

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



**BZA Application No. 21438
Emerald Wings, LLC
406 8th Street, SE (Square 925, Lot 827)**

HEARING DATE: June 17, 2026¹
DECISION DATE: June 17, 2026

SUMMARY ORDER

RELIEF REQUESTED. The application requests, pursuant to Subtitle X § 901.2, a special exception under Subtitle U § 513.1(e) to allow a new fast-food establishment on the first floor of an existing three-story attached building in the MU-4/CHC zone.

The zoning relief requested in this case was self-certified. (Exhibit 10.)²

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 public hearing, the Board granted party status in support of the application with conditions to a group of ten neighbors. (Exhibits 27-27D, 35.) Linda Elliott, Miles Hamilton, and Ritu Upadhyay testified at the public hearing on behalf of the party in support.

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 report indicated that at a properly noticed public meeting on June 9, 2026, at which a quorum was present, the ANC voted in conditional support of the application. (Exhibit 36.) The ANC report raised concerns regarding rodents, odor, pedestrian safety, and

¹ The application was administratively rescheduled twice from the original hearing date of April 1, 2026.

² At the public hearing, the Applicant orally amended the application to withdraw a request for a special exception from the refuse dumpster requirements of Subtitle U § 513.1(e)(2). The Board's approval of the self-certified application did not constitute a determination by the Board that the application, as amended, requested the zoning relief necessary in order to obtain a building permit or other administrative determination based on the Zoning Regulations and Map. The Board notes that examples of area variances include "requests to deviate from... [p]reconditions to the establishment of a...special exception use...." (Subtitle X § 1001.3(f).)

noise. The ANC's support for the application was conditioned on the incorporation of ten conditions in the order, listed in the Memorandum of Agreement (see Exhibit 32A) between the Applicant and ANC. The Board voted to adopt these conditions in the final order.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 31.)

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT submitted a report indicating that it had no objection to the approval of the application. (Exhibit 30.)

FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT ("FEMS") REPORT. FEMS submitted a letter indicating it had no objection to the request. (Exhibit 29.)

ARCHITECT OF THE CAPITOL ("AOC") REPORT. AOC submitted a letter indicating it had no objection to the application. (Exhibit 37.)

PERSONS IN CONDITIONAL SUPPORT. The Board received a letter signed by multiple neighbors in Squares 902 and 925, where they expressed support for the request, provided the conditions negotiated by the Applicant, ANC 6B, and various neighbors (as well as the exhibits incorporated into those conditions) were made part of any BZA order. (Exhibit 38.)

PERSONS IN OPPOSITION. The Board received letters and heard testimony 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, pursuant to Subtitle X § 901.2, under Subtitle U § 513.1(e) to allow a new fast-food establishment on the first floor of an existing building.

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibits 26A and 32A of the record, as required under Subtitle Y §§ 604.9 and 604.10, subject to the following **CONDITIONS**:

1. **Term Limit.** Approval of the special exception to allow a fast-food establishment on the first floor of an existing three-story attached building shall be for a term of ten (10) years beginning on the date when this order became final.
2. **Community Liaison.** The Applicant shall designate an individual that will serve as a community liaison and shall provide the ANC with the liaison's name and contact information. The community liaison shall engage with the community to address concerns related to the fast-food establishment use, including with respect to noise, odors, and pests, in a manner consistent with these conditions and applicable laws and regulations.
3. **Hours of Operation.** The Applicant's hours of operation for the fast food establishment use shall not exceed 10:30 a.m. to 12:00 a.m. (midnight), Sunday through Thursday, and 10:30 a.m. to 2:00 a.m., Friday and Saturday. On Friday and Saturday between 1:00 a.m. and 2:00 a.m., the Applicant shall not permit any walk-in orders but may accommodate mobile and online orders.
4. **Trash and Recycling Pick-Ups.** The Applicant shall provide for and utilize on-site storage for all trash and recycling materials within an enclosed refrigerated storage area consistent with the plans contained in Exhibit 32A, page 7 (Sheet M1 (Mechanical Floor Plan), marked as Revision 5 and dated 06/23/26), and in compliance with applicable health and building code requirements, until removal from the subject property. The Applicant shall arrange for trash pick-up service at least 6 days per week and recycling pick-up service at least 5 days per week. All trash pick-ups shall be from the abutting 8th Street, SE curb.
5. **Grease Collection, Storage, & Removal.** The Applicant shall install and utilize a grease interceptor and oil collection system at the subject property designed to collect and store used cooking grease indoors. The Applicant shall operate and maintain the equipment and schedule of maintenance and oil collection in a commercially reasonable manner and in accordance with applicable laws, regulations, and manufacturer recommendations.
6. **Rodent and Pest Control.** The Applicant shall retain the extermination services of a licensed exterminator who will visit the subject property at least monthly, including treatment for insects, spiders, rats, mice, moles and other rodents. Upon discovery of any such pests on the subject property, the Applicant shall take all commercially reasonable and appropriate measures to promptly relieve the subject property of such pests.
7. **Customer Trash Receptacle.** The Applicant shall provide at least one trash receptacle in the customer waiting/pick up area to discourage littering in and around the subject property.

