

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

**406 8th Street, SE (Square 925, Lot 827)
Emerald Wings LLC**

PRELIMINARY STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF

This statement is submitted by Emerald Wings LLC (the “Applicant”), as authorized by Jamal’s Niti LLC, the owner of the property located at 406 8th Street, SE (Lot 827 in Square 925) (the “Property”), in support of an application filed pursuant to Subtitle X § 901.2 and Subtitle U § 513.1(e) of the 2016 Zoning Regulations of the District of Columbia (Title 11, District of Columbia Municipal Regulations) (the “Zoning Regulations”) for:

- (1) special exception approval for a fast food restaurant use at the Property, which is in the MU-4/CHC zone; and
- (2) special exception relief from Subtitle U § 513.1(e)(2) relating to the refuse dumpster requirements

(the “Application”).

Attached hereto are letters from the Applicant and the owner of the Property authorizing Holland & Knight LLP to file and process the Application. The Applicant will provide the filing fee for the special exception relief requested (\$1,560.00).

Pursuant to Subtitle Y §300.15, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (hereinafter “BZA” or “Board”) no fewer than 30 days prior to the public hearing on the Application. In this statement, as well as at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board’s approval of the requested special exception relief. The following is a preliminary statement demonstrating how the Applicant satisfies the burden of proof.

I. BACKGROUND

A. Description of the Property and Surrounding Area

The Property consists of approximately 2,888 square feet of land area and is located on the east side of 8th Street, SE, south of Pennsylvania Avenue, SE, and within the Capitol Hill Historic District. The Property is improved with an attached, three-story brick building that has ground floor retail and office uses above. The Property is situated in an accessible, pedestrian-friendly location. Metrobus stops serving the C53, C55, D1X, and D10 routes and the Eastern Market Metrorail station (Orange, Silver, and Blue Line service) are located within a short walking distance.

With respect to the surrounding area, the Property is located amidst various commercial uses that line the 8th Street, SE corridor, in the area generally known as Barracks Row. The city's oldest commercial corridor, Barracks Row includes a variety of restaurants, retail shops, and service establishments. The nearest residential uses are located on the south side of the square, along E and 9th Streets, SE.

B. Zoning

As shown on the portion of the Zoning Map submitted with the Application, the Property is located within the MU-4/CHC zone, one of two Capitol Hill Commercial Mixed-Use zones. Generally, the Mixed Use (MU) zones are designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. *See* Subtitle G § 101.2. In addition to the purposes of the MU zones, the purposes of the MU-4/CHC zone include: (a) encourage the adaptive use and reuse of existing buildings, many of which are located in the Capitol Hill Historic District; and (b) concentrate non-residential uses in commercial zones in certain areas of Capitol Hill, thereby enhancing and protecting the residential character of the areas surrounding the commercial zones and relieving pressure to use properties zoned residential for commercial uses. *See* Subtitle G § 400.3.

The base zone development standards of the MU-4 zone apply to the MU-4/CHC zone, except as modified by Subtitle G, Chapter 4. *See* Subtitle G § 400.1. The use permissions of the MU-4/CHC zone fall under MU-Use Group E. *See* Subtitle U § 500.2. A fast food restaurant¹ is permitted as a special exception in the MU-4/CHC zone. *See* Subtitle U § 513.1(e).

A fast food restaurant requires 1.33 vehicle parking spaces per 1,000 square feet in excess of 3,000 square feet; one (1) short-term bicycle parking space for each 3,500 square feet; and at least one loading berth and adjacent loading platform for a food and alcohol service-related use consisting of 5,000-20,000 square feet of gross floor area ("GFA"). *See* Subtitle C §§ 701.5, 802.1, and 901.1.

II. PROPOSED FAST FOOD RESTAURANT – WINGSTOP

As shown on the plans and elevations submitted with the Application (the "Plans"), the Applicant proposes to reconfigure the existing tenant space on the first floor of the building, which consists of approximately 1,274 square feet of GFA, to accommodate a Wingstop fast food restaurant. No new additions or enlargements to the existing structure are proposed as part of the application. As shown on the floor plan the front of the restaurant will be outfitted as a customer waiting area. The floor plan also shows typical back of house spaces, including the kitchen, office, and storage space. Customer service will be solely third-party deliveries (e.g., UberEats, GrubHub, DoorDash) and remote order pick-ups. There will not be any accommodations for dining

¹ The Zoning Regulations define "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." *See* 11-B DCMR § 100.2.

at the establishment. The Wingstop will operate from 10:30am – 1:00am daily, with the option to go to 3:00am as needed. Deliveries will be made to the establishment two or three times a week, typically by Class 6 and 7 refrigerated multi-stop trucks, and trash will be picked up three to four times a week. Deliveries are typically made outside of business hours in a discreet manner via a lockbox key.

