

3831 Georgia Avenue, NW

Washington, D.C. 20011 | Square 3028, Lot 59

BZA CASE NO. 21462

Special Exception — Fast Food Establishment

Zone: NMU-7B/GA ANC: 4C | Ward 4



APPLICANT'S TEAM

Alexandra Wilson | Applicant's Counsel (Sullivan & Barros, LLP)

Saad Usman | Managing Member, Emerald Wings, LLC

Jen Francis | Wingstop Brand Manager, Emerald Wings, LLC

Board of Zoning Adjustment
District of Columbia
CASE NO. 21462
EXHIBIT NO. 32

Applicants: Thomas Jefferson Real Estate, LLC (Owner) and Emerald Wings, LLC (Tenant) | Public Hearing — July 22, 2026

Project Introduction

3831 Georgia Avenue, NW — NMU-7B/GA Zone

The Building

The Augusta on Georgia — six stories, 20 residential units above ground-floor commercial, completed 2023

The Space

1,488 sq. ft. ground-floor retail bay at Georgia Ave. & Randolph St. — never occupied

Proposed Use

Wingstop — carry-out and delivery only; no seating; no alcohol; no drive-through

Hours

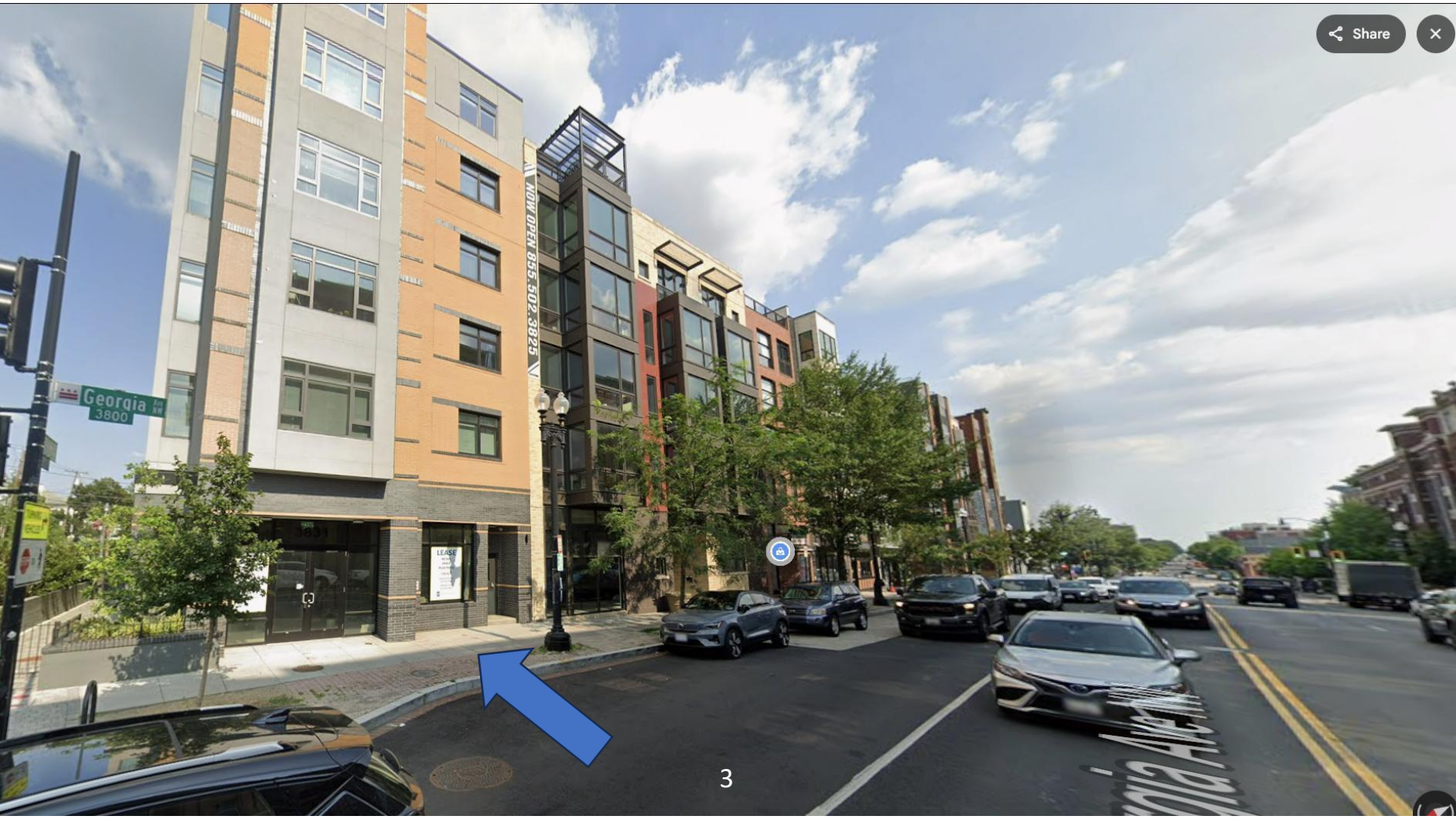
10:00 a.m. – 3:00 a.m. daily; (~4-8 employees per shift)

