Advisory Neighborhood Commission 4A
Government of the District of Columbia
Washington, DC 20011 and 20012

November 2, 2026

Chair Michelle Pourciau
Board of Zoning Adjustment
441 4th Street, N.W.
Suite 200S
Washington, DC 20001

RE: Case No. 21503
7800 Alaska Avenue NW
BZA Application for Special Exemption
Comments on Proposed Conditions per BZA Memo dated October 22, 2026

Dear Chair and Members of the Board,

We were unable to submit our comments on October 30, 2026 as stipulated by the Board for the reasons cited in our Form 150 requesting an extension of time to comment, filed on October 30, 2026.

The following are our comments as requested by the BZA memo date October 22, 2026 on the revised conditions posed by the applicant, posted on October 23, 2026.

The items addressed below are overshadowed by the status of the parking lot as disclosed at the hearing on October 21, 2026. The uncertainty around that issue has affected our assessment of the application because we completely disagree with the Office of Planning's opinion that the applicant could function without detriment to the surrounding community without access to that parking lot. There is no possible way that the applicant could stage outgoing deliveries, serve in store customers, accept deliveries, and dispose of waste without creating traffic and parking problems on the nearby residential streets if that parking lot were not available.

We have tried to contact Jemal Gateway, the owner and manager of the lot, both directly and through their attorneys to clarify how they intend to rectify the situation. We

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have not received a response; however, we do not wish this uncertainty to delay the processing of this application.

I would like to say that the applicant and its representative have been very responsive to our concerns and has been very transparent in our conversations. We have a few differences but agree on most of the conditions presented. Our differences are as follow:

1) Hours – We would prefer that the hours be from 10:00 AM until midnight Sunday through Thursday and from 10:00 AM until 1:00 AM on Fridays and Saturdays. In requesting these hours, we have reviewed the previous Board orders for Wingstop/Emerald Wings cases #21438, 21462, 17600 (attached). We have also reviewed the closing hours for the Wingstop at 1839 7th St NW and the Taco Bell/KFC at 7720 Blair Road NW, Spring Silver MD (the closest fast-food restaurant to the applicant's proposed location at 7800 Alaska Ave NW). These locations all close at midnight during the week. All other locations are Mixed Use only as opposed to sharing a space with a parking lot zoned R1B less than one hundred feet from townhomes.
   Although we would prefer a closing time of 1:00 AM on Fridays and Saturdays to conform to the Taco Bell across Georgia Ave NW, but we would accept a 2:00 AM closing time, especially if the store did not accept walk in customers after 1:00 AM.
2) Parking Lot – The proposed use of the parking lot is acceptable in the event that the parking lot is available for use
3) Supply Deliveries – The plan for supply deliveries is acceptable with the caveat that deliveries occur from 8:00 AM through 9:00 PM rather than overnight if the trucks park in the rear lot.
4) Delivery Drivers – The plan for delivery drivers is acceptable.
5) Trash – The plan for trash collection is acceptable. Collection should be from 8:00 AM through 9:00 PM
6) Litter – The litter management plan is acceptable. The streets on which litter should be collected are Kalmia Avenue from the intersection with Alaska Avenue to the driveway into the parking lot, and Alaska Avenue from the intersection with Kalmia Avenue to the Morris Miller store. We would also like signage discouraging littering posted inside and outside the property subject to applicable laws and regulations (See BZA orders for cases #21438 and #21462).
   There is a small garden area attached to the premises that should be kept clean and trimmed.
7) Pest Control – The pest control plan is acceptable.
8) Grease and Odor – The grease and odor plan is acceptable.
9) Noise – The noise plan is acceptable. The community is concerned about noise being generated by customers, employees, and delivery personnel, especially

late at night. We would appreciate applicant's encouraging employees, customers, and delivery drivers arriving/leaving late at night to be considerate of the community.

10) Security Camera – The exterior security camera is acceptable. The applicant may wish to consider an interior camera also to discourage disruptive behavior and crime.
11) Community Contact – The community contact plan is acceptable. We would like the contact to be available to address any complaints and to attend ANC 4A meetings as necessary (See BZA orders for cases #21438 and #21462).

We would like the following item included in the conditions:

1) Term limit – We would prefer that the initial term limit be no less than 5 years and no greater than 7 years to judge the success of the business in this environment (See BZA orders for cases #21438 and #21462).

Thank you for considering our comments. Please contact me if you have any questions.

Paula Edwards

Paula Edwards
Chair
ANC 4A
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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, 2026[1]
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).)

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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 l: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 Ml (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 Ml (Mechanical Floor Plan), marked as Revision 5 and dated 06/23/26, Sheet Ml.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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 21462 of Thomas Jefferson Real Estate LLC and Emerald Wings LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle H §§ 6007.1(e)(2) and 6009.1(c) to allow a new eating and drinking establishment use (fast food establishment) on the first floor of an existing six-story building (dwelling units above ground-floor retail space) in the NMU-7B/GA Zone at 3831 Georgia Avenue, N.W. (Square 3028, Lot 59).

HEARING DATE: July 22, 2026
DECISION DATE: July 29, 2026

DECISION AND ORDER

This self-certified application was filed on March 18, 2026 on behalf of Thomas Jefferson Real Estate LLC, the owner of the property that is the subject of the application, and Emerald Wings LLC, the tenant of a ground-floor space of a building at the property (together, the "Applicant"). Following a public hearing, the Board voted to grant the application subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and public hearing, by letters dated April 30, 2026, to the Applicant, the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), the Department of Buildings, Advisory Neighborhood Commission ("ANC") 4C, the ANC in which the subject property is located, and Single Member District 4C03, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 4 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was posted at the subject property and was published in the District of Columbia Register on May 15, 2026 (73 DCR 007338) as well as on the calendar on the Office of Zoning website.

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 4C were automatically parties in this proceeding. The Board received no request for party status.

Applicant's case. The Applicant presented evidence and testimony in support of the request for a special exception to allow a fast-food establishment on the ground floor of an existing building.

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OP report. By memorandum dated July 10, 2026, the Office of Planning recommended approval of the application. (Exhibit 20.)

