

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



**BZA Application No. 21144
Taco Bell of America, LLC
411 8th Street, SE (Square 902, Lot 16)**

HEARING DATE: July 3, 2024
DECISION DATE: July 17, 2024

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief for a fast-food establishment use on the first floor of an existing two-story attached building in the MU-4/CHC zone:

- Special Exception under the fast-food establishment requirements of Subtitle U § 513.1(e), pursuant to Subtitle X § 901.2
- Special Exception from the penthouse wall enclosure requirement of Subtitle C § 1503.1, pursuant to Subtitle C § 1506.1 and Subtitle X § 901.2
- Special Exception from the penthouse wall setback requirement of Subtitle C § 1504.1(d), pursuant to Subtitle C § 1506.1 and Subtitle X § 901.2

The zoning relief requested in this case was self-certified. (Exhibit 22A (Final Revised).)¹

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6B, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

At the July 3 Public Hearing, the Board granted Party Status in Support to Linda Elliot, John West, and Max Moncaster.

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "Board") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

ANC REPORT. The ANC's supplemental report indicated that at a regularly scheduled, properly noticed public meeting on July 9, 2024, at which a quorum was present, the ANC voted to support the application. (Exhibit 42.) The ANC report's recommendation was conditioned on the adoption

¹ The application was amended to add special exception relief from the penthouse wall requirements of Subtitle C §§ 1503.1 and 1504.1(d) to allow various rooftop structures, including a directional exhaust fan and a sound proofing wall, in response to neighbors' requests to mitigate noise and odor.

of conditions agreed to between the Applicant, property owner, and neighbors, as listed in Exhibit 40A. The Board included these conditions in the final order.

The ANC's original report recommended approval of the application subject to conditions. (Exhibits 35, 35A.) At the July 3 Public Hearing, the Board requested further clarification on the ANC's position regarding the proposed conditions.

ANC 6B04 Commissioner Frank D'Andrea testified on behalf of the ANC at the July 3 Public Hearing.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 29.) OP's report noted they were not opposed to the Applicant's proposed conditions.

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT did not submit a report to the record.

ARCHITECT OF THE CAPITOL ("AOC") REPORT. AOC submitted a report stating no objection to the application. (Exhibit 20.)

PERSONS IN SUPPORT. The Board received a letter signed by numerous commercial and residential neighbors located in Square 902 stating their support for the application, as long as conditions proposed by the Applicant were adopted by the Board. (Exhibit 30.)

A signed Memorandum of Agreement between the Applicant, Property Owner, and neighbors, dated July 10, 2024, was submitted to the record to memorialize their agreement to conditions that would not be adopted in the final BZA order. (Exhibit 41A.)

At the July 3 Public Hearing, Anna Katherine Szafran testified in support of the application.

UNDECLARED PERSONS. Kirk Beatley testified at the July 3 Public Hearing neither in support nor in opposition to the application.

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and

- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special Exception under the fast-food establishment requirements of Subtitle U § 513.1(e), pursuant to Subtitle X § 901.2
- Special Exception from the penthouse wall enclosure requirement of Subtitle C § 1503.1, pursuant to Subtitle C § 1506.1 and Subtitle X § 901.2
- Special Exception from the penthouse wall setback requirement of Subtitle C § 1504.1(d), pursuant to Subtitle C § 1506.1 and Subtitle X § 901.2

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 22D of the record, with the flexibility to modify the plans, including configuration of the rooftop structures, to make revisions needed to respond to additional feedback and/or modifications from HPRB and/or HPO, provided that any changes made to the approved plans shall not expand the special exception relief approved in this order, or create any new areas of relief that would require further review by the Board, subject to the following **CONDITIONS** as listed in Exhibit 40A:

