

ANC 4C's Opposition to BZA Case 21462

PRESENTED BY MIKE WARBURTON

Legal Criteria for Special Exceptions

Section	Description
Subtitle X § 901.2(a)	Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps
Subtitle X § 901.2(b)	Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps
Subtitle X § 901.2(c)	Will meet such special conditions as may be specified in this title
Subtitle X § 901.3	The applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record
Subtitle X § 901.4	The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, size, signs, screening, landscaping, lighting, building materials, or other requirements it deems necessary to protect adjacent or nearby property, or to ensure compliance with the intent of the Zoning Regulations.

Per Subtitle X § 901.2(a), Intent of Zone NMU-7B/GA

Section	Description
Subtitle G § 101.3(b) & Subtitle H § 101.2(a)	Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale
Subtitle G § 101.3(d) & Subtitle H § 101.2(b)	Encourage safe and efficient conditions for pedestrian and motor vehicle movement.
Subtitle G § 101.3(f) & Subtitle H § 101.2(c)	Preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities.
Subtitle G § 101.3(g)	Ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces.
Subtitle H § 101.2(e)	Encourage retention and establishment of a variety of retail, entertainment, and personal service establishments, predominantly in a continuous pattern at ground level, to meet the needs of the surrounding area's residents, workers, and visitors.
Subtitle H § 800.1(a)	Implement the objectives of the Georgia Avenue - Petworth Metro Station Area and Corridor Plan

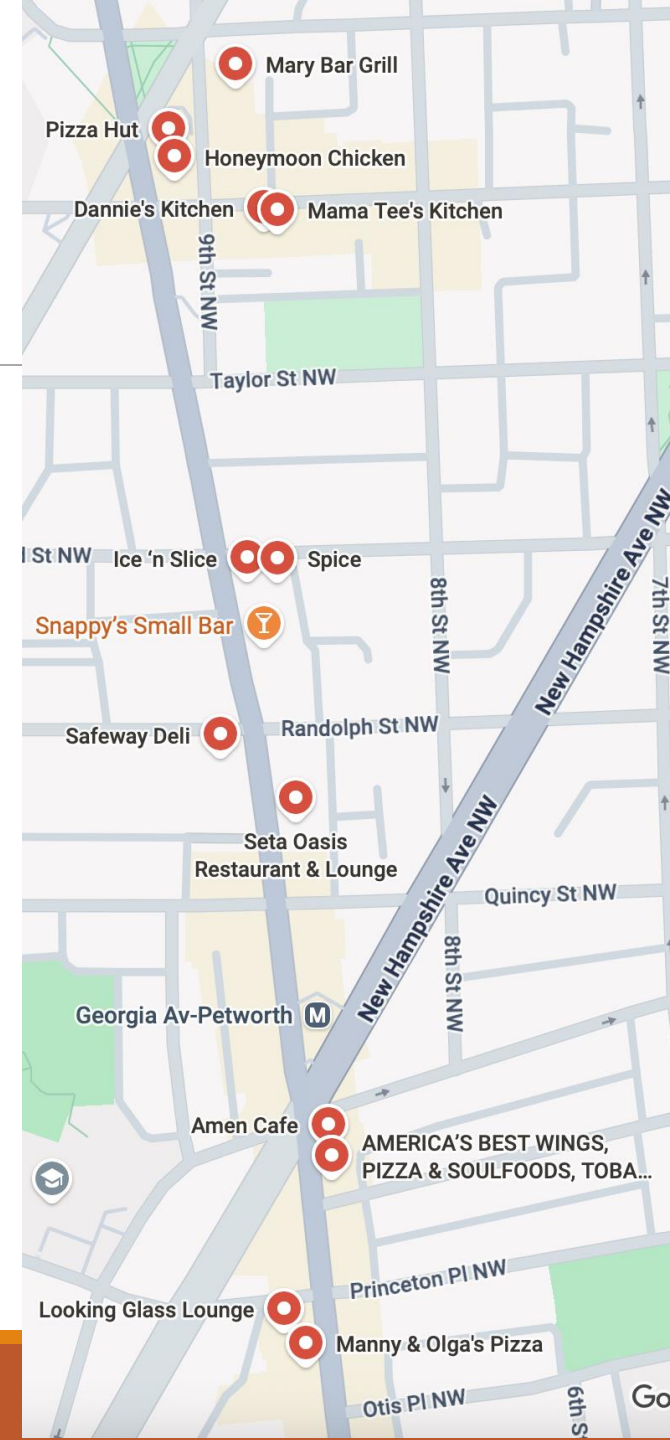
Subtitle G § 101.3(b) & Subtitle H § 101.2(a)

Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale

12+ establishments on the Georgia Ave Corridor, within a ¼ mile of the Property, already serve wings. Another fast food establishment, Wendy's, is directly across an intersection from the Property.