DDOT report. By memorandum dated July 9, 2026, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 19.)

ANC report. At a public meeting on August 7, 2026, with a quorum present, ANC 4C adopted a resolution recommending that the Board deny the application. (Exhibit 21.)

Persons in opposition. The Board received letters and heard testimony from persons in opposition to the application, including some residents and owners of businesses near the subject property. The persons in opposition generally stated concerns about the operation of the planned fast-food establishment and objected that the Applicant's proposal would cause adverse impacts including with respect to litter, late hours of operation, odors, noise, traffic, parking, light pollution from signage, rodents, the proximity of similar businesses, and a loss of neighborhood character.

FINDINGS OF FACT

1. The property that is the subject of this application is a corner lot located at the southeast corner of the intersection of Georgia Avenue and Randolph Street N.W., with the address 3831 Georgia Avenue, N.W. (Square 3028, Lot 59).

2. The subject property is generally rectangular, with approximately 34.4 feet of frontage on Georgia Avenue and 107.9 feet of frontage on Randolph Street. The lot area is approximately 3,117 square feet.

3. The subject property abuts a public alley, 15 feet wide, along its east (rear) lot line.

4. The subject property is improved with a six-story building completed in April 2023.[1] The building is 70 feet in height and results in a lot occupancy of 80 percent.

5. The existing building extends to the front (west) and side (north and south) lot lines of the subject property. The rear yard is 22.5 feet deep.

[1] The Board granted a variance from the vehicle parking requirements under § 2101.1 of the 1958 Zoning Regulations to allow a new six-story building, with 20 dwelling units above ground-floor retail space, at the subject property, which was then zoned GA/C-3-A (Commercial District C-3, major business and employment center, medium bulk, and Georgia Avenue overlay district). The zoning requirement for vehicle parking was then 10 spaces (according to the applicant, the parking requirement under the 2016 Zoning Regulations would be three spaces). The approved variance required the provision of two vehicle parking spaces at the rear of the building accessible from the abutting public alley. The variance was granted subject to conditions of approval requiring the applicant *inter alia* to implement a transportation management plan. See Application No. 19038 (Murillo Malnati Group, LLC; September 13, 2016).

6. The existing building is configured as 20 apartments on the five floors above the ground level. The ground floor contains a space, 1,488 square feet in area, reserved for commercial use.

7. The Applicant proposed to use the ground floor space as a fast-food establishment, without a drive-through or any expansion of the existing building. The application proposed exterior modifications of the building including the installation of ventilation equipment and signage. (Exhibit 18A.)

8. The fast-food establishment will not provide any indoor or outdoor seating. Food will be packaged for takeaway, rather than served on trays for on-site consumption. The establishment will not provide sales of alcohol. (Exhibits 18A, 20, 38; Transcript of July 22, 2026 at 172.)

9. According to the Applicant, most orders (approximately 75 percent) will be placed on-line, either for carry-out or delivery by a third-party food delivery service, and 25 percent of customers were expected to place orders at the fast-food establishment for carry-out. (Exhibits 18A, 36.)

10. The fast-food establishment will be accessible to customers solely via an existing entrance to the building on Georgia Avenue. No customer entrances will be provided on the side or at the rear of the building. (Exhibits 18A, 18C.)

11. The Applicant anticipated that each shift at the fast-food establishment will require approximately four to eight employees. The total number of employees will be approximately 15 to 20. (Exhibit 18A.)

12. The fast-food establishment will utilize a trash storage room located at the southeast corner of the building, which is also utilized by residents of the building. The trash room is accessible for the collection of trash from the abutting public alley. (Exhibit 18C.)

13. The Applicant will install a grease interceptor, grease trap, or other system to collect used cooking oil within the interior of the ground-floor commercial space. The Applicant will utilize a licensed third-party recycling company for collection of the used cooking oil. (Exhibits 18A, 33.)

14. The Applicant will install a cooking ventilation system routed along the exterior of the existing building. Exhaust outlets will be located above the roofline and directed away from nearby residences. (Exhibit 18C.)

15. The Applicant will utilize a pest control service that will provide monthly extermination services including treatments for insects, spiders, and rodents performed by a licensed exterminator. (Exhibit 33.)

16. The Applicant will provide at least one trash receptacle in the customer waiting/pick-up area of the fast-food establishment and will install signage outside the building to discourage littering.

17. The Applicant will install security cameras outside the front of the premises and inside at the rear of the premises. (Exhibit 33.)

18. The subject property is located less than a quarter-mile north of the Georgia Avenue-Petworth Metrorail Station. Several Metrobus routes provide service along Georgia Avenue.[2]

19. The subject property provides racks for bicycle parking in two locations at the front and rear of the existing building.

20. Properties to the east of the subject property, fronting on Randolph Street and separated by the public alley from the Applicant's property, are located in a Residential Flat zone, RF-1. The area zoned RF-1 contains primarily two-story attached residential buildings.

21. The subject property and nearby properties fronting on Georgia Avenue are located in a Georgia Avenue Neighborhood Mixed-Use (NMU) zone, NMU-7B/GA.

22. The property abutting the subject property to the south contains an apartment house. The property to the west, across Georgia Avenue, contains a mixed-use building that was approved as a planned unit development.[3]

23. Other nearby properties contain a fast-food establishment with a drive-through, a six-story apartment house, and smaller retail and office buildings. The surrounding area is characterized as "a mixed-use commercial corridor, typified by a combination of residential, commercial, and mixed-use buildings of varying heights, scales, and architectural styles." (Exhibit 20.)

24. The Mixed-Use (MU) zones provide for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling residential development at varying

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[2] The Zoning Regulations recognize Georgia Avenue, between 7th Street, N.W. (Archives Metrorail Station) and Eastern Avenue N.W., as a Metrobus corridor "served by high-frequency routes located entirely or partially within the District of Columbia" (see Subtitle C 702.1).