Location

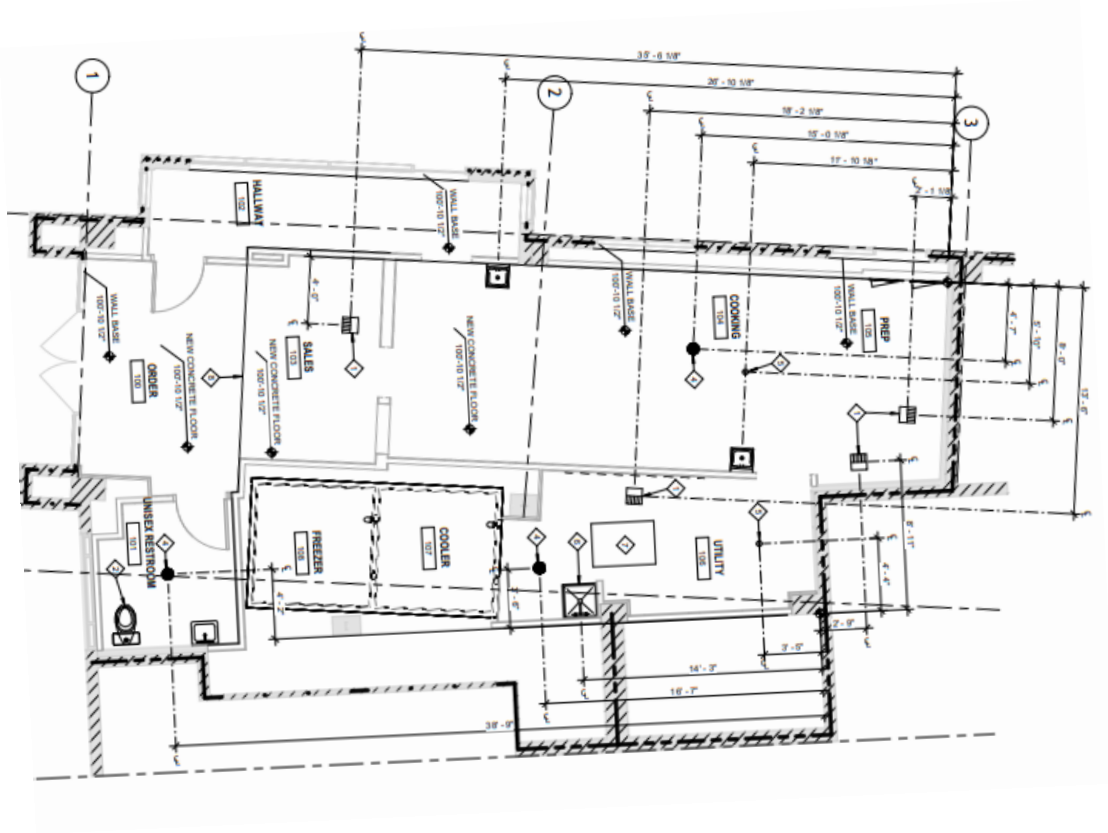
0.1 mile from Georgia Ave-Petworth Metro | Walkscore 92 | Ward 4, ANC 4C



