

Response to BZA's request for the Applicant on the Issues of Outdoor Seating and Trash

Let us be clear: The Applicant will say anything to get their zoning relief. They have consistently misrepresented the facts and circumvented the law.

Call Your Mother is a restaurant that does not belong in the residential zone, and Andrew Dana, the owner, is on the record as stating he cannot afford to be in the commercial zone yet he has opened up 16 other Call Your Mother (CYM) restaurants, many in high rent districts (Old Town Alexandria Virginia, downtown Denver, etc).

Everything that has happened over the past 5 years has been done to try and give CYM what they want. They claimed they had a matter of right to open. The neighbors said they did not and have suffered for five years from that mistake as the restaurant was given zoning relief against the law. When CYM operated with a (later rescinded) use variance, it did so with the proviso that it would not provide outside seating, specifically because of the negative impacts it would have on its surroundings. It would make no sense to now offer outside seating as a solution to the myriad problems generated by the current operation. Rather than correct a bad situation, it would merely compound it.

One 10 minute "surprise" visit by the Office of Planning has been given more weight than hundreds upon hundreds of photos and videos submitted by the opposition. Why did the Office of Planning not submit any photo evidence of what a perfect situation it was? The stanchions do not work, the line does not work, cars are parked illegally everywhere, the sidewalk is not passable when CYM is busy, customers eat everywhere on stoops and/or at the coffee shop and on tree boxes. Photo evidence has proven the objectionable conditions.

The Applicant's recent submission, supposed to be limited to the seating and trash issues, instead spends most of the space denying and trying to discredit this photographic evidence. We are not objecting to human beings! We are not objecting to families! We are not objecting to people enjoying themselves! We are objecting to a business not fitting in our residential neighborhood. They do not have the space for seating. They do not even have the space for their own trash cans and so they think it is OK to break the law from 7:30 am to 3pm or so and keep them outside, despite the law. In fact, see the attached photo exhibit which shows that trash is often not picked up until much later than what they testified, pictures show trash just tonight not yet picked up at 7 pm and then two weeks ago, CYM's trash was not picked up at almost midnight. Another example of their constant distortions of the truth.

They parse the word "storage." Their cans cannot be in public space, and they need a use variance to store them there. They bend the meaning of the word "reheating" and "cooking" (do you really think they are reheating cheese?). At every single step, they bend the law, or do not believe they have to follow it. Can anyone stand up to this bully?

Now, a new owner has bought the building (asking price \$1.8 million) WITHOUT the zoning relief. Why would anyone spend that much money unless they were certain the zoning relief would be received? The case law clearly states that the BZA does not have to insure the most profitable use of the building. As the DC Court of Appeals said, a landlord holding a lease does not have any practical difficulties. They simply do not meet the legal requirements for either the special exception or the variance.

We recognize that CYM is popular, and that there are now a few nearby homeowners who support them. But as Exhibit 197 shows, there are significantly more (almost 3 to 1 basis against) neighbors opposed, not including many more who were afraid to go on the record given the dirty tricks and shaming the Applicant has conducted. The two immediately adjacent properties object. These two immediately adjacent neighbors, who are most affected, along with others within 200 feet find objectionable conditions to the sitting on the stoops (which has continued and if anything, has been worse since people just move down the blocks now) and anywhere else in the neighborhood, but also to the lack of fire protection, noise and deliveries, parking (at least two CYM employees park daily without permits despite Mr. Dana's promise to have paid parking spaces rented for them, yet another lie), rodents, trash storage and late night pickups, crowds, blocked sidewalks and more. It is undeniable that the law states that a special exception cannot be granted if neighboring property finds objectionable conditions. The attached exhibit vividly depicts this irrefutable evidence of objectionable conditions.

If there were no objectionable issues, then CYM would not be proposing all those toothless and unenforceable conditions. Just the fact they have conditions helps prove there are legitimate objections that need to be factored into your decision on zoning relief.

In addition, both the seating and trash issues would set a precedent for not just Georgetown, but all of DC. Other commercial entities in a residential zone would ask for the same exact favoritism to erect (even temporary) seating and be able to skirt the law that says trash must be inside. Or that you can operate a restaurant without seating and without an ADA accessible bathroom.

