

September 13, 2024

Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington DC 20001

Re: BZA Case 21157: Response to Applicant's Supplemental Submission

Dear Chairperson Hill and Members of the Board:

The Parties in Opposition respectfully submit the following responses to the Board's requests for 7 different further submissions from the Applicant. Given the amount of material, we will provide a summary here, with more detailed responses to each item submitted by the Applicant attached separately:

This application ("CYM") should be **denied** as this location is inappropriate for Call Your Mother ("CYM"). They are not a mom and pop shop, but a national business, and every other location is properly located in a commercial zone. CYM is operating a streetery without the needed seating, and instead using the neighborhood as its seating. This is unfair to other food shops and restaurants who follow the laws. Moreover, it sets a precedent for other restaurants to move into residential neighborhoods without proper seating (or access to bathrooms).

The current and proposed conditions are ineffective and unenforceable, as evidenced by hundreds of pictures and videos. As a newly proposed condition, CYM has already hired someone to help them try to keep patrons off of neighboring stoops and property, but it has not helped. We have submitted a video which shows this very employee telling the patrons to move where he cannot see them! The bagel patrons move deeper into the neighborhood or sit at the coffee shop across the street. When the spotlight is shining on them in order to approved this zoning relief, and they claim they are going to great unprecedented lengths (after over 4 years of inaction), their efforts have not affected the objectionable conditions neighbors continue to have,

This case is not about one person opposing, but a significant number of neighbors as shown by the attached map. Mr. Itteilag's¹ previous maps showing those with "sightlines" is irrelevant. Anyone within 200 feet can step outside and see the objectionable conditions. While the attached map does include a few neighbors just

¹ Mr. Itteilag, contrary to several statements during the July 24, 2024 BZA hearing (on the motion to remove him from party status given his conflict of interest with \$10 million in real estate sales on O Street alone) does not live directly across the street from CYM, but 3 houses down.

beyond 200 feet, these neighbors have been active since 2019 opposing this zoning relief. Please recognize that out of the 7 supporting residences within 200 feet that Mr. Itteilag shows, 5 of the 7 bought their houses since CYM opened, with constructive knowledge of CYM and the effects of having this business in a residential neighborhood. In fact, each and every one of these 5 houses were previously owned by neighbors in opposition.

Perhaps **more importantly, CYM continues to circumvent the law, as they have done from the very beginning with case #20135, They hide behind the self certification.** The BZA asked for two specific requests to help understand this claim: information about other corner stores, and a referral memorandum from the Zoning Administrator. CYM however now claims they do not need a referral memo. **This is another attempt to twist, circumvent and hide from the actual law as they are currently breaking the law by storing trash outside, as just one example.**

Every other corner store processed by the BZA and the ZA had to store all their trash inside (at all times) according to U 254.10 which states exactly that. CYM has NOT requested a use variance to allow them to store their two large cans which sit outside, every day while they are open. This is against the law. If the Applicant is allowed to continue to try and ignore this by hiding under the self certification, the opposing parties are confident that, once again, the DC Court of Appeals will read the plain language of this regulation and agree with the neighbors in opposition.