The Augusta on Georgia



Georgia





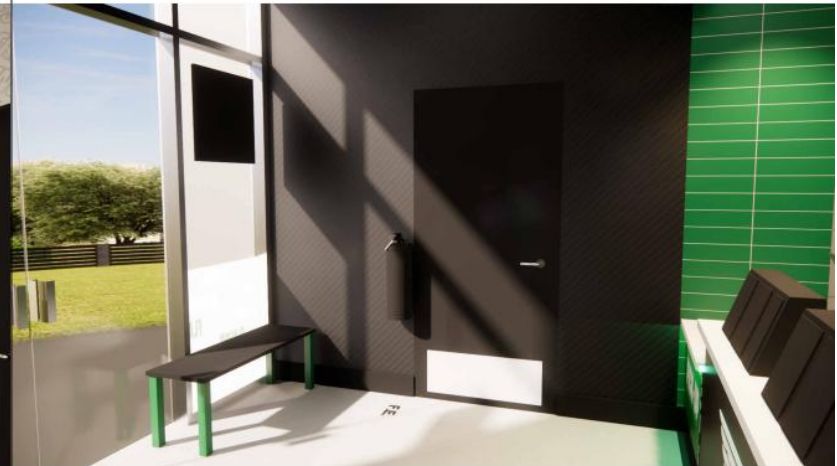
VIEW FROM FRONT DOOR



VIEW FROM SALES COUNTER



VIEW OF SALES COUNTER



VIEW OF WAITING AREA



VIEW OF HALLWAY



VIEW FROM WALK-IN



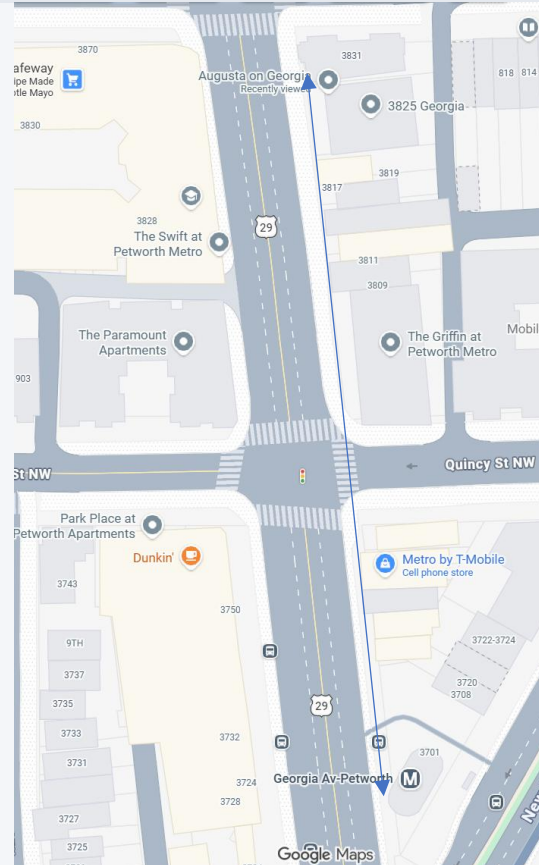
VIEW OF PILOT AND WINGMAN STATIONS



VIEW OF DISH ROOM

The Site

Georgia Avenue & Randolph Street, NW — a Mixed-Use Area and Zone



Commercial Uses in the Area

Walking From the Georgia Ave-Petworth Metro to the Site



Safeway at 3830 Georgia Ave., directly across the intersection



Looking north at Georgia Ave. & Randolph St. — the site at right



Wendy's at 3900 Georgia Ave. — open 24 hours, drive-through to 3 a.m.

National brands are already at this intersection: Safeway, Wendy's, and Dunkin' within steps of the site.

The Same Operator, One Month Ago (Different Location/ANC)

BZA No. 21438 — 406 8th Street, SE (Barracks Row)

✓ **APPROVED — June 17, 2026 — unanimous (3–0), operational conditions agreed to and adopted into the order**

ANC 6B	Voted 7–1 to support, conditioned on a negotiated memorandum of agreement
The Conditions	All operational: hours, refrigerated trash storage, grease, pest control, odor control, litter, delivery-driver instructions etc.
The Operator	Agreed to every one of them
OP	Recommended approval with the applicant's conditions, including a 10-year term

The Applicant agreed to all similar requests from ANC 4C — the outstanding item is monetary

The Legally Relevant Criteria

Subtitle X § 901.2 and Subtitle H § 6007.1(e)(2) — applied to the record

The Legal Test for This Application

General Special Exception Review Standards

Regulation	Context	Application
(a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;	The NMU-7B/GA zone is intended to permit mixed-use development at a medium density with a focus on employment, including additional residential uses above commercial uses; Encourage vertically mixed-uses (ground floor commercial and residential above) within a quarter mile of the Georgia Avenue - Petworth Metrorail Station along Georgia Avenue, from Park Road to Shepherd Street.	The proposal is for a vertically mixed-use within one-quarter mile of the Metro Station. Focus on employment through new job creation.
(b) Will not tend to affect adversely the use of neighboring property; and	Per the ct. of appeals, A special exception is a use deemed appropriate in the zone. Mitigation for reasonably anticipated impacts (not mere speculation) is achieved through conditions. Alleged ANC concerns are generalized. If tied to a specific concern, the Applicant has meaningfully addressed it through conditions deemed appropriate in the June Wingstop case. (See e.g. Call Your Mother/DC Ct. App, Roth v. BZA).	Here, the proposed Wingstop is a use contemplated within the NMU-7B zone, and the record demonstrates that any operational impacts can be addressed through reasonable mitigation measures. The standard is not whether the use creates change or ANY impact, or whether Wingstop is the preferred tenant or use, but whether it creates an undue adverse impact that rises to the level of nearby properties being unable to USE their property.

Office of Planning and DDOT

Office of Planning

Recommending approval From the Report:

- The intent of the NMU-7B/GA zone is to provide vertically mixed uses (ground floor commercial and residential above) within the Georgia Avenue Corridor within the quarter-mile walkshed of the Georgia Avenue-Petworth Metro station. The subject property is located approximately 0.1 miles from the nearest station entrance and would operate in the ground-floor retail space of a mixed-use building with residential uses above. As such, the proposed use should meet the intent of this zone, **which meets this standard.**
- Neighboring property is unlikely to be adversely affected by the proposed fast food establishment. The use will function primarily for carryout and delivery and provide no dining area. Trash and grease will be stored inside the building, and the ventilation system will be located above the roofline of the 6-story mixed-use building. **This standard is met.**

DDOT

No Objection

The District Department of Transportation (DDOT) has reviewed the application materials and has determined that the proposed action may lead to a **minor increase** in vehicle, transit, pedestrian, and bicycle trips on the localized transportation network. In addition, the project may result in increased pick-up and drop-off activity and slightly reduced availability of on-street parking within the immediate area. Despite these **minor impacts**, DDOT has no objection to the approval of this application.