[3] See Zoning Commission Order No. 11-09 in Z.C. Case No. 11-09 (Duball Petworth, LLC; November 11, 2011) (Commission approved a consolidated planned unit development and related map amendment to GA/C-3-A for Lots 808 and 809 in Square 2905, 3830 Georgia Avenue, N.W., a site with a lot area of approximately 68,118 square feet). The approved PUD included a new grocery store (approximately 63,125 square feet), a residential component comprising 198 to 242 dwelling units in approximately 211,540 square feet of gross floor area, and two below-grade levels of vehicle parking spaces, comprising 84 spaces for the grocery store as well as parking spaces for the residential component at a ratio of approximately 0.6 spaces per dwelling unit. The Commission adopted conditions of approval that included implementation of specified transportation demand management measures.

densities. (Subtitle G § 101.1.) The MU zones are designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. (Subtitle G § 101.2.)

25. The Mixed-Use (MU) zones are intended to:
    (a) provide for the orderly development and use of land and structures in the MU zones, characterized by a mixture of land uses;

    (b) provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city;

    (c) reflect a variety of building types, including, but not limited to, shop-front buildings which may include a vertical mixture of residential and non-residential uses, buildings made up entirely of residential uses, and buildings made up entirely of non-residential uses;

    (d) encourage safe and efficient conditions for pedestrian and motor vehicle movement;

    (e) ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas;

    (f) preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities; and

    (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 G § 101.3.)

26. The MU-4 zone is intended (a) to permit low- to moderate-density mixed-use development, (b) to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core, and (c) to be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (Subtitle G § 101.9.)

27. The MU-7 zones are intended (a) to permit moderate to medium density mixed-use development and (b) be located on arterial streets, in uptown and regional centers, and at rapid transit stops. (Subtitle G § 101.12.)

28. The Neighborhood Mixed-Use (NMU) zones are designed to provide for stable mixed-use areas permitting a range of commercial and multiple dwelling unit residential development in defined neighborhood commercial areas. (Subtitle H § 101.1.)

29. In addition to the purpose statements of the MU zones, the purposes of the Neighborhood Mixed-Use zones are to:
    (a) provide for a varied mix of residential, employment, retail, service, and other related uses in the area;

    (b) encourage safe and efficient conditions for pedestrian and motor vehicle movement;

    (c) preserve and enhance neighborhood shopping areas, by providing the scale of development and range of uses that are appropriate for neighborhood shopping and services;

    (d) encourage a general compatibility in scale between new and older buildings;

    (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;

    (f) encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement;

    (g) identify designated roadways within NMU zones with limitations on driveways and curb cuts; and

    (h) identify designated use areas within NMU zones within which use restriction shall apply to the ground floor.

    (Subtitle H § 101.2.)

30. The purposes of the Georgia Avenue Neighborhood Mixed-Use zones (NMU-4/GA and NMU-7B/GA) are the same as those of the MU-4 and MU-7 zones (set forth in Subtitle G § 101) and of the Neighborhood Mixed-Use zones (stated in Subtitle H § 101) as well as to:
    (a) implement the objectives of the Georgia Avenue - Petworth Metro Station Area and Corridor Plan, approved by the Council of the District of Columbia, effective July 20, 2006 (Res. 16-686);

    (b) implement the goals of the Great Streets Framework Plan for 7th Street - Georgia Avenue, published by the District Department of Transportation and dated 2006;

    (c) encourage additional residential uses along the Georgia Avenue corridor;

    (d) encourage improved commercial uses;

(e) provide uniform building design standards;

(f) set guidelines for development review through planned unit development (PUD) and special exception proceedings; and

(g) 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.

(Subtitle H § 800.1.)

31. 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. (Subtitle H § 800.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requested a special exception under Subtitle H §§ 6007.1(e)(2) and 6009.1(c) to allow a new eating and drinking establishment use (fast food establishment) on the first floor of an existing six-story building in the NMU-7B/GA zone at 3831 Georgia Avenue, N.W. (Square 3028, Lot 59).[4] The Board is authorized under § 8 of the Zoning Act (D.C. Official Code § 6-641.07(g)(2)) to grant special exceptions as provided in the Zoning Regulations where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific requirements. (*See also* Subtitle X § 901.2.)

[4] The Zoning Regulations state use category that include "eating and drinking establishments" for uses involving the "sale of food, alcoholic drinks, or refreshments prepared on the premises and sold to customers for consumption on or off the premises." Examples of an eating and drinking establishment include a "prepared food shop, restaurant, fast food restaurant, or fast food drive through" (which are all terms defined in the Zoning Regulations) and may also include "bar, café, cafeteria, cocktail lounge, coffee shop, delicatessen, an ice cream parlor or nightclub." The eating and drinking establishment use category "does not include uses which more typically would fall within the sexually oriented business establishment use category." (Subtitle B § 200.2(i).)

The Zoning Regulations define a fast food restaurant as "A business, other than a prepared food shop, where food is prepared and served very quickly; and where the food is typically made of preheated or precooked ingredients, served to the customer in a packaged form for carry-out/take-away, although it may be eaten on site." Characteristics of a fast food establishment may include: (a) foods that are prepared by production-line techniques; (b) foods that are standardized foodstuffs shipped to a franchised establishment from central locations; (c) an establishment that includes trash receptacles located in the dining area for self-bussing of tables; (d) seating for customers; and (e) food served on disposable tableware. An establishment meeting the definition of a fast food restaurant will not be deemed to constitute any other use permitted under the Zoning Regulations, except that a restaurant, grocery store, movie theater, or other use providing carry out sales that is clearly subordinate to its principal use will not be deemed a fast-food establishment. (Subtitle B § 100.2.)

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 4C, the Board determined that the proposed special exception use, operated consistent with the conditions of approval adopted in this order, met the requirements for approval of the application. The conditions include a term of approval of seven years to provide sufficient time for the Applicant to operate the planned fast-food establishment use, consistent with the conditions adopted in this order, and to address and mitigate any potential adverse impacts associated with the use. The Board determined that a seven-year term of approval was appropriate in accordance with Subtitle X § 901.5 as sufficient time to inform a subsequent evaluation of the actual impact of the use on neighboring properties. The Board was not persuaded by the Applicant that a term of 10 years was appropriate in light of the Applicant's lease provisions or by ANC 4C that a shorter term of three to five years would be sufficient for an assessment of the actual impact of the use or consistent with the reasonable impacts on and expectations of the Applicant in setting a term of approval.

