

Item #3 – Emails Regarding Other Corner Stores

The enclosed emails include a question from Applicant's Counsel to OZA on April 5th, along with one attachment to that email and an answer from OZA emailed on April 12th.

From: DC Department of Buildings <dob@dc.gov>
Sent: Friday, April 12, 2024 2:40 PM
To: Martin Sullivan <msullivan@sullivanbarros.com>
Cc: elisa.vitale@dc.gov; rohan.reid@dc.gov
Subject: Re: Compliance Plan Request for 'Call Your Mother' Prepared Food Shop

Mr. Sullivan,

We appreciate you providing the proposed compliance plan, including steps that Call Your Mother has taken and will take to address impacts to surrounding properties.

As there is no matter-of-right path for Call Your Mother under the U 254 provisions, please submit your BZA application no later than Friday, April 19, 2024.

OZA confirms that the use at 3500 O ST NW (former Saxby's, current Coffee Republic Georgetown) pre-dates the 2016 Zoning Regulations Corner Store use permissions for purposes of U 254.6(b).

Thank you, Elisa

Elisa Vitale, AICP | Deputy Zoning Administrator
The Department of Buildings
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Determination letter on Corner Store - regaredin

Martin Sullivan <msullivan@sullivanbarros.com>

Fri 4/5/2024 6:05 PM

To: elisa.vitale@dc.gov <elisa.vitale@dc.gov>

Cc: erik.cox@dc.gov <erik.cox@dc.gov>

 3 attachments (2 MB)

Det Let re 1500 Ogden St NW to Sullivan 4-20-17.pdf; Order - 20135 - 3428 O Street LLC.pdf; Roth v BZA Opinion.pdf;

Hi Elisa,

Here is the determination letter I mentioned yesterday. This is a little different situation, where we were asking to put a 2nd residential unit above an existing commercial use in RF. This was approved, despite the limit of 1 residential unit above a corner store, because the existing convenience store below was found to NOT be a corner store because it was never approved as a corner store. It was simply a nonconforming use. This is what we believe Saxby's to be.

The point being that a corner store is not just a store on a corner, but a use approved under, and meeting the requirements or with relief from the requirements, of the Corner Store Regs.

But I think there's an easier path. Everybody involved has already ruled on this and DOB does not need to revisit or reverse it now should not reverse it now.

In chronological order, OP first, then the Board found that we did not need relief from 254.6 (b) or (c) because the commercial uses cited by the Opponent did not meet the definition of "corner store". This is on page 24, Conclusion #30, of the BZA Order (attached).

"The Board therefore is not persuaded by the Party Opponent's argument that the Board cannot grant the Application because it also requires relief from Subtitle U § 254.6(c), which states that a corner store shall "not be located within five hundred feet (500 feet) of more than three (3) other lots with a corner store use defined as retail, general service, or arts, design, and creation uses." The Board credits OP's testimony that the properties cited by the Party Opponent as commercial uses within 500 feet of the Property did not meet the definition of a "corner store" in the Zoning Regulations. The Board notes that the Party Opponent did not provide any evidence that the commercial uses she cited are designated as corner stores based on a determination or certificate of occupancy issued by DCRA or any other District agency."

Then, DOB approved CYM's permit application and C of O application without requiring this relief either.

Then, the Court of Appeals said this, on this question: "If an issue arises about whether the obtained variance is sufficient, that issue can be decided by the Zoning Administrator at the time a building permit is requested." And that is what was done, as the ZA found that this location condition was met, along with all other location conditions other than the one for which we had variance relief. This decision was not appealed, and CYM has operated ever since.

For all these reasons, I think that revisiting this and reversing LeGrant's decision above, and the Board's opinion above, and OP's opinion, would be incorrect and inappropriate, and then confuse this muddled case even further.

I'm going to send our plan for going forward by Monday. That plan will include, as noted, a request for a special exception, and either a request for a variance or a waiver from the Board (215). On that question, you asked how a Board grants a waiver. A waiver is included in several parts of the Regs. It means that

the Board can waive a condition as part of their special exception consideration. It's not a variance or a special exception. It's just saying that Board can waive a special exception condition. There is no other element needed here. The ability to waive is provided right there in the Regs.

On the question of variance v. waiver, I will do a little more research on that point and send on Monday as well.

Thank you!

Regards,
Marty Sullivan
Sullivan & Barros, LLP
1155 15th St NW, Suite 1003
Washington, DC 20005
202-503-1704

Confidentiality Notice: The information in this e-mail (including attachments, if any) is considered confidential and is intended only for the recipient(s) listed above.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



April 20, 2017

Via Emailed PDF

Martin P. Sullivan
Sullivan & Barros, LLP
1990 M Street, NW, Suite 200
Washington, DC 20036
msullivan@sullivanbarros.com

Re: 1500 Ogden Street, NW; Square 2686, Lot 810; Determination Letter regarding BZA
Special Exception Relief, Permitted Lot Occupancy, and Permitted Use.