Already in discussions with DDOT re. delivery drivers to reduce any potential minor impacts.

The Seven Conditions — The Regulation, Verbatim

H § 6007.1(e)(2) | Findings per the Office of Planning Report, Exhibit 20

(A) The uses shall not be permitted in the MU-4/WP zone;

✓ **Site is NMU-7B/GA — standard not applicable.**

(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;

✓ **Within 25 ft. of RF-1 — separated by the public alley and Randolph St. Met.**

(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;

✓ **The building extends the full width of its lot — wall not required. Met.**

(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;

✓ **Dumpsters stored inside the building — OP: exceeds the standard.**

(E) The use shall not include a drive-through;

✓ **None proposed — and prohibited in every NMU zone (H § 6001.5).**

(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

✓ **Sole customer entrance on Georgia Avenue. Met.**

(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;

See proposed conditions.

✓ **Every finding above is the Office of Planning's — Exhibit 20. OP recommends approval.**

“Great Weight” Extends Only to Legally Relevant Factors

Position paper of the District’s Corporation Counsel, citing the Court of Appeals

“The factors that the agency may consider in making its decision on the proposed government action must be legally relevant. Thus, an ANC in making a recommendation to the agency is limited to discussion of factors that the agency lawfully may consider in making its decision. *Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment*, 403 A.2d 291, 294 (D.C. 1979). If an ANC raises factors outside the scope of the agency’s lawful consideration, the agency should state such in its decision, citing the specific recommendation and the limitations on its authority to lawfully consider the issue.”

— Position paper of the D.C. Corporation Counsel on the “great weight” owed to ANC recommendations

The ANC Report

Exhibit 21 — What is legally relevant?

“Not sufficiently varied from other uses”

“Variety” in the purpose provisions means a mix of use categories — residential, retail, service, eating and drinking — not variety among menus. Also, the provision cited is not specific to NMU-7B zone. (NMU7B anticipates exactly what’s proposed)

“Would decrease pedestrian & traffic safety”

DDOT reviewed this application and has no objection (Ex. 19). The Applicant has also worked with DDOT on additional traffic-safety measures (e.g. dedicated spots not currently there) to be implemented along with the new bus lane.

“Would degrade the shopping area / threaten existing uses”

The three-year vacancy is what threatens existing uses — the corridor has numerous vacancies. Nothing in the record shows this use would degrade the shopping area, which includes a Wendy’s and Safeway across the street, and Dunkin Donuts, two cell phone stores, a subway, a Caribbean restaurant, and a bar that only serves snacks (Snappy’s Small Bar) all within 0.1 mi.

“Extraction of wealth” / worker wages

Requests for monetary donations, a 5% revenue share, wage mandates, and franchise economics are outside the Board’s jurisdiction for a special exception. Regardless, Wingstop Charities provides the monetary reinvestment desired, even though not legally relevant.

“Would discourage residential uses on the corridor”

OP found the opposite: ground-floor commercial beneath 20 homes, 0.1 mile from Metro, is the exact pattern the zone intends (Ex. 20). The zone itself requires that at least 50% of the ground floor be dedicated to priority uses — and an eating and drinking establishment is a priority use.

Sub-standard (G): noise, lights, hours, odors, litter

See proposed conditions and agreement.

The Agreement With ANC 4C

What the ANC Asked — How the Applicant Responded

TOPIC	ANC 4C REQUEST	APPLICANT RESPONSE	
Delivery traffic	Prevent travel-lane pickups; manage drivers at the intersection	✓ Written policies, training, platform instructions; DDOT two-wheel parking (\$1)	✓
Pests	Prevent rodent increase	✓ Monthly licensed extermination at Applicant's expense (\$2)	✓
Grease	Prevent odors and rodents	✓ Interceptors; licensed oil recycling (\$3)	✓
Trash	Adequate capacity and handling	✓ Internal trash room; collection 4x/week (\$4)	✓
Noise & lighting	Protect nearby residences	✓ 55 dB standard inside residences; light shielding (\$5)	✓
Communication	Ongoing accountability	✓ Designated contact; semi-annual ANC engagement (\$7)	✓
Litter	Litter and food waste concerns	✓ Customer trash receptacle + anti-littering signage	✓
Money	5% of gross revenue annually — or \$20,000/year — plus wage mandates and annual financial reporting to the ANC	✗ Declined — not related to the zoning criteria BUT noted Wingstop Charities and Other Benefits	✗

Proposed Conditions

Delivery and Traffic Conduct (stricter than other location)

(a) Emerald Wings shall , where delivery platforms allow, include pickup instructions encouraging delivery drivers to comply with all applicable traffic and parking laws and to avoid obstructing travel lanes, sidewalks, driveways, and neighboring properties.