The Board is authorized under Subtitle H § 6009.1 to permit certain uses if approved as a special exception, subject to specific requirements.[5] The eligible uses in the NMU-7B/GA zone include an "eating and drinking establishment use that is a fast food establishment" subject to the requirements of Subtitle H § 6007.1(e). (Subtitle H § 6009.1(c).) Pursuant to Subtitle H § 6007.1(e), the Board is authorized to allow certain uses if approved by a special exception, subject to specific requirements. The eligible uses include eating and drinking establishment uses, including a fast food establishment consistent with the requirements stated in Subtitle H § 6007.1(e)(2). The requirements relevant in this proceeding are that (i) no part of the lot on which the use is located shall be within 25 feet of any Residential House (R), Residential Apartment (RA), or Residential Flat (RF) zone unless separated from those residential zones by a street or alley (Subtitle H § 6007.1(e)(2)(B)), (ii) if any lot line of the applicant's lot abuts an alley containing a zone boundary line for a residential zone, a continuous brick wall at least six feet high and 12 inches thick must be constructed and maintained on the lot along the length of that lot line, except in the case of a building that extends for the full width of its lot (Subtitle H § 6007.1(e)(2)(C)), (iii) any refuse dumpsters must be housed in a three-sided brick enclosure equal in height to the dumpster or six feet high, whichever is greater, with the entrance to the enclosure including an opaque gate that does not face an R, RA, or RF zone (Subtitle H § 6007.1(e)(2)(D)), (iv) the fast food establishment use must not include a drive-through (Subtitle H § 6007.1(e)(2)(E)), (v) the fast food establishment must not provide a 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 (Subtitle H § 6007.1(e)(2)(F)), and (vi) the fast food establishment use must 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 (Subtitle H § 6007.1(e)(2)(G)).

The Board determined that the application satisfied the requirements stated in Subtitle H §§ 6007.1(e)(2)(B)-(F) for approval of a special exception to allow a fast-food establishment use in

[5] The subject property is located in the NMU-7B/GA zone, which is included in Use Group C (see Subtitle H § 6000.8). The uses permitted by special exception in NMU Use Group C are stated in Subtitle H § 6009.1.

accordance with Subtitle H § 6009.1(c).[6] The Applicant's planned fast-food establishment use will be operated on the ground floor of an existing building on a lot that is located within 25 feet of a Residential Flat zone. However, the subject property is separated from the nearby RF-1 zone by a public alley. That alley, which abuts the rear lot line of the Applicant's lot, contains a zone boundary line separating the RF-1 zone to the east from the NMU-7B/GA zone where the subject property is located. The Applicant's building lacks side yards and thus extends for the full width of its lot, obviating the need for a brick wall maintained along the length of the rear lot line abutting the alley. The planned fast-food establishment will not utilize a dumpster, eliminating the need for an enclosure. The establishment will not provide a drive-through or any entrance for customers in the side or the rear of the existing building.

The Board concluded that the application satisfied the requirements stated in Subtitle H § 6007.1(e)(2)(G) for approval of the requested special exception based on its determination that the operation of the proposed fast-food establishment use, consistent with the conditions of approval adopted in this order, will not become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions. The Applicant's planned fast-food establishment use will occur inside an existing building, without providing outdoor seating, thereby avoiding the creation of objectionable conditions relating to noise or sound. The Board noted that the Applicant agreed with ANC 4C that the planned fast-food establishment will conduct its operations and maintain its equipment so that sound originating from the premises will "not exceed 55 decibels inside any nearby residence when the doors of the premises and of the residence are closed." (Exhibits 33, 39.)

The Applicant will install and utilize a ventilation system designed to exhaust cooking odors effectively without creating adverse impacts on nearby residences. The fast-food establishment will utilize the building's internal trash room, which will minimize odors, discourage vermin and other pests, and avoid trash containers that might otherwise hinder vehicle traffic in the public alley. Other potential adverse impacts related to odors will be mitigated by conditions of approval that create requirements for the frequent collection of waste materials. Any exterior lighting installed in connection with the fast-food establishment will be directed away from the windows of nearby residential buildings, thereby avoiding the creation of potential adverse impacts related to lighting.

The Applicant proposed hours of operation based on factors including the expected clientele and the hours of operation of similar businesses in the area. The Board generally agreed, except with respect to late-night hours on weekdays, when a closing time of midnight (rather than 3:00 a.m. as proposed) will mitigate potential adverse impacts on nearby dwellings, including with respect to possible noise associated with patrons or food delivery services. The conditions of approval of the requested special exception also require the Applicant to implement measures to address and avoid the creation of potential adverse impacts related to rodents and other pests.

[6] The requirement stated in Subtitle H § 6007.1(e)(2)(A) – that the eating and drinking establishment use is not permitted in the MU-4/WP [Woodley Park] zone – is not relevant to this application.

The Board determined that approval of the application would not result in adverse impacts related to deliveries to the subject property in connection with the fast-food establishment use. The persons in opposition raised objections based on their observations of current conditions on Georgia Avenue, especially the lack of a dedicated loading zone at the subject property as well as allegations of double-parking and congestion due to the proximity to a Metrorail station and bus traffic. The Board was not persuaded that approval of the application would create adverse impacts with respect to deliveries, noting that the subject property abuts an alley along its rear lot line, which provides an off-street area for deliveries to the site. Deliveries to the fast-food establishment are not likely to interfere with deliveries or other truck traffic associated with the 20 apartments located in the upper stories of the building at the subject property because the building owner was obligated, as a condition of approval of the parking relief in approved in 2016, to implement a transportation management plan and to restrict loading activities associated with residents of the building.[7] The planned unit development located across Georgia Avenue was also approved with conditions requiring the implementation of specified transportation demand management measures for the project, which complied with applicable zoning requirements for loading for both the grocery store and residential components of the project.[8] Under the circumstances, the Board credited the testimony of DDOT that the Applicant's proposal might lead to "a minor increase in vehicle, transit, pedestrian, and bicycle trips on the localized transportation network" as well as "increased pick-up and drop-off activity and slightly reduced availability of on-street parking within the immediate area." (Exhibit 19.) The Board noted DDOT's suggestion that the Applicant "should coordinate with DDOT to mitigate the potential impact of delivery trips to the site" to avoid impacts on traffic on Georgia Avenue, where "DDOT is currently constructing bus-only lanes" (Exhibit 19) and that the Applicant described measures already underway with DDOT to address curbside management along the Georgia Avenue frontage (see Exhibit 32).