Most of these establishments offer delivery, as well as seating.

Approving this use would not provide a greater variety of uses.



Subtitle G § 101.3(d) & Subtitle H § 101.2(b)

Encourage safe and efficient conditions for pedestrian and motor vehicle movement.

DDOT acknowledges that the proposed use will likely degrade traffic conditions. And ANC 4C believes that DDOT is under-estimating the impact of the proposed use on this area.

Safeway customers regularly double-park immediately across from the Property.

Due to increasing density, street parking is becoming more in-demand.

The Wendy's & its drive-thru regularly cause congestion in the intersection as drivers enter and exit.

We support the upcoming bus lane on Georgia Ave and do not want delivery drivers tempted to park in a way that disrupts bus movement and wastes the City's efforts to improve bus efficiency.

Subtitle G § 101.3(f) & Subtitle H § 101.2(c)

Preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities.

Chains like Wingstop threaten the viability of local businesses. The proposed use will extract \$300,000 to \$500,000 per year from the community. As such, this business will not help preserve this commercial node.

We have a prevalence of existing wing and fried chicken options. The requested use will underutilize the Property by keeping the patio empty. As such, this proposed use will not enhance this commercial node.

Subtitle G § 101.3(g)

Ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces.

The proposed use is oriented around delivery driving, which is contrary to active use of public transportation.

The proposed use will threaten the efficiency and safety of the upcoming Georgia Ave Bus Lanes.

Subtitle H § 101.2(e)

Encourage retention and establishment of a variety of retail, entertainment, and personal service establishments, predominantly in a continuous pattern at ground level, to meet the needs of the surrounding area's residents, workers, and visitors.

The proposed use would not increase the variety of establishments in this area; we have wings and fast food already.

The proposed use would not meet the needs of our workers. Fast food workers in 2018 were, “ranked third highest for SNAP enrollment rates out of all occupations.”

The Applicant would not commit to quality or equal wages. Weighed against the 5% franchise fee and an anticipated profit rate in the teens, this use will not meet the needs of our workers.

Subtitle H § 800.1(a)

Implement the objectives of the Georgia Avenue - Petworth Metro Station Area and Corridor Plan.

Attract quality retail that serves neighborhood needs; Strengthen existing businesses; Provide opportunities for quality affordable housing and increase homeownership; Provide opportunities for job training; Improve neighborhood parking, traffic, and transit conditions and services; Maintain and enhance neighborhood character.

None of the objectives would be furthered by the proposed use and many would be degraded.

Existing local businesses would be threatened.

The local environmental impact would reduce the quality of local housing.

Parking would be made more difficult.

Neighborhood character would be lost.

Subtitle X § 901.2(b)

Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps

Use of neighboring property will be affected adversely because high rents will persist in keeping local business owners from acquiring space in our neighborhood.

Local environmental conditions created by the proposed use will also make the area less attractive.

Per Subtitle X § 901.2(c), Subtitle H § 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

We have objections based on noise, odors, lights, hours of operation, litter, and neighborhood prosperity.

Walk-outs are likely to loiter, eat, litter, and be loud at night.

Delivery drivers are likely to use mopeds, which are often louder than cars.