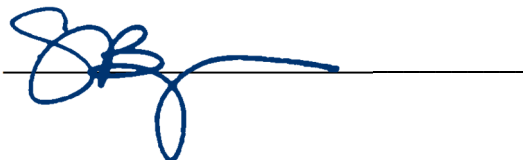
- 8. No Littering Sign.** The Applicant shall post at least one anti-littering sign on the subject property, subject to applicable laws and regulations.
- 9. Pollution Control Unit.** The Applicant shall install, maintain, and utilize a pollution control unit ("PCU") as part of the exhaust system of the fast food establishment use at the subject property. The PCU at the subject property shall be designed to mitigate odors, substantially the same as the PCU specs reflected in Drawing No. 4LU1A1DK15FE2, and the installation shall be substantially as shown in the engineering sketch represented in Sheet M1 (Mechanical Floor Plan), marked as Revision 5 and dated 06/23/26, Sheet M1.2 (Mechanical Roof Plan), marked as Revision 5 and dated 06/23/26, and Sheet M2 (Mechanical Schedules), marked as Revision 5 and dated 6/23/26. (Exhibit 32A, pages 9, 11-13.)
- 10. Minor Design Flexibility.** The Applicant shall have minor design flexibility from the approved plans, including modifications to the layout, dimensions, configuration, screening, location, and specifications of the PCU, exhaust systems, rooftop equipment, HVAC equipment, mechanical systems, trash facilities, and related architectural or engineering elements as may be required by field conditions, permitting requirements, Historic Preservation Office review, Historic Preservation Review Board review, engineering considerations, manufacturer requirements, or code compliance, provided the overall intent of the Conditions 4 (Trash and Recycling Pickup) and 9 (Pollution Control Unit) and the incorporated plans in Exhibit 32A are maintained and such changes do not materially increase external impacts. Mechanical equipment may be repaired, replaced, relocated, upgraded, or modified over time with substantially equivalent or improved equipment, provided such changes comply with applicable law, and provided the overall intent of Conditions 4 and 9 and the incorporated plans in Exhibit 32A are maintained and such changes do not materially increase adverse external impacts. Nothing herein shall prohibit repairs, replacements, maintenance, upgrades, or modifications required by applicable law, permitting authorities, manufacturers, insurers, or operational necessity, provided the overall intent of Conditions 4 and 9 and the incorporated plans in Exhibit 32A are maintained and such changes do not materially increase adverse external impacts.
- 11. Instructions for Delivery Drivers.** The Applicant shall guide app-based delivery drivers to adhere to all signage along the Bus Only Lanes and to only park or stand in legal spaces, including the curbside spaces along the west side of 8th Street SE, the south side of Pennsylvania Avenue SE, and on D Street SE. The Applicant shall provide instructions that specifically note that parking or standing in front of the fire station driveway is prohibited.

VOTE: 3-0-2 (Paul Goldstein, Michelle Pourciau, and Joseph S. Imamura to APPROVE; Melissa Lindsjo not present, not participating; one Board seat vacant)

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 8, 2026

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 § 703.10, 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.