III. SPECIAL EXCEPTION RELIEF

A. Relief Requested

The Applicant is requesting the Board’s approval to allow the proposed Wingstop to operate at the Property, which is considered a fast food restaurant and thus permitted by special exception in the MU-4/CHC zone. To grant approval, the Board must find that the Application meets the criteria of Subtitle X § 901.2 and Subtitle U § 513.1(e). Also, the Board must find that relief from Subtitle U § 513.1(e)(2) relating to the refuse dumpster must find that the request meets the special exception criteria in Subtitle X § 901.2. An analysis of how the Application satisfies the applicable standards is provided below in Section III.C.

B. Burden of Proof

Pursuant to D.C. Official Code § 6-641.07(g)(2) and Subtitle § 901.2 of the Zoning Regulations, the Board is authorized to grant a request for special exception where it finds said request will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and will meet such special conditions as may be applicable. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met.

In reviewing an application for special exception relief, “[t]he Board’s discretion...is limited to a determination of whether the exception sought meets the requirements of the regulation.” See *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

C. Justification for Proposed Fast Food Restaurant in the MU-4/CHC Zone

The proposed Wingstop will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. As discussed above, the MU-4/CHC zone encourages the “adaptive use and reuse of existing buildings” and is intended to “concentrate non-residential uses in commercial zones in certain areas of Capitol Hill” to protect the residential character of the area. Subtitle G § 400.3. Given the location of the Property, which is situated among a variety of commercial uses along 8th Street, SE, the proposed use aligns with the purposes of the MU-4/CHC

zone. The proposed use will blend seamlessly with the surrounding area, which includes a variety of types of commercial uses including various restaurants, retail shops, and service establishments.

The requested special exception will also not tend to affect adversely the use of neighboring property. As discussed throughout this statement, the Property is primarily surrounded by commercial uses of similar intensity and character. As such, neighboring retail and services uses are already accustomed to the customer patterns and foot/vehicular traffic that can be expected to derive from the proposed Wingstop. The proposed use and its associated operations also will not encroach upon any residential areas. The nearest row homes are located on the south side of the square, along E and 9th Streets, SE, and an alley that bisects the square as well as other structures provide a sufficient buffer from the Property.

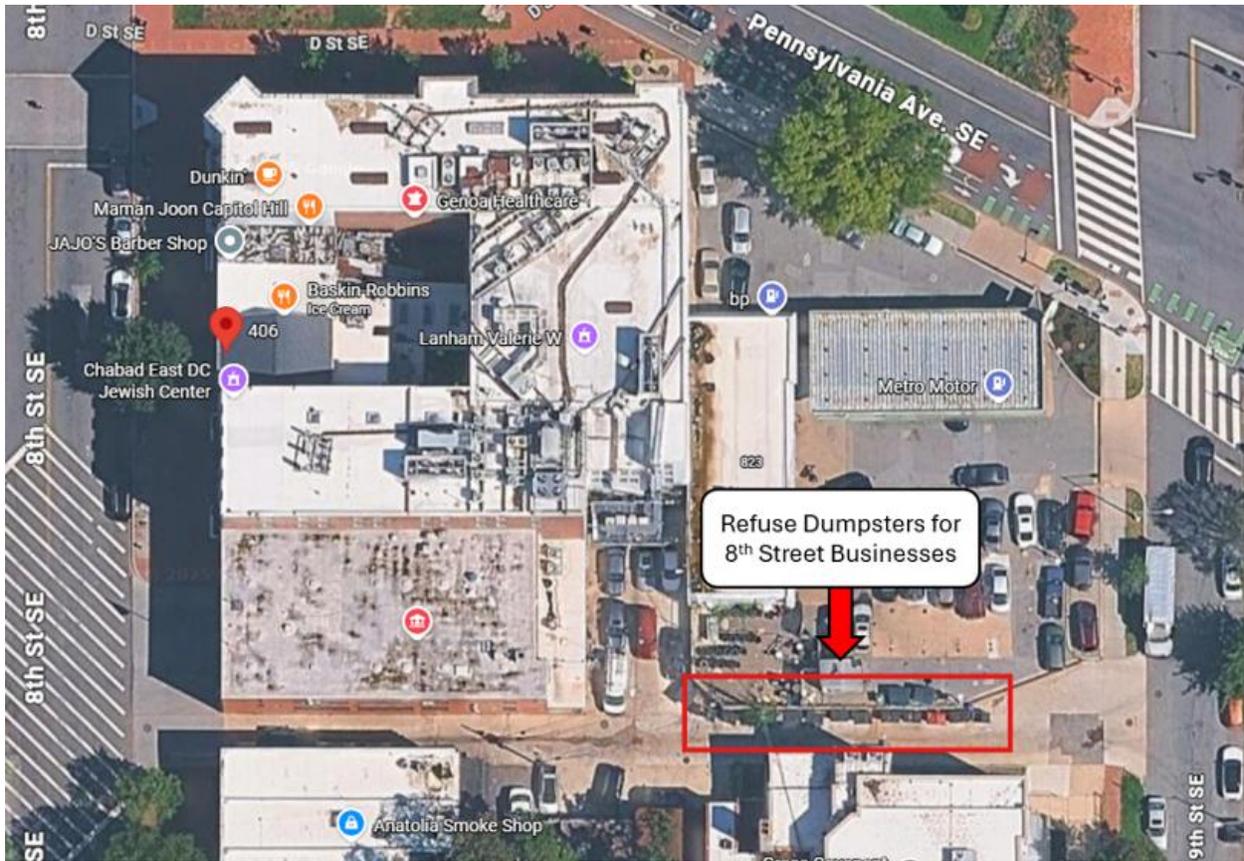
In addition to the general criteria of Subtitle X § 901.2, the proposed use will satisfy the special conditions for fast food establishments in the MU-4/CHC zone, which are enumerated under Subtitle U § 513.1(e):

