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions; (FF No. 11.)

(e) *Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences.*

The parking and traffic conditions associated with the proposed use are less intense than those associated with the approved retail use. The veterinary hospital would result in a few more morning peak hour trips but would result in significantly fewer vehicular peak hour trips in the afternoon. The veterinary hospital use requires fewer dedicated parking spaces than the approved retail use. The peak parking demand for the veterinary hospital use is less than the peak parking demand for the approved retail use; (FF Nos. 11, 16; Ex. 3D.)

(f) *Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences.*

The veterinary hospital has been designed to minimize the adverse effect to the nearby and abutting residences through sound mitigation measures that will reduce the maximum sound generated by the veterinary hospital use to a level comparable with that generated by a retail tenant. There will be a seven-inch-thick concrete floor above the veterinary hospital, sealed penetrations and double layer drywall ceiling with batt and hanging isolators, and acoustic tiles below the drywall ceiling and as wall panels; and (FF No. 11; Ex. 3E.)

(g) *The [Commission] may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the NC zone.*

The Commission concludes that the Application minimizes the potential adverse impacts of veterinary hospital use without any additional conditions.

12. The Commission concludes that the Application complies with the requirement of Subtitle H § 1202.1 because it proposed no changes to the exterior design approved by the Approved PUD as consistent with the design intent of the requirements of Subtitle H § 909 and the H Street N.E. Strategic Development Plan. (FF No. 11.)

General Special Exception Criteria – Subtitle X § 901.2

13. The Commission concludes that the Applicant has satisfied its burden of proof under the general special exception criteria for the veterinary hospital use because:

(a) A veterinary hospital use is expressly permitted in the NC-17 zone and the zone encourages ground floor commercial development, including animal care and boarding. (Subtitle H § 1101.2.) Therefore the Commission concludes that the veterinary hospital use is in harmony with the general purpose and intent of the Zoning Regulations; (Ex. 3 at 14.)

- (b) The proposed veterinary hospital use has been designed to minimize impacts to the neighboring residential uses, including the incorporation of design elements to mitigate noise and odors. The proposed use will also result in fewer traffic and parking impacts than the approved retail use as demonstrated by the Application's traffic analysis and as confirmed by DDOT; and (FF Nos. 11, 13, 16.)
- (c) The Commission concludes that the Application meets the specific conditions of Subtitle H as detailed above.

“Great Weight” to the Recommendations of OP

- 14. The Commission must give “great weight” to the recommendations of OP pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
- 15. The Commission finds OP's recommendation persuasive that the Commission approve the Application and concurs in that judgment.

“Great Weight” to the Written Report of the ANC

- 16. 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) (citation omitted).)
- 17. The Commission finds the ANC 6A Report and the ANC 6C Report persuasive in their support of the Application, particularly their statements that their concerns about potential noise and other operational impact had been addressed by the Applicant, and concurs in that judgement.

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 of significance to modify Decision Nos. A.1 and A.2 of Z.C. Order No. 10-03, which are hereby revised to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):

A.1. The PUD shall be developed in accordance with the plans prepared by Torti Gallas and Partners, Inc., dated November 8, 2010, marked as Exhibit 58 in the record of Z.C. Case No. 10-03 (the “Approved Plans”) and as further modified by the guidelines, conditions, and standards herein, and as further modified by the architectural drawings marked as Exhibit 3C in the record of Z.C. Case No. 10-03D.

A.2. The PUD shall have a maximum density of 5.0 FAR and a gross floor area of 435,265 feet. Of that, the PUD shall have approximately 51,420 square feet of retail use, of which approximately 5,365 square feet may also be devoted to veterinary hospital use.

All other conditions in Z.C. Order No. 10-03 remain unchanged and in effect.

VOTE (Jan. 30, 2020): 5-0-0 (Peter A. Shapiro, Peter G. May, Anthony J. Hood, Robert E. Miller, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 10-03D shall become final and effective upon publication in the *DC Register*; that is, on April 24, 2020.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA AL-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.