(b) Emerald Wings shall continue to work with District Department of Transportation (“DDOT”) options for installing additional bike rack infrastructure or converting an existing parking space to scooter and motorized bike parking and to accommodate delivery vehicles in a designated area and reduce alley and intersection congestion. Emerald Wings will provide ANC 4C with an update on those discussions within ninety (90) business days of opening.

(c) Emerald Wings will adopt and maintain written policies, and will train its employees, so that orders are not knowingly handed to, and deliveries are not knowingly accepted from, any person whose vehicle is stopped in an active travel lane of Georgia Avenue, NW. Emerald Wings will ensure that its employees are reasonably able to observe the area of Georgia Avenue, NW immediately in front of the premises, whether through the storefront windows or an interior camera, in support of this commitment.

Delivery Pick-Up and Drop-Off — Working With DDOT on Curbside Management



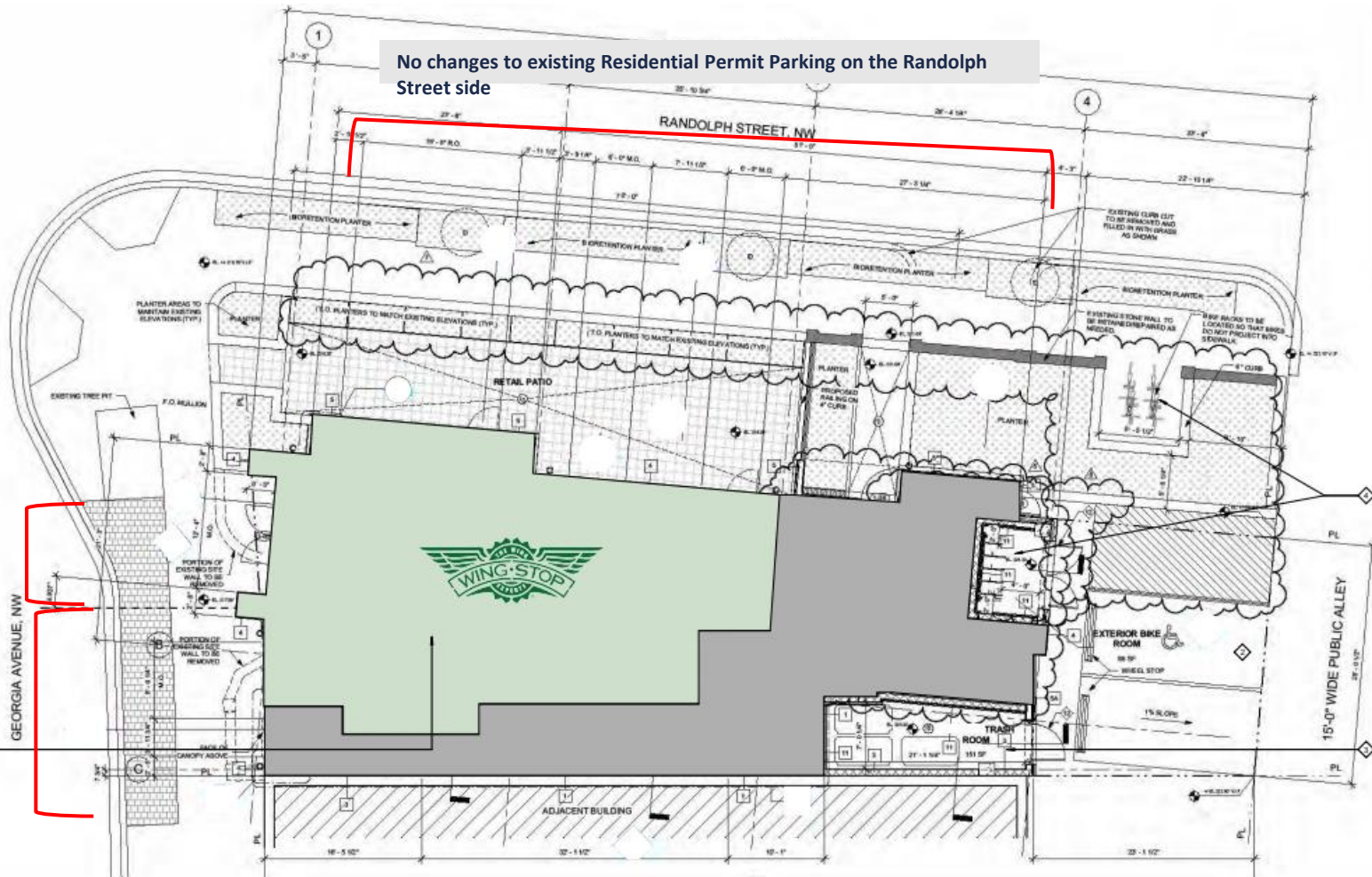
Bike rack for bikes and e-bikes

Currently no parking — exploring 1-2 scooter spaces

Transition pay-to-park to a 10-minute pick-up space

No changes to existing Residential Permit Parking on the Randolph Street side

Changes limited to existing pay-to-park on Georgia Avenue & NEW spaces



