

November 22, 2019

via IZIS

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

Re: BZA Case No. 20135 – 3428 O Street, NW- Post-hearing Submission

Dear Members of the Board:

At the hearing on October 30, 2019, the Board requested that the Applicant provide the following additional information:

1. Information and To-Scale Diagram of Interior and Exterior Customer Line Management: The Board requested more information on the interior and exterior customer line management and configuration. Enclosed as Exhibit A are photos and a to-scale diagram demonstrating how the interior and exterior lines are proposed to wrap in and outside of the Building. As shown in the photos and diagram, approximately fifty (50) people can fit on the sidewalk outside wrapped into four lines and approximately eight-to-ten (8-10) people can wait in line inside of the Building. The enclosed photos and diagram also show how wide the sidewalk is directly outside of the Building at the corner of O Street, NW and 35th Street, NW. Measuring slightly over twenty feet (20 ft.), the sidewalk provides ample space for the line to loop around at least four (4) times at the side of the Building without interfering with other foot traffic.

2. Options for Door Configurations: The Board requested that the Applicant provide options for door configurations based on the customer line management plans. The Applicant has determined that flipping the current front door configuration is not necessary for providing optimal line management in the Building. The above diagrams and photographs illustrate that the optimal line placement works with the existing door configuration.

3. Statement from the Property Owner: Enclosed as Exhibit B is a statement on behalf of the property owner from Shane McCann, the manager of the property. As discussed in Mr. McCann's statement, the property owner would face undue hardship if Call Your Mother Deli or another prepared food shop were not allowed to open at 3428 O Street, NW as the property itself is currently outfitted for a flower shop or a prepared food shop use. To renovate the property to suit another use would be cost prohibitive and an unreasonable burden for the property owner. With Call Your Mother Deli as the tenant, the property owner is confident that they will be able to stay in business, ensuring that the property owner will not miss any rent payments over the next ten years. However, this may not be the case if Call Your Mother Deli is only permitted to open by Matter of Right. As mentioned in the enclosed Applicant's letter regarding the difference between the permitted and proposed use, "if customers are toasting and topping their

own bagel, we expect that to be much slower than if our cooks were allowed to make the sandwich. We think this could slow our throughput down from 12 sandwiches per minute to less than or about one sandwich per minute. This coupled with the fact that we do not expect a decrease in customer traffic means our wait time will increase by twelve times.” Longer wait times could be harmful to the success of Call Your Mother Deli and, as a result, harmful to the property owner.

4. Difference Between Permitted Retail Use and the Proposed Use as a Prepared Food Shop: Enclosed as Exhibit C is a letter from the owner of Call Your Mother Deli, Andrew Dana, describing how Call Your Mother Deli would operate differently if they were to follow the permitted retail use instead of the proposed use as a prepared food shop.

5. Information/Commentary on Previous BZA Cases from Nearby Properties: At the hearing, the Board requested that the Applicant address two previous BZA cases from nearby properties, BZA Case No. 10588 and BZA Case No. 12848. Speaking generally: as the Board often states, each case is decided on its own merits, and the influence of similar cases is limited by this principle. The neighborhood opponents have offered as “precedent” two cases, one decided over 40 years ago, and the other decided 49 years ago. While the value of a precedent is limited even when it is similar in time to a pending decision, that value is lessened significantly by the changes which occur over the course of 40 – 50 years.

Speaking specifically: (i) Order No. 10588 denied deli use for a building which ironically now contains a prepared food shop (Saxby’s, across the street from this property), the category which deli use is included in, and the use requested in this case. The Board, in 1970, determined that that particular proposed deli use was not desired. In our opinion, that decision offers no insight into the particular circumstances of the present case. (ii) Order No. 12848 was a denial of a change from a tailoring shop to a deli. The application was opposed by the immediate neighbor, supported by nobody, and unanimously opposed by the ANC, in contrast to the present case which is strongly supported by the ANC. The decision was made on a number of subjective factors; the type which the Board would tend to seek input from the ANC or party-status neighbors. The fact that the ANC approved this use speaks volumes as to the perception of the currently proposed use in relation to the denied deli use at 1300 35th Street.

The Applicant would submit that providing two cases, both from more than 40 years ago, does not offer meaningful insight to the Board for its evaluation of the approval criteria for the present case.

Sincerely,

Martin P Sullivan

Martin P. Sullivan, Esq.

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CERTIFICATE OF SERVICE

I certify that on November 22, 2019, I served a copy of this post-hearing submission to the following, via email.

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