- (1) *If the use is a single tenant in a detached building;*
 - (A) *No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a R, RF, or RA zone, unless separated therefrom by a street or alley; and*
 - (B) *If any lot line of the lot abuts an alley containing a zone district 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;*

This provision is not applicable to the Application because the existing building is an attached, three-story building with ground floor retail and office use above.

- (2) *Any refuse dumpster used by the establishment shall be housed in a three (3)-sided 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 or be within ten feet (10 ft.) of a R, RF, or RA zone;*

The Applicant seeks relief from this requirement because, historically, the refuse dumpsters for the Property and many of the other businesses on this section of 8th Street, SE have been located along the 15-foot wide public alley to the south of the Property between 8th and 9th Street (as shown on the image below). The dumpsters are away from residential uses and are serviced in the alley.



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

The proposed fast food restaurant does not include a drive-through component.

- (4) *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 proposed restaurant will not become objectionable to neighboring properties. The hours of operation for the proposed Wingstop will be comparable to neighboring establishments on 8th Street, SE like the other commercial uses seen along 8th Street, SE in the Barracks Row area.

- (5) *The use shall provide sufficient off-street parking, but not less than that required by Subtitle C, Chapter 7 to accommodate the needs of patrons and employees;*

Pursuant to the minimum parking requirements of Subtitle C § 701.5, the proposed use does not trigger the requirement to provide any vehicle parking spaces given that the restaurant will not exceed 3,000 square feet of GFA.

- (6) *The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and*

The proposed use will not create any dangerous or otherwise objectionable traffic conditions. The proposed fast food establishment does not include a drive-through component, so there is no potential for vehicular queuing to occur on-site or onto adjacent streets.

- (7) *The Board of Zoning Adjustment 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;*

As stated above, the proposed fast food establishment will not result in conditions that are objectionable to neighboring properties and will not create dangerous or otherwise objectionable conditions. As such, the Applicant believes the Board can grant the special exception request absent any additional conditions.

D. Justification for Relief from Refuse Dumpster Requirements

Subtitle U § 513.1(e)(2) requires that any refuse dumpster used by the establishment shall be housed in a three (3)-sided 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 or be within ten feet (10 ft.) of an R, RF, or RA zone.

The Applicant seeks relief from this provision because the refuse dumpster for the Property has been located in the 15-wide public alley in the middle of Square 925. Granting relief to maintain the existing trash service operations would not tend to affect adversely the use of the neighboring properties because, as evidenced from the image above, the neighboring properties also locate their refuse dumpsters in this location. While not in compliance with the current Zoning Regulations, continuing the existing service operations for the Property is in harmony with the purposes of the MU-4/CHC zone, which include encouraging the adaptive use and reuse of existing buildings (Subtitle G § 400.3). Also, having the refuse dumpster serviced in the alley instead of the street is consistent with DDOT policies.

IV. COMMUNITY OUTREACH

The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 6B and Single Member District (“SMD”) 6B-04. As required under Subtitle Y § 300.8(1), the Applicant has appraised ANC 6B of this Application for zoning relief, and has specifically communicated with Commissioner Brian Gorman, the SMD representative, and the ANC 6B Planning and Zoning (P&Z) Committee. The Applicant anticipates that it will have an opportunity to present the Application during the P&Z Committee’s scheduled meeting on January 8, 2026, and will continue to coordinate with ANC 6B as this Application progresses.