Proposed Conditions

Pest Control

- (a) Emerald Wings shall maintain a pest control service arrangement providing, at a minimum, monthly extermination services — including treatment for insects, spiders, rats, and other rodents — performed by a licensed exterminator, at Emerald Wings' expense.
- (b) Emerald Wings shall exercise care in its handling of garbage, waste, and refuse, and will remove such materials from the building as frequently as necessary to prevent pests from entering the premises or surrounding areas.
- (c) In the event pests are discovered in or about the premises that are reasonably attributable to Emerald Wings' operations, Emerald Wings shall promptly take all commercially reasonable, necessary, and appropriate measures to address the issue.

Proposed Conditions

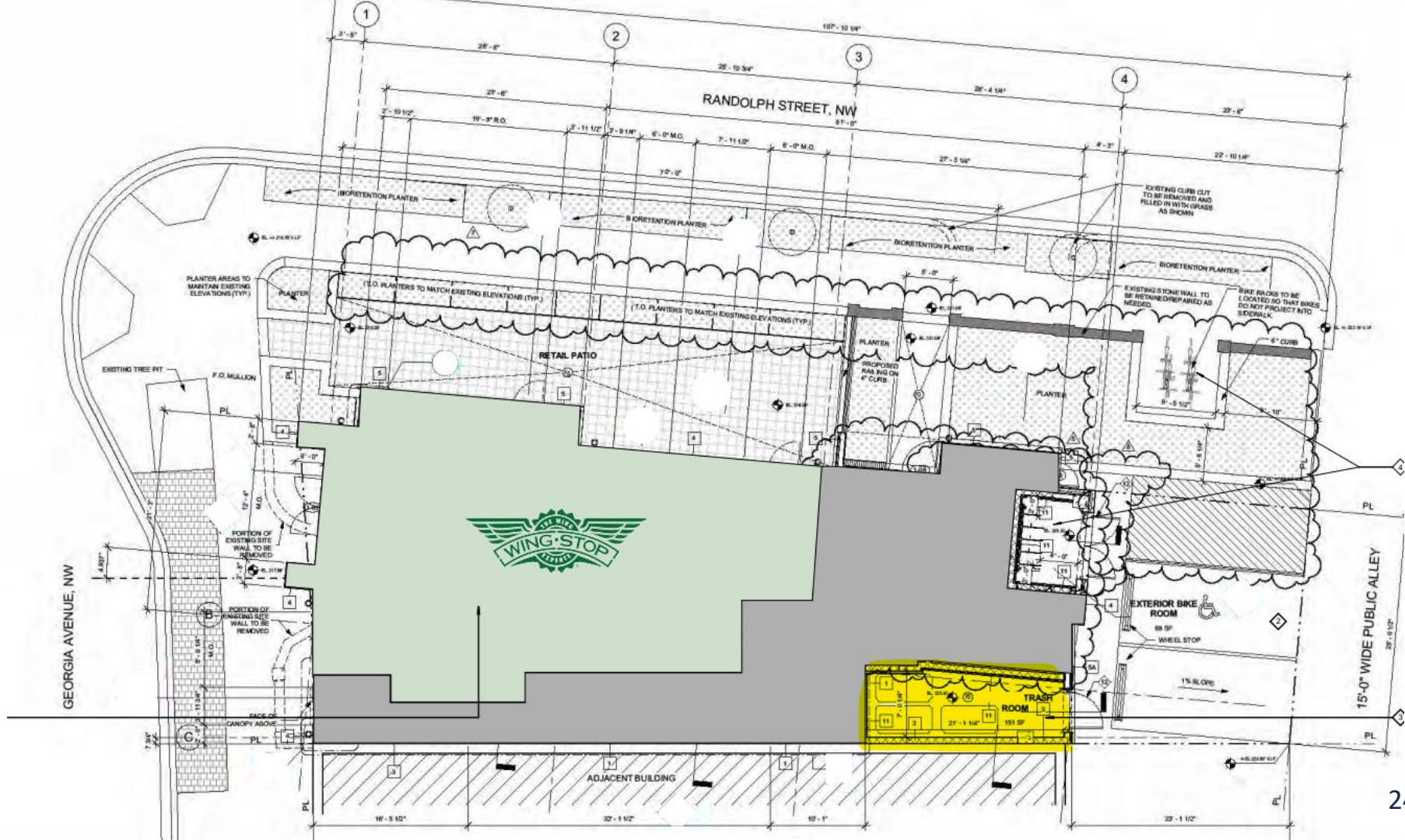
Grease Management

Emerald Wings shall install a grease interceptor, grease trap, or equivalent collection system as required by applicable local codes and ordinances. Emerald Wings will maintain that system in accordance with applicable law and commercially reasonable industry practices and in a manner that is reasonably necessary to prevent odors, rodents, or other adverse conditions. Used cooking oil will be collected and recycled by a licensed third-party recycling company on a regular schedule.

