

Party in Opposition
BZA Case 21157

Response to Item #6: Applicant response to a time limit on an Order

The BZA is under no obligation to ensure the owner of the building makes a profit, or even the highest profit on their use of the Subject Property. As stated in the Taylor case, the BZA “*simply has no authority to grant a variance in order to assure the petitioner a profit.*” See *Taylor v District of Columbia Bd. of Zoning Adjustment*. CYM could have opened when they received their permit to sell bagels, but chose not to do so. The neighbors should not have to bear the brunt of objectionable conditions because the certificate of occupancy for the retail use lapsed. That is the problem of the owner of the building and cannot and should not be used to argue their new need for zoning relief.

CYM also writes that the time limit is “not appropriate because the proposed conditions are strong, measurable, and enforceable, and the enforcement, or the threat of enforcement, is sufficient to ensure that CYM will comply with those conditions, thereby limiting and preventing objectionable conditions.”

Once again, this is categorically false. The proposed conditions are not enforceable (see all of the photographic evidence that since hiring someone to help manage patrons, nothing has changed). **None of the conditions prevent the objectionable conditions caused by CYM.**

The immediate neighbors still have a fire safety issue. The entire neighborhood is now a streeter for CYM.

Parking, noise and trash remain issues. In fact, CYM promised to pay for parking spots in 2019 for employees but never provided the requested proof, and for the past 5 years, employees have been parking illegally on a daily basis in rare Zone 2 spots, while patrons park illegally, blocking the fire hydrant on 35th or the bus turning onto O Street.

The neighbors, especially the most affected – the immediately adjacent ones – have already suffered for five years from this business inappropriately located in this residential neighborhood. If they are granted zoning relief again – contrary again to the law – the neighbors will seek the court’s review.