

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 21157-A of 3428 O Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 254.14 and, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from Subtitle U § 254.6(g) to allow a corner store use on the first floor and basement of an existing building in the R-3/GT zone at 3428 O Street, N.W. (Square 1228, Lot 76).

HEARING DATES: June 12 and September 25, 2024
DECISION DATES: July 24, October 9, October 23, and November 13, 2024
ORDER ISSUANCE DATE: September 9, 2025
DECISION ON
RECONSIDERATION DATE: October 22, 2025

ORDER DISMISSING MOTION FOR
RECONSIDERATION

By order issued September 9, 2025, the Board granted a self-certified application was filed on behalf of 3428 O Street LLC, the owner of the property that was the subject of the application (collectively, with Dee Zee Group L.L.C., a tenant at the subject property operating as Call Your Mother, the “Applicant”).¹ The order approved, subject to 13 conditions, a special exception under Subtitle U § 254.14 and an area variance from Subtitle U § 254.6(g) to allow the use of the first floor and cellar of an existing building as a corner store operating as a prepared food shop in the R-3/GT less than 750 feet from a Mixed Use zone.

Parties in this proceeding are the Applicant, ANC 2E, Christopher Itteilag, a party in support of the application, and the parties in opposition to the application, Nabil and Caroline Emad, Julian Latimer Clarke, and Melinda Roth. On September 19, 2025, Melinda Roth filed a motion “for reconsideration and a rehearing” of the Board’s order issued September 9, 2025. (Exhibit 221.) The Applicant submitted a response in opposition to the motion on September 29, 2025. (Exhibit 223.)

FINDINGS OF FACT

¹ As of October 29, 2024, the owner of the subject property was 3426-3428 O Street NW, LLC. (Exhibit 217.)

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1. The property that is the subject of this application is a corner lot located at the southeast corner of the intersection of 35th and O Streets, N.W. with the address 3428 O Street, N.W. (Square 1228, Lot 76). The subject property is improved with a two-story wood frame building, with a basement, that occupies the lot.
2. The building at the subject property was constructed in the mid-1800s to house a grocery store use on the ground floor and basement level and residential use on the second floor. The second floor now contains one dwelling unit. In April 2019, the tenant Call Your Mother entered into a 10-year lease, with an option for another five years, with the owner of the subject property for the first floor and basement of the building. Pursuant to a certificate of occupancy (No. CO2000796) issued on July 7, 2020, Call Your Mother began operation of a corner store use on the first floor and basement of the existing building.² The Applicant indicated that the existing lease will expire in 2034 and proposed to continue operating the corner store use in a manner similar to its existing operation.
3. By order issued September 9, 2025, the Board granted the Applicant's self-certified application for a special exception under Subtitle U § 254.14 and an area variance from Subtitle U § 254.6(g) to allow the use of the first floor and cellar of the existing building as a corner store operating as a prepared food shop in the R-3/GT less than 750 feet from a Mixed Use zone. Approval was granted subject to 13 conditions intended to avoid the creation of any objectionable conditions attendant to the corner store use.
4. On September 19, 2025, a party in opposition to the application filed a motion for reconsideration and rehearing of the Board's decision. The motion alleged "a number of errors in the order," including in Findings of Fact 14, 21, 23, 24, 25, 28, and 32 and in Condition No. 4 regarding the storage of trash. The motion contended that "there is overwhelming new evidence that CYM is neither complying with the conditions set in the order nor with DC law." The motion sought relief as "either a denial of the zoning relief granted in Order 21157, or alternatively, a remand for the Applicant to request the required use variance to continue to store their trash externally." (Exhibit 221.)
5. On September 29, 2025, the Applicant submitted a response in opposition to the motion for reconsideration and rehearing. According to the Applicant, the motion did not present "new evidence, nor new argument" that was properly before the Board in a motion for reconsideration. (Exhibit 223.)

² The Board previously granted the Applicant's request for an area variance from Subtitle U § 254.6(g) to allow operation of a corner store use on the first floor and basement of the existing building at the subject property. *See* Application No. 20135 (3428 O Street LLC; June 16, 2020). The Board's order was later vacated by the District of Columbia Court of Appeals, which remanded the case to the Board. *See Roth v. District of Columbia Bd. of Zoning Adjustment*, 279 A.3d 840 (D.C. 2022). On remand, the Board dismissed the application on the ground that the proposed use required approval as a special exception under Subtitle U § 254.14, which the Applicant had not requested. *See* Application No. 20135-B (3428 O Street LLC; order on remand issued September 9, 2025).

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6. On October 3, 2025, Melinda Roth filed a petition for review of the Board's order in Application No. 21157 at the D.C. Court of Appeals. See, Case No. 25-AA-0907.³

CONCLUSIONS OF LAW AND OPINION

Pursuant to Subtitle Y § 700.2 of the Board's Rules of Practice and Procedure, any party may file a motion for reconsideration or rehearing of any decision of the Board granting an application, provided that the motion is filed within 10 days from the date of issuance of a final written order by the Board. A motion for reconsideration or rehearing is not a prerequisite to judicial review. (Subtitle Y § 700.13.) However, "any pending motion for reconsideration or rehearing shall be dismissed if ... a petition [to review an order granting an application] is filed [with the District of Columbia Court of Appeals]." (Subtitle Y § 700.4.)

The Board may waive Subtitle Y § 700.4 in accordance with Subtitle Y § 101.9 but does not find good cause to do so under the circumstances of this motion for reconsideration and rehearing. Such a waiver would prejudice the rights of the other parties in this proceeding and would potentially interfere with the consideration of the petition for review of the Board's order by the Court of Appeals.

Based on the findings of fact and conclusions of law, the Board concludes that it lacks jurisdiction to consider the motion submitted by Melinda Roth for the reconsideration and rehearing of the order issued September 9, 2025 to approve Application No. 21157. Accordingly, it is **ORDERED** that the motion for reconsideration and rehearing in Application No. 21157 is **DISMISSED**.

VOTE: 3-0-2 (Frederick L. Hill, Carl H. Blake, and Anthony J. Hood to DISMISS; Chrishaun S. Smith not present, not voting; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 9, 2026

³ Information about Case No. 25-AA-0907 is available on the Appellate E-Filing System of the District of Columbia Court of Appeals at <https://efile.dcappeals.gov/public/caseView.do?csIID=70464>.

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PURSUANT TO SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.