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2024, an electronic copy of this submission, including exhibits, was served to the following:

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IMPORTANT LEGAL FINDING

Based on DC Code Rule 11-C204 regarding Nonconforming Use, the Applicant has no right to the special exception sought.

The language below is clear: Discontinuance of the nonconforming use for more than 3 years is prima facie evidence of no intention to resume the nonconforming use. The fact that CYM let the Certificate of Occupancy for retail use lapse after three years means that **“any subsequent use shall conform to the regulations of the zone in which the use is located.”**

In plain language: the nonconforming use (commercial use in a residential zone) lapsed and CANNOT be resumed. The fact that the case(s) dragged on is the problem of the landlord, who had one of the top zoning attorneys and should know this law.

Rule 11-C204 - NONCONFORMING USE

204.4

*Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for any period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. **Any subsequent use shall conform to the regulations of the zone in which the use is located.***

Although we believe the above law makes it clear that the landlord cannot be granted a special exception given the three year lapse, in the alternative, there is another part of the same Nonconforming Use Code says the BZA can approve a non conforming use to another one, subject to the special exception criteria in Subtitle X, Chapter 9 and the following conditions which include that the “external impacts of the proposed use to be no greater than the existing use.” It is clear from the evidence already submitted and testimony taken that the impact of the crowds and the number of people eating at CYM is significantly GREATER than the previous retail use.

In plain language, they cannot increase the use – and given the foot traffic, the cars, noise, people loitering and sitting in the neighborhood, the trash, and all the other objectionable conditions – the use has clearly increased and by law is not allowed.

204.9

If approved by the Board of Zoning Adjustment, a nonconforming use may be changed to another nonconforming use, subject to the general special exception criteria of Subtitle X, Chapter 9, and the following conditions:

(c) In the R and RF zones, the corner store provisions of the relevant subtitle shall apply;