1. Exhibits Included as Part of Proposed Conditions. The fast-food restaurant shall be constructed and operated in accordance with these Proposed Conditions and the attached Exhibits, all of which are in the record at Exhibit 40A.
2. Term Limit and Applicant's Good Faith Commitment. This approval shall be for a term of TEN (10) YEARS, beginning on the date upon which this order becomes final (the "Term"). Throughout the Term, Applicant commits to working in good faith with the community to address, improve, remedy, and/or resolve (i) concerns related to operations; and/or (ii) shortcomings in fulfilling the intent of the conditions which are to mitigate noise, odors and pests. For purposes of this condition, the Applicant designates Saleh Uddin as its primary point of contact (phone: 703-981-0987/email: salehuddin@3754@gmail.com). In the event of continuing mechanical noise issues, Applicant shall engage ArtUSA to assist in resolving such issues.
3. Deliveries. Deliveries to the site shall be restricted to Monday through Friday, between 10:00 am to 4:00 pm.
4. Hours of Operation. Applicant's hours of operation may be from 7:00 am to 12:00 am (midnight), seven days a week. The walk-up service window may be open daily until 3:00 am but will only accommodate third party delivery services and mobile order pick-ups.

5. Restaurant Trash and Recycling Pick-Ups. Trash and recycling pick-ups shall occur no earlier than 7:00 am. Trash shall be picked up six (6) days a week. Recycling shall be picked up five (5) days per week. All trash pick-ups shall be from the abutting 8th Street, S.E. curb.
6. Indoor Cooler. As specified in Exhibit A to the Proposed Conditions, an indoor, walk-in style cooler, shall be used exclusively for the storage of all trash, recycling, and used cooking oil and grease.
7. Condensers and Compressors. As specified in Exhibit A to the Proposed Conditions, all condensers and compressors shall be located inside the leased portion of the building and shall not be located on the roof. These items include, but are not limited to, Pepsi, ICEE, food freezer/cooler and the trash/recycling cooler condensing units.
8. HVAC. As shown and specified in Exhibit B and Exhibit C to the Proposed Conditions, HVAC units shall be located on the roof of the building. No mechanical equipment beyond that specified in Exhibit D to the Proposed Conditions will be added to the roof of the building for any restaurant use. When replacement of HVAC equipment is required, the replacement equipment will be no louder than the acoustical measures specified in Exhibit D to the Proposed Conditions
9. Kitchen Exhaust Fan. As shown and specified in Exhibit B and Exhibit C to the Proposed Conditions, the kitchen exhaust fan shall be located on the roof. Deflectors attached to the exhaust fan shall direct discharge toward the east. No mechanical equipment beyond that specified in Exhibit D to the Proposed Conditions will be added to the roof of the building for any restaurant use. When replacement of the kitchen exhaust fan is required, it shall involve a fan no louder than the acoustical measures specified in Exhibit D to the Proposed Conditions.
10. Rooftop Sound Barriers. Applicant has retained ArtUSA for installation of rooftop sound barriers as shown and specified in Exhibit B and Exhibit C to the Proposed Conditions. Sound barrier materials, including ArtWhisper sound absorbing material, shall be repaired and replaced when the materials begin to deteriorate.
11. Maintenance of Mechanical Equipment. The HVAC units and kitchen exhaust fan located on the rooftop shall be maintained in good working order via a maintenance contract including, at minimum, four annual service inspections.
12. Non-Use of Rear Courtyard. The rear courtyard shall not be used by employees or for storage purposes. No rear egress shall be made available from the building and rear doors will be alarmed. No outdoor seating will be provided for customers.

13. Condition of Rear Courtyard. The rear courtyard shall be maintained in good condition. Among other measures, commercially reasonable efforts shall be used to keep the courtyard free of debris, keep the existing drainage system clear and unobstructed, and rid the courtyard space of any rodent burrows and all rodent harborage.


14. Pest Control. Applicant shall use commercially reasonable efforts to conduct all operations in accordance with Exhibit E to the Proposed Conditions.

VOTE: 4-0-1 (Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Joseph S. Imamura (by absentee vote) to APPROVE; Frederick L. Hill not present, not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 29, 2024

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.