Review standards. For the reasons already discussed, the Board concluded that approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, consistent with Subtitle X § 901.2(b). The Board also concluded that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, in accordance with Subtitle X § 901.2(a). The Applicant's proposal is consistent with the intent of the Georgia Avenue Neighborhood Mixed-Use (NMU-7B/GA) zone to permit mixed-use development at a medium density with a focus on employment, including additional residential uses above commercial uses. Approval of the

[7] The conditions of approval adopted by the Board in the 2016 order included a provision requiring the Applicant to schedule no more than two moves in or out by residents on a single day and to schedule major loading and off-loading activities during off-peak parking periods on weekdays and weekends. See Application No. 19038 (Murillo Malnati Group, LLC; September 13, 2016).

[8] The PUD application did not seek flexibility from applicable loading requirements, which the Commission's order stated as one loading berth at 30 feet deep, one loading platform at 100 square feet, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep for a grocery store with 20,000 to 100,000 square feet of gross floor area (§ 2201.1) and one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep for an apartment house or multiple dwelling with 50 or more dwelling units (§ 2201.1). See Zoning Commission Order No. 11-09 in Z.C. Case No. 11-09 (Duball Petworth, LLC; November 11, 2011).

application is consistent with the purposes of the Georgia Avenue Neighborhood Mixed-Use zones, especially with respect to encouraging improved commercial uses as well as vertically mixed-uses (ground floor commercial and residential above) along Georgia Avenue within a quarter mile of the Georgia Avenue - Petworth Metrorail Station. The Applicant's proposal will further the intent of the Neighborhood Mixed-Use (NMU) zones to provide for stable mixed-use areas permitting a range of commercial and multiple dwelling unit residential development in defined neighborhood commercial areas, as well as the purposes of the NMU zones to provide for a varied mix of residential, employment, retail, service, and other related uses in the area; preserve and enhance neighborhood shopping areas by providing a scale of development and range of uses appropriate for neighborhood shopping and services; and 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.

Approval of the requested special exception is also consistent with the purposes of the Mixed-Use (MU) zones to provide for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling residential development at varying densities, encompassing facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. Approval of the application will further the intent of the MU zones to provide for the orderly use of land and structures, characterized by a mixture of land uses; to provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale; and to preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities. Consistent with the intent of the MU-7 zone, approval of the requested special exception will permit moderate to medium density mixed-use development located on an arterial street.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) For the reasons discussed above, the Board agreed with OP's recommendation to approve the application.

The Board is also required to give "great weight" to the issues and concerns raised by an affected ANC. (Section 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)(3)(A)).) The Board is directed to accord "great weight" only to the issues and concerns of the affected ANC that are legally relevant to the application at issue. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), *citing Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 180 (D.C. 1981) (the "great weight" requirement extends only to "issues and concerns that are legally relevant").

In this case, ANC 4C adopted a resolution recommending denial of the application on the grounds that the proposed fast-food establishment use (i) "would not be sufficiently varied from other uses in the immediate area" (which the ANC alleged would be contrary to Subtitle G § 101.3(b) and Subtitle H § 101.2(a)), (ii) "would decrease pedestrian [and] traffic safety and traffic efficiency" (Subtitle G § 101.3(d), Subtitle H § 101.2(b)), (iii) "would threaten existing uses nearby" (Subtitle

H §§ 101.2(c) and (e)), (iv) "would detract from the needs of … residents, due to an extraction of wealth" (Subtitle H § 101.2(e)), (v) "would not meet the needs of … workers" (Subtitle H § 101.2(e)), (vi) "would degrade the local shopping area (due to litter and chicken waste)" (Subtitle H § 101.2(c)), (vii) "would discourage residential uses along the Georgia Avenue corridor due to sensory disturbances, litter, and lack of local character" (Subtitle H §§ 800.1(c) and (g)), (viii) "would discourage additional commercial uses, by encouraging landlords to hold out for high-budget establishments … rather than make their spaces available to local establishments" (Subtitle H § 800.1(g)), and (ix) "would be objectionable to neighboring properties due to noise, lights, hours of operation, odors, and litter" (Subtitle H § 6007.1(e)(2)(G)." (Exhibit 21.) While reiterating its opposition to approval of the application, ANC 4C commented favorably on some of the conditions of approval proposed by the Applicant. (Exhibit 39.) ANC 4C generally supported the Applicant's proposed conditions with respect to pest control, grease management and odor, trash storage, installation of anti-littering signage, and the provision of a trash receptacle for customers, lighting, and security cameras.

The Board adopted several conditions of approval based on comments provided by ANC 4C, including conditions requiring the Applicant to collect any litter associated with the fast-food establishment from the abutting sidewalks each day and to designate a liaison to serve as a community contact. However, the Board found no basis to adopt some of the conditions recommended by ANC 4C. The Board declined to require the owner of the building at the subject property to designate a separate liaison because the two roles would be unnecessarily redundant in addressing any issues relating to the operation of the fast-food establishment.[9] Other conditions proposed by ANC 4C did not identify a potential adverse impact related to the zoning relief requested that was within the Board's purview in deliberating on the application or provide an adequate basis for the Board to determine that the recommended conditions were reasonable and necessary to mitigate any potential adverse impact. These included conditions proposed by ANC 4C that would have addressed non-zoning matters governed by other statutes and regulations, such as the enforcement of traffic violations and minimum wage requirements for employees of the fast-food establishment.