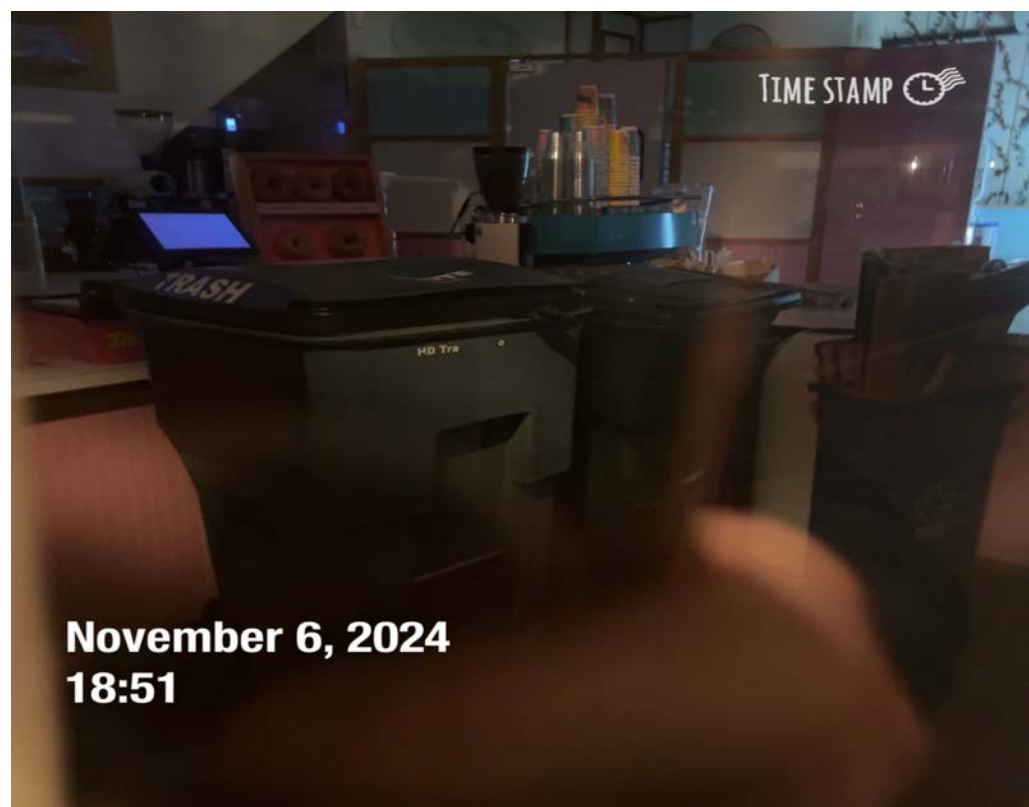
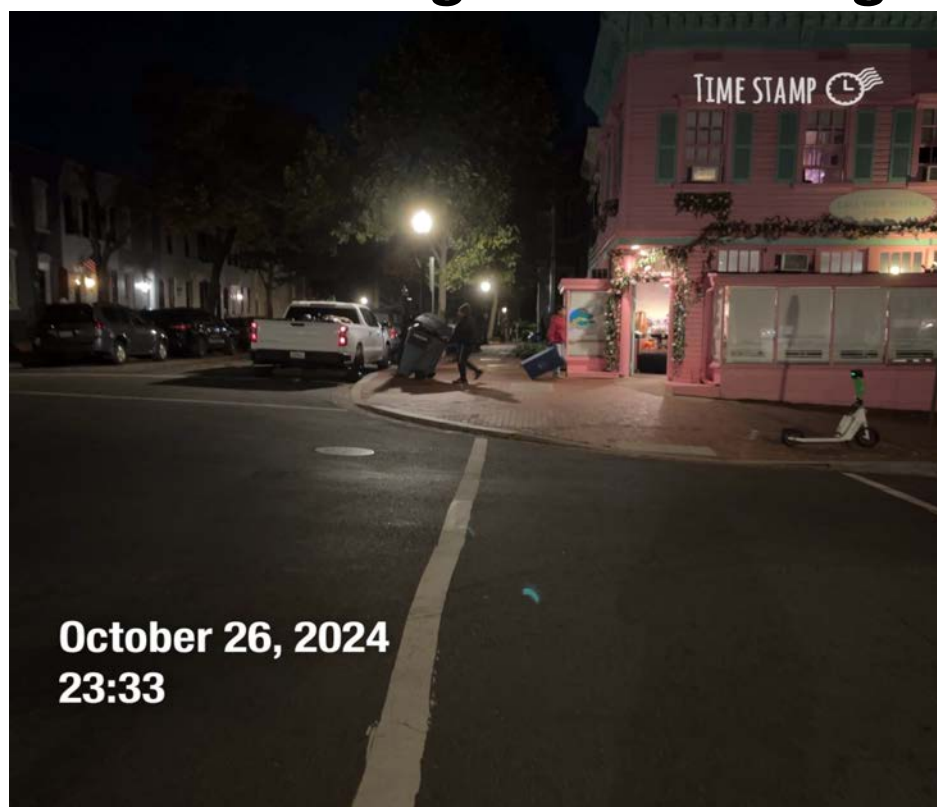
(d) The external impacts of the proposed use will be deemed to be no greater than the existing use;

**Sample Photographic Evidence of
Objectionable Conditions
SINCE the last BZA hearing only**



This shows the two large, industrial size trash cans that are stored outside every single day. They are adjacent to 1331 35th Street, Dr. Latimer Clarke's property, in clear violation of the law and how other corner stores must operate.

These photos show trash being picked up significantly later than the afternoon as CYM attested. This happens all the time, and is yet another example of CYM's distortions and mistruths in order to get their zoning relief.





This is a Monday morning. No one comes to shoo them away, and they are clearly on the Emad steps, blocking access.

Plus there are two small white trash cans in violation of the law regarding no external storage of trash.

CYM Patrons eating at 36th/O Street (a block away)
Never given a map, never told to not eat in the neighborhood
This is NOT their house, they are from MD.