Proposed Conditions

Trash Storage (INTERNAL dedicated room for building)

- (a) Emerald Wings shall store all trash in the existing rear internal trash room.
- (b) Emerald Wings shall arrange for garbage collection four times per week.
- (c) Emerald Wings will work with the building landlord, Thomas Jefferson Real Estate LLC, to ensure adequate waste capacity within the trash room or other location as necessary and to reasonably ensure that the pedestrian pathway adjacent to the trash area allows for rolling collection without obstruction.
- (d) Collection frequency shall be evaluated following opening based on actual operational experience and adjusted as appropriate to ensure refuse management remains efficient and responsive to the needs of the building and surrounding area.



Proposed Conditions

No Littering Sign

The Applicant shall post at least one anti-littering sign on the subject property, subject to applicable laws and regulations.

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.

Proposed Conditions

Review and Communication

Emerald Wings shall designate a local point of contact for ANC 4C and neighboring residents to raise operational concerns. ANC 4C may contact Emerald Wings directly with any concerns, and Emerald Wings will respond within a reasonable time. The parties agree to meet informally if significant operational concerns arise that are not otherwise resolved.

Proposed Conditions

Time Limit- same as other location

Approval of the special exception to allow a fast-food establishment on the first floor of the existing apartment building shall be for a term of ten (10) years beginning on the date when this order became final

Hours of Operation

- Currently proposed 10am-3am per neighborhood context
- Wendy's open 24 hours, drive-through available
- Metro open until 2am on the weekends, near metro
- Would also provide additional security and a presence in the area
- Additional conditions imposed (compared to other location) to ensure that later closing does not create any undue impacts

Proposed Conditions – Not included in the other case

Noise

Emerald Wings shall conduct its operations and maintain its equipment so that sound originating from the premises does not exceed 55 decibels inside any nearby residence when the doors of the premises and of the residence are closed.

Lighting

Emerald Wings shall use commercially reasonable efforts to minimize light spill onto adjacent residential properties — including, where practicable, by shielding or directing exterior fixtures under its control away from residential windows — while complying with applicable law and maintaining the lighting levels necessary for the safe operation of the restaurant.

Security

Emerald wings shall provide one camera on the front exterior and one camera on the rear interior of the premises.

What is missing? ANC wanted profit-share or donation but Community Benefits Belong to a Different Process

The Regulations Do Provide for Them — in a PUD. This Is Not a PUD.

The regulations know how to require community benefits. In a Planned Unit Development, the Zoning Commission “shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered.” (X § 304.3) Examples: employment and training.

This is not a PUD. It is a special exception — and the special exception chapter contains no benefits element.

Even in a PUD, monetary contributions are permitted only to a D.C. government program, or with delivery of the funded items proven before a certificate of occupancy issues. (X § 305.3(d)) A revenue share would likely not qualify.

Even in a PUD, benefits cannot be compelled: the Zoning Commission “may not compel an applicant to add to proffered public benefits.” (X § 305.11)

Revenue/profit share or \$20k annual donation is not part of the special exception test. That being said, there are still some naturally occurring public benefits (job creation, activating vacant streetscape, Wingstop charities program, Wingstop employee programs).

Wingstop in the Community

A Franchisee, and a Brand That Reinvests Where It Operates

\$1.3 million

in Wingstop Charities community grants awarded in 2023 alone

15–20 jobs

on this corridor, operated by Emerald Wings, LLC

Wingstop Foundation: emergency financial assistance and the Morrison Family Scholarship Program for team members.

wingstopcharities.org

Where the 2023 grants went

Schools and school districts

Dallas Academy; Leyden High School District 212; Hillsborough County Schools (Tampa)

Youth sports and mentoring

Sunset Little League; Oak Creek Youth Football; Boys & Girls Clubs (Los Angeles, Kentuckiana)

Food security

Cultivate Food Rescue; Regional Food Bank of Northeast Florida; No Kid Hungry (national partner)

Regional organizations

Pearl Foundation, Columbia, MD; The Bennett Center, Portsmouth, VA; C.L.E.A.N., Norfolk, VA

The Applicant declined to make a private payment a condition of zoning support. It did not decline to be a good neighbor.