Implicit in the Board's power to grant special exceptions is the authority to place reasonable conditions on that approval. Because the zoning regulations require that a use permitted by special exception must meet the requirements for approval of that special exception, the Board is authorized in approving an application to ensure, by imposing appropriate requirements on the applicant that "so far as reasonably possible, objectionable conditions such as those enumerated in the regulation will be avoided." *President and Directors of Georgetown College v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 69 (D.C. 2003) (citations omitted). However, any conditions of approval adopted by the Board should not involve the Board in the "details and mechanics" of an applicant's operations, in matters "in which a zoning body lacks any specialized

[9] See Subtitle A §§ 303.3-303.5 (if a building permit or certificate of occupancy is issued under the authority of a decision of the Board of Zoning Adjustment to approve a special exception, each condition to the approval of the special exception must be treated as a condition to the issuance of a building permit or certificate of occupancy; any person who controls or uses a building or part of a building must comply with any condition to the issuance of a building permit or certificate of occupancy for the building or part of the building).

competence" that are "far removed from the BZA's expertise and area of responsibility." *President and Directors of Georgetown College* at 77. Personal conditions of approval that impermissibly regulate the business conduct of the property owner, rather than the use of the property, are unlawful *per se*; conditions that regulate the use of property are permissible but must be based on reliable, probative, and substantial evidence in the record as a whole. *National Black Child Development Institute, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 691-692 (D.C. 1984).

The Board did not determine that the issues and concerns stated by ANC 4C provided persuasive advice to support a conclusion that the application should be denied. The Board did not agree with ANC 4C that the proposed fast-food establishment use "would not be sufficiently varied from other uses in the immediate area." The provisions cited by ANC 4C, which convey information about aspects the MU and NMU zones, refer to an intent to provide a "varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale" throughout the relevant zones but do not preclude or require specific uses for specific sites within the zones.

Similarly, for the reasons already discussed, the Board was not persuaded by ANC 4C's unsubstantiated claims that approval of the requested special exception, subject to the conditions of approval adopted in this order, would create adverse impacts with respect to pedestrian and vehicle traffic, trash, or by threatening nearby uses and detracting from neighborhood character. Other concerns stated by ANC 4C were not germane to the zoning criteria for approval of the requested special exception and therefore were outside the scope of the Board's purview in this proceeding, including unspecified and unsubstantiated claims about the needs of residents and workers and about creating incentives for "high-budget establishments," as alleged by ANC 4C. The criteria for approval of the special exception are stated in Subtitle H §§ 6007.1(e)(2) and 6009.1(c), not in the purpose provisions cited by ANC 4C. The purpose provisions are relevant to the Board's assessment of an application, especially with respect to harmony with the zone plan, but in evaluating a request for a special exception, the Board is limited to a determination of whether the special exception meets the requirements of the particular regulation on which the application is based; the applicant has the burden of showing that the proposal complies with the regulation but once that showing has been made "the Board ordinarily must grant [the] application." *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C. 1995) (citations omitted); see also *National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984 (D.C. 2000).

Based on the findings of fact and conclusions of law, the Board concluded that the Applicant has satisfied the burden of proof for a special exception under Subtitle H §§ 6007.1(e)(2) and 6009.1(c) to allow a new eating and drinking establishment use (fast food establishment) on the first floor of an existing six-story building (dwelling units above ground-floor retail space) in the NMU-7B/GA Zone at 3831 Georgia Avenue, N.W. (Square 3028, Lot 59). Accordingly, it is **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS**:

1. Term. Approval of the special exception shall be for a term of seven years, beginning on the date this order became final.

2. Hours of operation. The hours of operation of the fast-food establishment use shall not exceed 10:00 a.m. to 12:00 a.m. (midnight) Sunday through Thursday and 10:00 a.m. to 3:00 a.m. on Fridays and Saturdays.

3. Pest control. The Applicant shall utilize a professional pest control service providing, at a minimum, monthly extermination services including treatment for insects, spiders, and rodents, performed by a licensed exterminator.

4. The Applicant shall exercise care in its handling of garbage, waste, and refuse, and shall remove such materials from the building as frequently as necessary to prevent pests from entering the premises or surrounding areas. The Applicant shall promptly undertake appropriate measures necessary to address issues related to pests that are reasonably attributable to the fast-food establishment operation.

5. Grease management. The Applicant shall install and maintain a grease interceptor, grease trap, or equivalent system in accordance with applicable code requirements and shall ensure the regular collection and recycling of used cooking oil by a licensed third-party provider.

6. The Applicant shall have hoods and exhaust systems of the fast-food establishment inspected and serviced at least quarterly using commercially licensed providers.

7. Trash storage. The Applicant shall store all trash attendant to the fast-food establishment use within the building's existing internal trash room and shall not utilize any trash storage outside the building.

8. The Applicant shall ensure adequate trash storage capacity and odor control in connection with the use of the internal trash storage room. The Applicant shall maintain unobstructed access for trash collection from the public alley.

9. The Applicant shall arrange for trash collection at least four times per week, increasing the frequency of collection if necessary based on waste generation and operational experience.

10. Delivery management. When allowed by a delivery platform, the Applicant shall provide pickup instructions reminding delivery drivers to comply with all applicable traffic and parking laws and to avoid obstructing travel lanes, sidewalks, driveways, and neighboring properties.

11. Outdoor lighting. The Applicant shall ensure that any exterior lighting fixtures installed attendant to the fast-food establishment use shall be directed away from residential windows except as needed for the safe operation of the premises and consistent with applicable law.

12. Security cameras. The Applicant shall install security cameras to monitor the fast-food establishment operation, including at least one camera on the front exterior and one camera on the rear interior of the premises.

13. Litter collection. The Applicant shall collect any outdoor litter associated with the fast-food establishment from the adjacent sidewalks at least once per day.

14. Anti-littering signage. The Applicant shall install and maintain at least one anti-littering sign in the customer waiting/pick-up area of the fast-food establishment and at least one anti-littering sign outside the building, consistent with applicable sign regulations, to discourage littering in and around the property.