Sample weekend with CY patrons sitting on the curb after being asked to move;
Group sitting on Emad steps constantly all weekend





More CYM patrons eating at the Emads, but also a great shot showing the small and easily ignored sign that asks patrons to not eat in the neighborhood

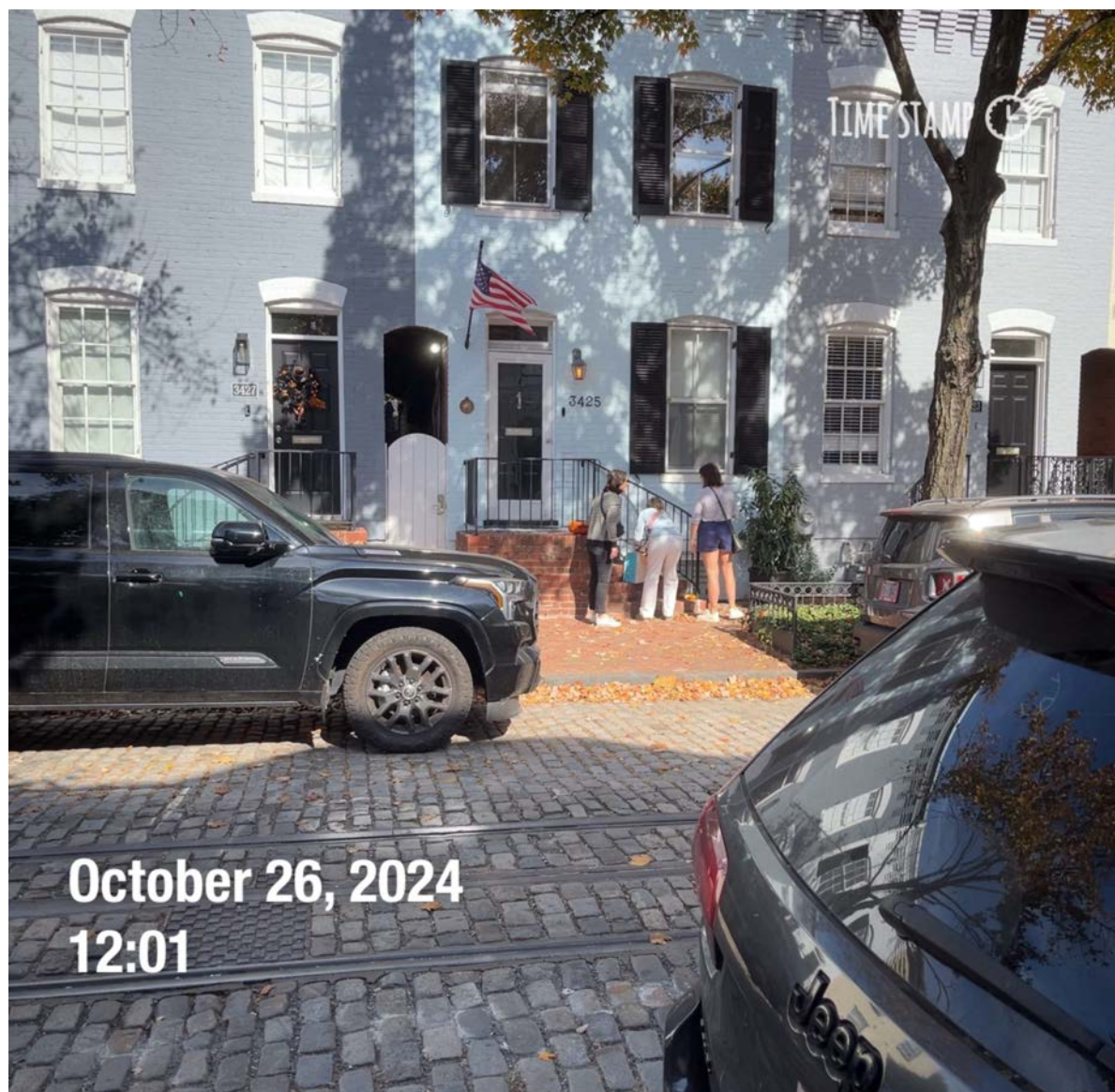


There is a sign right behind these CYM patrons that says no sitting or eating or loitering.