Additional Condition (if deemed appropriate)

Community Programs and Economic Opportunities

Emerald Wings and Wingstop are committed to being a positive presence in the community. Wingstop Charities supports the neighborhoods Wingstop serves through grant programs focused on education, entrepreneurship, and community development. Wingstop also maintains the Wingstop Foundation, which provides team members with emergency financial assistance and scholarship opportunities, including the Morrison Family Scholarship Program for first-generation team members pursuing higher education. Beyond these programs, this project will create jobs and economic opportunity for residents of the surrounding community.

Wingstop shall work with charities or organization identified by ANC 4C and provide information on how to apply for the grant program through Wingstop Charities.

Additional Context

What This Zone Requires, Permits, and Prohibits

NMU-7B/GA — Subtitle H, Chapter 60 (Use Group C)

REQUIRED

Ground floor must provide designated uses— at least 50% of ground-floor area (§§ 6001.1, 6001.3)

Eating and drinking establishments are one of the seven designated categories (§ 6001.2(d))

Goal is to activate streetscape.

BY RIGHT — NO HEARING

- Full-service restaurant — alcohol via ABCA (§ 6008.1(d))
- **Starbucks or Dunkin' — prepared food shop, no seating cap in this group (§ 6008.1(d))**
- Grocery, drug, or convenience store (§§ 6001.2(g), 6003.1(p))
- Fitness center, salon, laundry to 5,000 sf (§ 6008.1(g))
- Bank, office, daytime care (§ 6003.1)

SPECIAL EXCEPTION

Fast food use (which is related to method of cooking and stems from anti-fast food uses in Georgetown in the 1980s) comes to this Board (§§ 6008.1(d), 6009.1(c))

Mitigating conditions are directly related to the impacts related to fast-food (ex. Spaces for delivery drivers, trash, ventilation) vs. prepared food or restaurant. The existence of fast-food use as a special exception means the use itself is deemed appropriate. Restaurants and prepared food shops can operate with zero conditions and may have more of an impact in some cases (more noise, more trash, more on-site activity, alcohol, more parking issues).

From the Owner

Thomas Jefferson Real Estate, LLC — the Leasing History, in the Owner's Words (Excerpts)

Hello Alex:

This building was completed in April of 2023. See C of O attached.

We have been marketing that space since April 28, 2023. We have had inquiries from 10 tenants that didn't work out for various reasons. Our original listing agent gave up it was taking so long. We tried several local businesses, but nothing came that worked for both them and us.

I will give you a call to discuss.

Don Malnati

Murillo/Malnati Group/Renovations Unlimited

Potential tenants that fell through:

- Personal trainer who was looking for a home base; applied for a small business loan but could not obtain funds
- Multiple cannabis retailers
- Deli operator (concept build out was over \$100k and neither party could absorb the cost)
- Self-Storage interest (but required BZA approval)
- Wingstop was the only tenant willing to invest in the space

The Corridor Today

Available Ground-Floor Space Within Blocks of the Site — information provided by KLN/CoStar, July 17, 2026

- **3903 Georgia Ave** 900 SF vacant
- **3831 Georgia Ave — THIS SITE** 1,488 SF — vacant three years
- **3817 Georgia Ave** 500 SF vacant
- **3619 Georgia Ave (built 2022)** 1,658 SF vacant
- **3607 Georgia Ave** 900–1,800 SF vacant
- **3532 Georgia Ave** 1,041 SF

Off-Georgia: 850 Quincy St (Park Place): four vacant bays, 1,227–2,011 SF
4011 9th St: 720–1,440 SF



3817 Georgia Ave



3619 Georgia Ave



3532 Georgia Ave



3903 Georgia Ave

Delivery: Local, Not Additive

How Third-Party Delivery Actually Works Here

No employed drivers	Third-party platforms only (DoorDash, Uber Eats, white-label via DoorDash)
Timed dispatch	Food is ready within <u>10 minutes of order being placed</u> Drivers arrive at order completion; hand-off incentivized within 120 seconds (\$1)
Dedicated Space(s)	Working with DDOT for dedicated 10-minute space and scooter/2-wheel spaces where “pay to park” is now. Not removing protected residential permit parking.

EACH NEW LOCATION SHRINKS EVERY DELIVERY RADIUS

300 Riggs Rd NE Open (unaffiliated) Additional MD locations near DC	Barracks Row Approved 6/17 — opening	3831 Georgia Ave THIS APPLICATION	7800 Alaska Ave Planned (BZA)
--	--	---	---

Neighborhood demand is served today from farther away. Opening here relocates existing trips closer to the customer.

Conclusion

- Every applicable standard is met — per the record and the Office of Planning.
- Every operational concern is resolved by binding commitments — the same approach this Board approved for this operator one month ago, same conditions, same operations, deemed appropriate then, will be appropriate here.
- The applicant agreed to all reasonable operational conditions in both cases. Even without the benefit of the ANC and community support re. timing, the Applicant commits to the conditions, as the Board found them appropriate in the last case.
- The Applicant has attempted to resolve the issues outside the scope through a condition assisting community groups to apply for grant money.

The Applicant respectfully requests approval of Application No. 21462