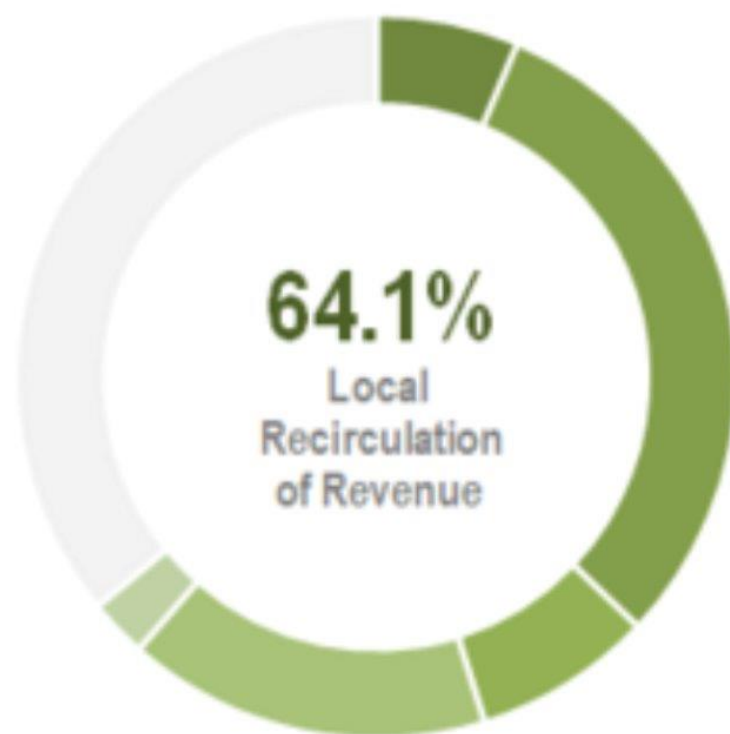
Odors and lights are likely impact the homes above Safeway, right across the street.

Take-out & delivery packaging generates more waste than dine-in.

A 5% franchise fee will deplete the neighborhood by \$80-100k per year, and anticipated profit margins by an additional \$200-400k per year. The loss of recirculated revenue is likely to be about \$600,000 per year.

INDEPENDENT RESTAURANTS AND CHAIN COMPETITORS

INDEPENDENT RESTAURANTS
Weighted Average



CHAIN RESTAURANTS
Weighted Average



■ Profit ■ Labor ■ Services ■ Goods ■ Charity

SOURCE: For independents: 318 surveys across 20 North American market areas. For chains: Civic Economics analysis of public filings for major retail and restaurant chains.

Subtitle X § 901.3

The applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record

The mitigating factor of the Applicant's ventilation plan is unproven, especially for residences at the same height as the exhaust.

The traffic will be negatively impacted.

The Applicant's offer to address lighting concerns is unspecific and heavily conditioned.

The adverse impact on neighborhood prosperity is significant and the proposed use's only mitigating factor is a handful of part-time minimum wage jobs without benefits.

The Applicant has not offered any meaningful solution to increased litter, or evidence that litter will not increase.

Subtitle X § 901.4

The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, size, signs, screening, landscaping, lighting, building materials, or other requirements it deems necessary to protect adjacent or nearby property, or to ensure compliance with the intent of the Zoning Regulations.

The intent of the zoning regulations for this zone include consideration for the needs of workers, per Subtitle H § 101.2(e).

The intent of the zoning regulations for this zone include a focus on employment, per H § 800.3.

This gives the Board authority to impose requirements on behalf of workers and employees.

Negotiations with the Applicant

I emailed the Applicant with some community concerns on June 6, prior to ANC 4C's June meeting.

The Applicant attended our meeting on June 10 and we received a draft community agreement from the Applicant on Friday, June 26.

I responded on Monday, June 29 and we scheduled a video call for July 1. I shared my own draft agreement on the same day.

The Applicant responded on July 7 and I responded on the same day. ANC 4C held its July meeting the next day, on the 8th.

At the meeting, we reviewed the state of negotiations and heard more from community members. It became apparent that the negotiations so far were not sufficient. Due to the severity of the concerns and lack of trust, I asked the Applicant if they would make a more concrete offer for community investment. That seemed like the only solution that might resolve our issues on the timeline requested by the Applicant.

Negotiations with the Applicant

The owner of the Property is listed as an Applicant on the case but never informed their residents, nor communicated with ANC 4C, about this case.

The Applicant spent weeks negotiating with community members for their Barracks Row location. They should have anticipated similar concerns here might also take time to resolve. I only learned of this through my own research.

The Applicant displayed an avoidance of responsibility for the behavior of their delivery drivers, and the associated adverse impacts.

Summary

The proposed use fails to meet the intent of our zone on multiple counts, even with the draft agreement offered by the Applicant.

The proposed use is objectionable to neighbors on multiple conditions, and thus fails the requirements for a Special Exemption for a fast food establishment in our zone.

The Applicant opposed my participation in the hearing for this case, as is my right.

The Applicant did not take reasonable precautions to protect their timeline and now asks others to sacrifice for it.

ANC 4C opposes this Application due to the intent & requirements of zone NUM-7B/GA.