15. Community liaison. The Applicant shall designate a representative to serve as a liaison to address operational questions or concerns related to the fast-food establishment. The Applicant shall provide the liaison's name and contact information to ANC 4C. The Applicant shall ensure that the liaison attends a public meeting of ANC 4C at least quarterly for the first year of operation of the fast-food establishment and at least semi-annually thereafter.

VOTE: **3-1-1** (Michelle Pourciau, Paul Goldstein, and Robert E. Miller voting to APPROVE; Melissa Lindsjo opposed; 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: September 16, 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, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 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.

District of Columbia
Office of Planning

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Stephen J. Mordfin, AICP, Case Manager

JL Joel Lawson, Associate Director Development Review

DATE: February 16, 2016

SUBJECT: BZA Case 17600-B to permit three fast food restaurants at 300-320 Riggs Road, N.E.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following special exception:

- § 733, Fast Food Establishments

II. LOCATION AND SITE DESCRIPTION

Address	300-320 Riggs Road, N.E.
Applicant	Fort Totten North, L.L.C.
Legal Description	Square 3748, Lot 52
Ward/ANC	Ward 4; ANC 4B
Zone	C-2-A
Lot Characteristics	Lot occupies entire square with no public alleys
Existing Development	Mixed use residential/commercial building
Adjacent Properties	North: Across Chillum Place, semi-detached dwellings South: Across 3rd Street, low-rise industrial buildings East: Across Riggs Road, vacant land and free-standing commercial buildings West: Across 3rd Street, four-story apartment buildings
Surrounding Neighborhood Character	Generally a mixture of low and moderate density housing and light-industrial uses
Proposed Development	Permit three fast food restaurants to occupy three ground-level commercial spaces

III. RELIEF REQUESTED

The applicant proposes to add three fast food restaurants to an existing mixed-use building. The restaurants would be located within spaces specifically designed for commercial use, facing Riggs Road. The three restaurants include Subway, Five Guys and 350 Degrees.

IV. OFFICE OF PLANNING ANALYSIS

a. Special Exception Relief pursuant to § 733, Fast Food Establishments

i. *733.2 No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District unless separated therefrom by a street or alley.*

No part of the lot is within twenty-five feet of a residence district unless separated therefrom by a street. It is separated from the R-2 zone by either Chillum Place to the north or 3rd Street to the west.

733.3 If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, 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.

No part of the lot abuts an alley.

733.4 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 a Residence District.

No exterior dumpsters are proposed. All dumpsters would be located within the parking garage.

733.5 The use shall not include a drive-through.

No drive-throughs proposed.

733.6 There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone district boundary line for a Residence District.

The customer entrances for each of the three fast food restaurants would face Riggs Road, the front of the building, across from which is the C-2-A zone.

733.7 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.

The fast food restaurants should not become objectionable to neighboring properties. They would be located within existing commercial space in the building and would utilize modern ventilation systems to decimate odors. Lighting would be internal to the each individual commercial space. Hours of operation for any of the restaurants would be no earlier than 7:00 am on weekdays and 9:00 am on weekends, and no later than 10:00 pm any day of the week.

733.8 The use shall provide sufficient off-street parking, but not less than that required by § 2101.1, to accommodate the needs of patrons and employees.

The existing building was designed to accommodate ground floor commercial uses. Forty-four parking spaces would be provided, in excess of the twenty-two required.

733.9 The use shall be located and designed so as to create no dangerous or other objectionable traffic conditions.

All parking and loading access to and from the building would be from the existing garage entrances specifically designed for this mixed use building.

733.10 There shall be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles, or driveways on the site.

Loading and refuse facilities would be provided within the garage to the rear of the restaurant spaces.

733.11 The Board may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property.

The Office of Planning makes no recommendations for conditions.

733.12 An applicant for special exception under this section may request the Board to modify the conditions enumerated in §§ 733.2 through 733.4; provided that the general purposes and intent of this section are complied with.

No requests were made to modify conditions.

i. Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?

The subject application would permit three fast food restaurants to locate within a mixed-use commercial/residential building in the C-2-A, a commercial zone, in conformance with the Section 733 of the Zoning Regulations.

ii. Would the proposal appear to tend to affect adversely, the use of neighboring property?

The subject property is a mixed use building occupying the entire square, with no adjacent properties. Each of the fast food restaurants would be located within a space specifically designed for commercial use.