Dear Mr. Sullivan:

This letter confirms my determination of the zoning matters discussed at our meeting at January 31, 2017. The subject property (the "Property"), located at 1500 Ogden Street, NW (Square 2686, A&T Lot 1, Tax Lot 810), is improved with a building which currently consists of one (1) residential unit on the second story and a legally nonconforming retail use on the first floor (the "Building"). The Property is located in the RF-1 Zone district.

The Owner of the Property is seeking to renovate and add to the existing Building by constructing a third story addition to the existing Building and a three-story addition at the rear of the Building (the "Addition" or the "Project"). The additional space will be used solely for residential purposes and will allow the Applicant to provide an additional residential unit, resulting in one story of commercial use (less the addition in the rear, as the commercial use will not be expanded), and two stories of residential use.

The Owner has submitted a Board of Zoning Adjustment ("BZA") Application (No. 19424) for Special Exception relief pursuant to 11 DCMR § E-5201.1 in order to construct the Addition, as the maximum lot occupancy for the RF-1 Zone is sixty percent (60%), the minimum rear yard for the RF-1 Zone is twenty feet (20 ft.) and the Project proposes a lot occupancy of sixty-nine percent (69%) and thirteen feet (13 ft.).

You have asked for my confirmation of the following items:

- 1) That the Application was correctly filed as a Special Exception request pursuant to 11 DCMR § E-5201.1;
- 2) That the Building, as proposed, has a matter of right lot occupancy of sixty percent (60%); and
- 3) That a flat is permitted on the Property as a matter-of-right, in addition to the existing nonconforming use.

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April 20, 2017

- 4) That the existing grocery use is considered a legally nonconforming use, notwithstanding changes relating to corner stores pursuant to the 2016 Regulations.

1. The Application was correctly filed as a Special Exception Request pursuant to 11 DCMR § E-5201.1.

Subtitle 11 DCMR § E-5201.1 states that “the Board of Zoning Adjustment may approve as a special exception in the RF zones, relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9.” Relief from maximum lot occupancy, minimum rear yard, and the limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2, is permitted under this section. The Section continues, “Special exception relief under this section is applicable only to the following . . . an addition to a residential building . . .”.

The Project will increase the Property’s lot occupancy from forty-eight percent (48%) to sixty-nine percent (69%) and will provide a rear yard of only thirteen feet (13 ft.). Accordingly, the Owner filed a BZA Application—No. 19424 for Special Exception relief pursuant to 11 DCMR § E-5201.1, for relief from the maximum lot occupancy and minimum rear yard requirements, and the limitations on additions to nonconforming structures. The Property is currently configured with 1,089.5 square feet dedicated to the commercial market on the first floor and 1,089.5 square feet dedicated to the single dwelling unit on the second floor. I have determined that because the Project proposes no change in commercial square footage but will increase the residential square footage, the Building will have a greater amount of residential floor area than it does commercial floor area. For that reason, the Building qualifies as a residential building for purposes 11 DCMR § E-5201.1, and special exception relief is therefore the appropriate relief for an expansion of lot occupancy up to a lot occupancy of seventy percent (70%).

2. The Property has a matter-of-right lot occupancy of sixty percent (60%) and does not need relief from the limitations on enlargements or additions to nonconforming structures as set forth in 11 DCMR § C-202.2.

For similar reasons as discussed above, I have determined that the Property has a matter of right lot occupancy of sixty percent (60%). Originally, the Owner believed that the Property was limited to forty percent (40%) lot occupancy. Accordingly, the Owner requested relief under 11 DCMR § E-5201.1 for relief from limitations on additions to nonconforming structures, as the Building is currently at forty-eight percent (48%) lot occupancy. Because the proposed Project will result in more residential space than commercial space, the resulting Building is considered a residential building and is therefore afforded sixty percent (60%) lot occupancy. Accordingly, the Applicant is no longer required to request relief from 11 DCMR § C-202.2, as the existing Building is well under the permitted sixty percent (60%) lot occupancy in the RF-1 Zone.

3. A flat is permitted on the Property as a matter-of-right, despite the existing nonconforming use.

The RF-1 Zone permits up to two (2) residential units by right. There is an existing nonconforming market use on the first floor of the Building. This existing nonconforming use


April 20, 2017

does not impact the Owner's ability to provide two (2) residential units, as the Owners are not increasing the square footage of the nonconforming commercial use.

4. The enactment of the 2016 Regulations, by itself without further action, does not, in this case, convert the existing legally nonconforming use into a legal, conforming corner store use.

The 2016 Regulations now permit the use of a corner store in the RF-1 Zone, subject to certain specific conditions and restrictions as enumerated in 11 DCMR § U-254. The existing corner store at 1500 Ogden Street, NW, is currently a legally nonconforming use, pursuant to Certificate of Occupancy No. CO142120 [attached]. In order to officially convert the status of this nonconforming use to a "conforming use" under the 2016 Regulations for corner stores, the owner or operator would have to satisfy my office that the subject store has met all of the conditions in restrictions in §254, and receive a new certificate of occupancy evidencing DCRA's approval of the corner store use. Until such time as a corner store use does that, it will still be considered a legally nonconforming use, pursuant to 11 DCMR C-204.

Please feel free to contact me if you have any questions.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachment: COO # CO142120 – 1500 Ogden St NW – 6-11-07