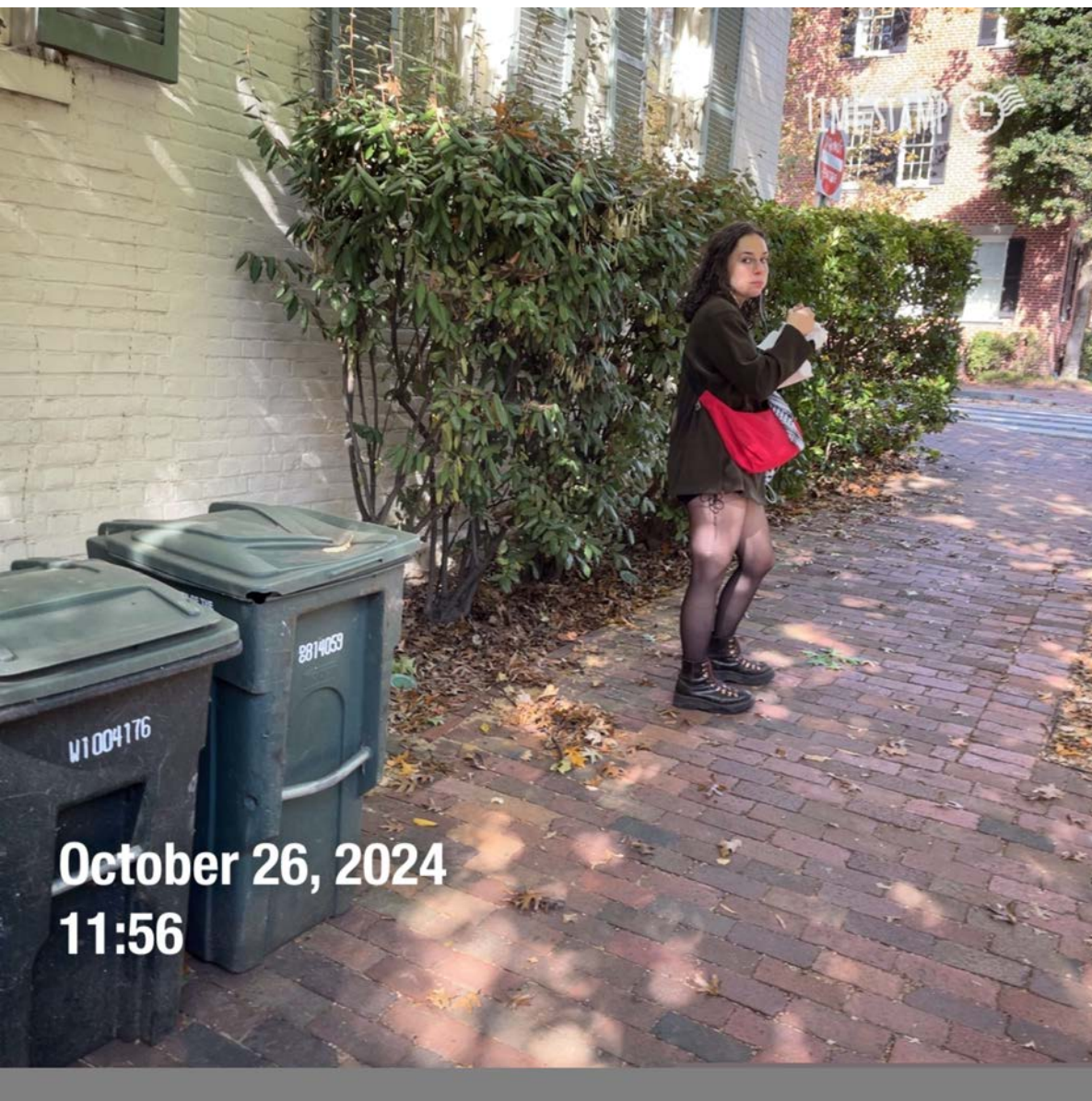
Also, the CYM “Shoo Police” never ask anyone sitting elsewhere to move (only if at the Emads, and only some of the time there)



Up 35th Street after being asked to move, the CYM patrons simply move $\frac{1}{2}$ a block away.



**CYM patrons
eating at 3425 O
Street (Chris
Itteilag's house).
They were not
given a map and
never told not to
sit in the
neighborhood.**



This woman walked to 34th/O (a block away from CYM) and sat at the building there and when the residents asked her to move she went around the corner



Another example of many of CYM patrons moving where CYM cannot see them and no enforcement occurs.



These CYM patrons plop down on the sidewalk across the street, and are never asked to move, because it is the sidewalk and not someone's stoop (despite a sign that says no eating, no sitting, no loitering behind them). This happens constantly!

These photos show that there is bench seating for over 10 patrons inside CYM yet there is no ADA accessible bathroom, which is against the law.