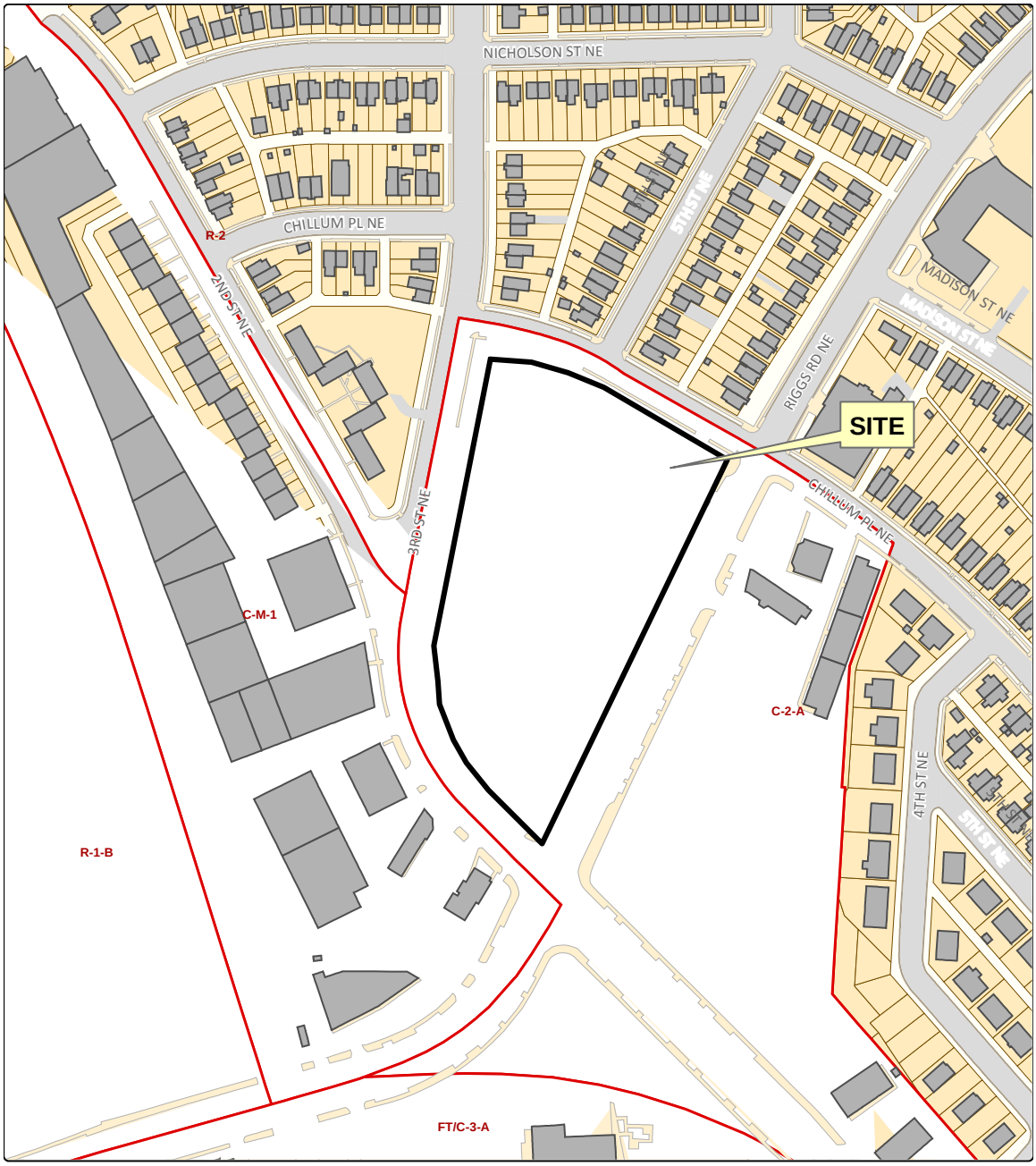
V. COMMENTS FROM OTHER DISTRICT AGENCIES

No comments were received from other District agencies.

VI. COMMUNITY COMMENTS

No comments were received from ANC 4B.

Attachment: Location Map



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17600-B of Fort Totten North, L.L.C., pursuant to 11 DCMR § 3104.1, for a special exception from the fast food establishment requirements pursuant to § 733, to permit three fast food establishments in the C-2-A District at premises 300-320 Riggs Road N.E. (Square 3748, Lot 52).

HEARING DATE: February 23, 2016
DECISION DATE: February 23, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.) In its Prehearing Statement, the Applicant noted that one of the originally proposed tenants decided not to open in the project, but indicated that the Applicant will be seeking a future fast food establishment tenant in the same retail space. (Exhibit 29.) Accordingly, no amendment to the originally requested relief was required.

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. The ANC submitted a report dated February 5, 2016 indicating that at its regularly scheduled and properly noticed public meeting of February 4, 2016, at which a quorum was in attendance, ANC 4B voted 7-0 to support the application with three conditions.[1] (Exhibit 30.)

The Office of Planning ("OP") submitted a report on February 8, 2016, recommending approval of the application. (Exhibit 27.) OP also testified in support of the application at the public hearing. The District Department of Transportation ("DDOT") submitted a report on February

[1] The Board did not adopt the proposed conditions as part of its order after receiving advice from counsel that the conditions were outside the scope of the Board's jurisdiction.

Board of Zoning Adjustment
District of Columbia
CASE NO.17600B
EXHIBIT NO.34

16, 2016 indicating that it had no objection to the Applicant's request for special exception relief. (Exhibit 31.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions from § 733, to permit three fast food establishments in the C-2-A District. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 733, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED.**

VOTE: 3-0-2 (Marnique Y. Heath, Marcie I. Cohen, and Frederick L. Hill to APPROVE; Jeffrey L. Hinkle not participating and one Board seat vacant.)

ATTESTED BY: _____

SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 25, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

October 22, 2026

BZA Memo:

Re: BZA No. 21503 - Application of Jemal's Gateway DC, LLC, and Emerald Wings, LLC

At its Virtual Public Hearing on October 21, 2026, the Board of Zoning Adjustment completed its hearing procedures and **scheduled** the application for decision at the **VIRTUAL PUBLIC MEETING** on **NOVEMBER 4, 2026**, through WebEx, beginning at 9:30 a.m. The Board **closed** the record **except** for the following requested items:

Due by Friday, October 23, 2026

From the Applicant: Proposed conditions

Due by Friday, October 30, 2026

From ANCs 4A and 4B: Optional response

Please serve your filings on the other party to the application. Documents can be filed directly into the case record through IZIS or, if you have technical difficulties, they can be filed by email to bzasubmissions@dc.gov. Submissions are allowed into IZIS until 24 hours before the Meeting (i.e., by Tuesday, November 3rd at 9:30 a.m.).

To listen to the Public Meeting, please see the Office of Zoning website for Webex access information: https://dcoz.dc.gov/service/watch-live-virtual-zcbza-hearingsmeetings.

If you have questions, please contact the Office of Zoning at 202-727-6311.

Sincerely,

KEARA MEHLERT
Secretary, Board of Zoning Adjustment
Office of Zoning

Outlook

Delivered: BZA 21503 ANC 4A Comments on Proposed Conditions

From postmaster@sullivanbarros.com <postmaster@sullivanbarros.com>
Date Mon 11/2/2026 11:24 PM
To Martin Sullivan <msullivan@sullivanbarros.com>

1 attachment (35 KB)
BZA 21503 ANC 4A Comments on Proposed Conditions;

You don't often get email from postmaster@sullivanbarros.com. Learn why this is important

Your message has been delivered to the following recipients:

Martin Sullivan (msullivan@sullivanbarros.com)

Subject: BZA 21503 ANC 4A Comments on Proposed Conditions