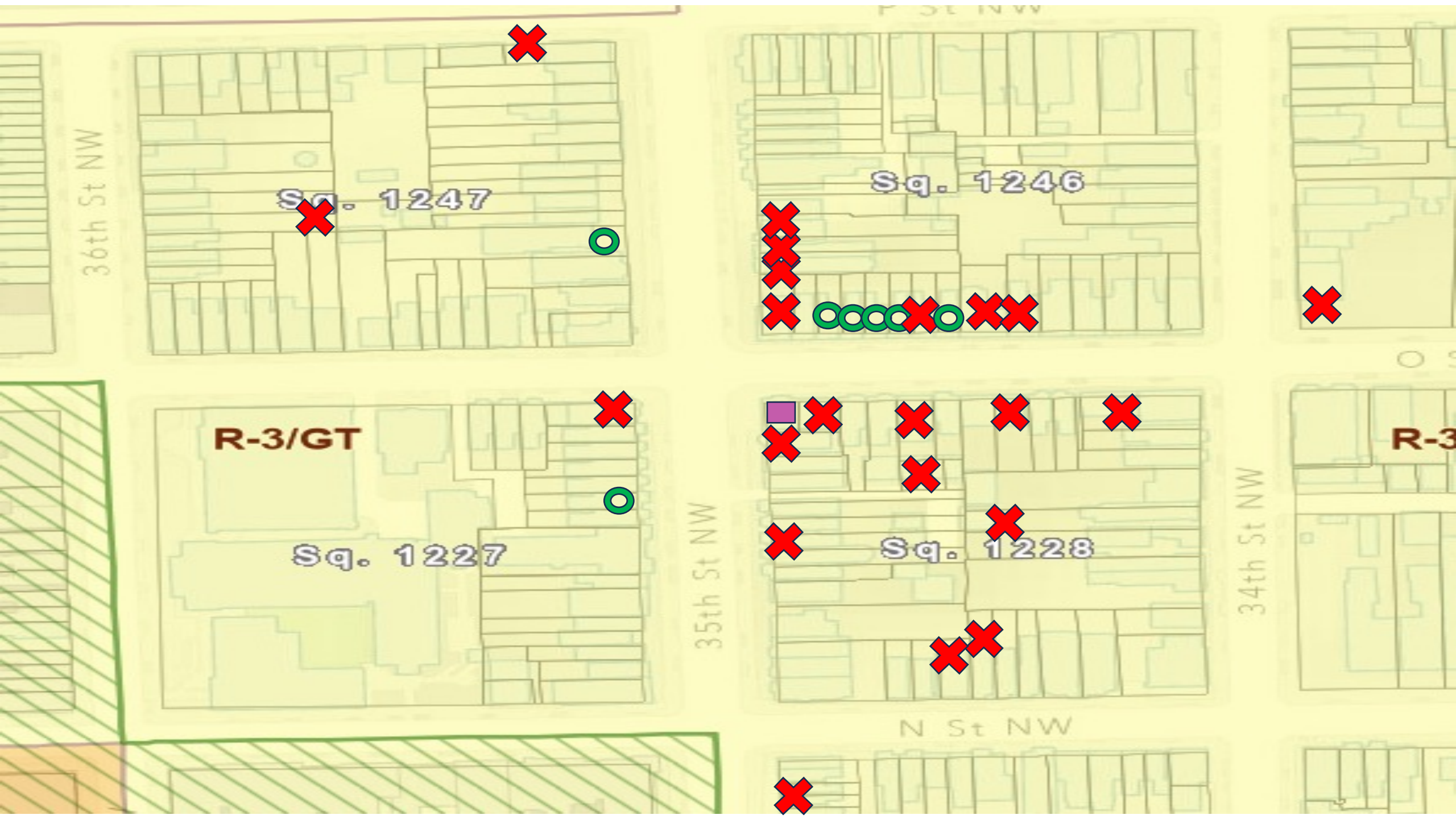
Furthermore, **CYM also requires an area variance** as they are located within 500 feet of other corner store use establishments. Our full response (see Item #3) details how they present yet another misleading explanation from a separate unrelated case from 2017 and then add that Saxby's/Coffee Republic was/is not classified as a "corner store." We have never claimed that Coffee Republic (along with the other commercial establishments on 35th) are official corner stores, but instead, take the law for its plain meaning that Coffee Republic is a corner store "use." Moreover, by putting food inspection reports in the record and pointing fingers at Coffee Republic, they once again show not only that they are not good neighbors, but moreover their intent to draw your attention away from them by trying to discredit those opposing them.

CYM's response to BZA's query about a potential time limit comes from the real estate broker who is marketing the building for sale. This broker claims the value will be decreased if there is a time limit. However, the BZA has no obligation to ensure the most profitable use of the building. The submission is irrelevant – of course CYM would oppose a time limit. However, the neighbors have already had to bear the brunt of the objectionable conditions for FIVE YEARS given the zoning relief originally awarded was

wrong and granted under the same issues we are still facing: unfulfilled promises to be a good neighbor, lack of ability to control or enforce their patrons and a continued twisting and warping of the zoning laws to allow them to try and stay in a location which is inappropriate for their business.

For the last item, the clarification of the lease shows that the landlord has a lease for the next 10 years. As the DC Court of Appeals opinion from case #20135 suggests, there are no practical difficulties for the owner of the building when they are holding a lease. Mr. Dana is under oath testifying that it would cost him \$100,000 to break the lease. If so, the owner of the building (and the actual applicant) must prove the practical difficulties for the area variance (or undue hardship if they asked for the use variance they require to continue to store their trash outside), and as the Court reasoned, the actual applicant has not proven any difficulties and would be richly compensated if the lease were to be broken.

The bottom line is that this business does not fit here. They do not have the space to store their trash. They have no ability to add seating, nor do they have ADA accessible bathrooms. The immediately adjacent neighbors continue to oppose the objectionable conditions, including fire safety issues. CYM, for the past five years, has continued to circumvent and twist the laws that apply to them by hiding behind self certification and misinterpreting the law. Nothing they have done or can do would control the crowds that create a nuisance in our neighborhood.



BZA Case No. 21157
3428 O Street, NW

CERTIFICATION OF SERVICE

I hereby certify that on September 13, 2024, an electronic copy of this party status request was served to the following:

Martin Sullivan
Sullivan & Barros LLP
Representative of the Applicant
msullivan@sullivanbarros.com

DC Office of Planning
Crystal Myers
crystal.myers@dc.gov
Joel Lawson
joel.lawson@dc.gov

Advisory Neighborhood Commission 2E
2E@anc.dc.gov

Gwendolyn Lohse, Chairperson
2E06@anc.dc.gov

Paul Maysak, SMD
2E03@anc.dc.gov

Chris Itteilag
chris.itteilag@gmail.com

Respectfully Submitted,

Melinda Roth