

Party in Opposition
BZA Case 21157

Response to Item #1: List of conditions from BZA Order No. 20135 and proposed conditions

The original conditions from BZA Order No 20135 and the newly proposed conditions do not change a thing in preventing objectionable conditions to the neighboring properties. **The newly proposed conditions are unenforceable** (see Exhibit 1 for photographic evidence of continued seating at neighboring properties despite the efforts of CYM and staff to ask their patrons otherwise). Even the ANC Commissioners have witnessed continued seating around the neighborhood, no matter what CYM tries to do - it cannot be controlled at all.

Moreover, CYM's operations are unfair to other prepared food shops who must apply to operate a streetery in DC and must follow specific regulations to have outdoor seating. If CYM is allowed to continue to operate like this, and use the neighborhood as their seating, any restaurant and prepared food shop in DC will be able to do the same and be able to skirt the regulations.

Please see below for the specific conditions proposed by CYM and then the responses.

Condition: The Applicant will maintain the posted signs asking patrons to consume their products off-site and not to sit on any neighboring stoops, and will provide flyers to customers with a similar message, and including a map of off-site public seating.

This condition is unenforceable and untenable. It is meaningless and changes nothing. **CYM patrons continue to sit across the street (both inside and outside) at Coffee Republic. CYM patrons continue to sit on neighboring stoops.** When asked to move, many move further into the neighborhood, so that CYM staff cannot see them (see video of CYM staff saying to **"move down the block where he cannot see them"**).

There are regulations about operating a streetery in DC. Since CYM is not in the Georgetown Business Improvement District("BID"), it has no automatic right to operate a streetery, especially since one of the conditions imposed in BZA Order No 20135 was no outdoor seating.

Condition: Trash will be accumulated during the day in trash cans on the 35th Street sidewalk and inside the Premises. All such trash, as well as any trash accumulated in the public trash can outside the Premises on 35th Street (subject to D.C. Law) will be collected by the trash service company seven (7) days per week, in the afternoon, after closing. In no event will trash ever be stored overnight, either inside or outside the Premises.

This condition is a clever way of hiding the fact that every single day that CYM has been open, they continue to break the law. The Corner Store Regulations (U 254.10) state:

254.10

All storage of materials and trash shall occur within the building area devoted to the corner store. There shall be no external storage of materials or trash.

CYM requires a use variance to stop breaking this law. Full stop. They store two large garbage cans outside. Previously, they had 4 large cans outside every day during opening hours. Now, they have moved the recycling cans inside but they simply do not have the space for the garbage cans. The Office of Planning admitted this fact. CYM uses the basement space for food prep and cannot store the trash cans there until they are closed. This is why their self certification circumvents the law and avoids the fact that trash cannot be stored outside. The law does not say trash can be stored outside while the store is open. **The law says no external storage of materials or trash, but CYM has shown a pattern of circumventing the law and this is yet another example.**

And Mr. Sullivan, who is an expert zoning lawyer, should be well aware of the law (certainly better than the opposing neighbors who are not zoning experts), and yet he hides behind self certification rather than ask for the full zoning relief. For this issue alone, the zoning relief requested must be denied.

This issue has absolutely nothing to do with the dirty trick video meant to discredit one of the Parties in Opposition. The public can is irrelevant. Other neighbors having overflowing trash cans and introducing that into the record is also irrelevant. This is about the two large CYM garbage cans stored outside every single day because CYM has no space to store them inside. It is against the law. If CYM or Chris Itteilag have issues with neighbors using the public can or having overflowing private trash, they can contact DPW to have these neighbors potentially fined but these issues are not related to granting CYM zoning relief, nor should 1 or 2 pictures over a five year period discredit the opposition. CYM is trying to distract attention away from the real issue regarding trash: their cans must be inside, all the time.

Condition: Stanchions will be used to keep any lines within the public space area adjacent to CYM on the 35th Street side of the building.

These stanchions are ineffective and have never worked; patrons wait and sit all over the neighborhood for their orders. The neighbors in opposition have hundreds of photos to prove this.

Condition: There shall be no alcohol sales.

While this may be a “new” condition, it was already agreed to under case #20135 and it will not change the track record for the past 5 years of already objectionable conditions on the neighboring properties.

Condition: On Saturdays, Sundays, and Holidays, Call Your Mother shall have an employee located outside the Building (for at least 45 minutes of every hour) during operating hours, for the purpose of picking up trash, keeping people off of any neighboring stoops, and otherwise monitoring operations from the outside to prevent or stop any potentially objectionable conditions.

On Weekdays, CYM shall do 15-minute sweeps, checking outside spaces for the purpose of picking up trash, keeping people off of any neighboring stoops, and otherwise monitoring operations from the outside to prevent or stop any potentially objectionable conditions. On Fridays, if there is any line outside the Building, an employee will step outside to monitor as needed.

As already discussed, this condition is meaningless. It cannot be enforced. Video and photographic evidence entered into the record show countless CYM patrons sitting up and down our streets, all over the neighborhood – since June and having employees responsible to manage this. The CYM employees are unable to “keep people off” stoops. In fact, they redirect them to their competitor across the street (the coffee shop) or further down the block where they cannot then see the patrons.

This condition also admits that CYM is operating a streetery without the proper seating or permit to do so. It recognizes that people need somewhere to eat their food. Furthermore, it proves that the current location is inappropriate for CYM’s business. It is unfair to those restaurants in Georgetown and anywhere else in DC that need to have their outdoor seating permitted and according to the law. CYM has, as the ANC SMD commissioner has stated in the record, “outsourced its seating to the neighborhood.”