

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:

I, along with the overwhelming majority of my neighbors, continue to oppose granting a variance to Call Your Mother (CYM). This letter is focused on the “narrower” scope for the second BZA Hearing, including refuting some of CYM’s own statements.

Please let CYM open as a matter of right! Mr. Dana suggests in his latest letter that, “We believe the concerns of the Georgetown residents are more likely in a Matter of Right situation verse a variance.” He suggests it is just a matter of which way the toasters face. Mr. Dana is wrong.

Let Call Your Mother open! How the line snakes, the time it takes to make bagels, the length of the line, whether they have music or Uber eats deliveries, 100 deliveries a day or only 8, none of this matters. What matters is that you uphold the very standards you have set. There is no absolute right to the variance; you have to prove the three prongs required.

First of all, CYM did not submit all of the requested materials from the Commission’s first hearing. This alone should postpone the hearing at a minimum until they comply with the requests. They disregarded the request to flip the door opening and provided no cost estimates. In addition, the measured width of the sidewalk is flat out wrong. There is no lease. They have a statement from the property manager, not the property owner. Moreover, this statement refers to POTENTIAL future hardship, not actual hardship. You have to buy his statement as the whole truth, and not his reluctance to even attempt to find any other tenant. The Department of Planning buys it, and even uses it to provide their support, without any independent verification or study. Moreover, the property manager mentions that because there is a walk-in cooler in the basement, the only possible use is a prepared food shop, stating it would be “cost prohibitive” to remove the cooler, without providing a single shred of evidence as to this potential cost. Nor do they provide any costs related to their claim that conversion of the location to any other use is cost prohibitive. How can anyone fairly use this as evidence that CYM is the only possible tenant when no other tenant was ever sought and no cost estimates have been provided? Moreover, we had photographic evidence of these very same features (except for the walk in cooler) in place at homes just steps away. CYM also dismisses the cases that the Commissioners asked for further details on because they are older, despite the fact these were both for variances to open delis on the exact same block and the variances were rightfully denied.

Finally, Mr. Dana does not explain the differences between opening as a matter of right versus opening with a variance, as requested by the Commission. Instead, he uses fuzzy math to explain that they could make a dozen sandwiches a minute if their 3 cooks¹ can prepare them, but only one sandwich per minute if the customer has to toast them. This totally ignores the fact that

¹ With 3 cooks, cashiers, an outside line supervisor, manager, coffee/drinks person, just how many employees will there now be?!

people would be purchasing prepared sandwiches already made from their other location! CYM cannot have it both ways. If they plan to have 8 deliveries a day of ready-made sandwiches, the lines might move even faster! This is just one example of the many contradictions (we will only be open until 3pm, we rented parking spots, rents elsewhere are too high, converting the building to any other use is too expensive, etc.) where their arguments are either false or unsupported.

Furthermore, CYM has turned this case into a popularity contest. Form letters from their massive rolodex of people sending in support letters who do not live near enough to the proposed location to matter. Lately, the letters pouring in despite the file supposedly being closed are from Georgetown residents, but not those within the requisite 200 feet and most affected. They have directly contacted officials. We are the homeowners, not the students who do not pay taxes and mostly move on after graduation (but have signed the CYM supporting petition on their campus). But we still have **95% of the relevant immediate neighborhood opposing the variance.**

CYM has promised to be a good neighbor; Mr. Dana states, “We want to be great neighbors and limit the impact on the neighborhood” in his most recent submission. Yet, they cannot control their patrons, the lack of parking nor the increase in litter, noise and rats. Since our last hearing, on a daily basis we have had 3-6 parking infractions every single day. Today, the day before the hearing, they were illegally taking 8 rare residential parking spots with their contractor’s vans and trucks. Some of them were thankfully ticketed, yet they still park all day, every day. We all pay to have resident parking permits, yet there are no spaces because of Mr., Dana’s good neighborly policies. We have photo evidence of all of this. On the day before Thanksgiving, CYM had an unpermitted crane on the street. If this is how they act as good neighbors now, just wait. They clearly cannot even control the people who work for them; how will they possibly control their customers?

Please let CYM open as a matter of right! They are trying to intimidate us by saying it will be even worse if they do not get their variance. We disagree wholeheartedly. They do not want to just sell bagels that the customers can toast. They claim they will have 8 deliveries a day and that making bagels this way will take even longer (neglecting the fact about ready-made sandwiches as noted above). The lines will not be as long once the novelty wears off and people realize they can buy a bagel at Saxbys’ across the street for half the price and actually have a place to sit and eat it. There will not be 8 deliveries a day of soggy sandwiches with a 25 minute drive between locations without traffic. This is not their business model, and they will move on to a proper location, like the one they already have secured in Capitol Hill in a properly zoned commercial area with foot traffic and seating. They themselves admit they should never have signed this lease. The music and the way the line may snake are simply not relevant issues to decide on this variance, and you all know that.

What is the issue is granting a variance in what is supposed to be a quiet residential neighborhood. A lot can happen during a 5 year “look back” period, as Chair Hill has already suggested. Who knows if CYM even stays open there, and yet the variance would pass on to someone who may not be as wildly supported but also wants to be close to the immediate market of 7000+ Georgetown students.

Chair Hill focused on the “X” value of the increase between opening as a matter of right as a retail store and then getting the variance and opening as a prepared food shop. The added nuisance should not be relevant to the decision making. We cannot stop them from opening as a matter of right. But we can apply the law about what it takes to get a variance. The regulations are very clear, that the burden of proof is on the applicant to show they meet the three prongs. They have not proven anything except that they have more money, contacts and popularity than we do. While they claim good intentions to be good neighbors, this alone does not meet the required test (even if it proves to be true).

There is no cost estimate of converting the space to a residential use because they know there are other houses just steps away that have these exact same features. They do not pass the first prong as there are no exceptional circumstances. There has been zero effort to rent the place to anyone else. We know for a fact that Mr. Dana approached several other stores on 35th street that were also not listed for rent. He wanted to be on this block because of the proximity to the University but had poor advice about the zoning regulations. The statement from the property manager is more of the same. They have not undergone any hardship when the property has never been vacant and never advertised for rent at all. Let them try to find another tenant before they say they cannot. Submitting the articles about the difficulties Georgetown is facing only proves the point that CYM misrepresented what the real rents are in the properly zoned locations.

Of course, the owner (not the same as the property manager, and the request at the previous hearing was for a statement from the owner) could always sell the building, as they have well over a half a million dollars in equity. Again, zero hardship. The only hardship is the money CYM has sunk into renovations, renovations that continued even earlier today because they know they are getting this variance. And their sunk costs, including the supposed \$100,000 it would cost to get out of the lease (despite the fact no one has seen the lease to know what the details are) is their hardship, and absolutely irrelevant to the granting of a variance. Zoning regulations are not meant to be skirted just to make a business more profitable.

Finally, they fail the third prong, the detriment to the neighborhood and the zoning plan. They claim strong support given their petition from students and the form letters from people scattered all over DC. The Department of Planning used Call Your Mother’s own submissions as gospel and did no independent verification or investigation. Neither did the Department of Transportation in their earlier approval. CYM also claims “strong support” from the ANC in their recent submission, yet the two most affected Commissioners voted against. No one else wanted to be unfriendly to a popular business given the economic woes in Georgetown. The CAG voted against the variance on purely legal grounds. They know the spirit of the zoning law and said that another prepared food shop, Saxby’s, is right across the street and within 500 feet and on those grounds alone, the variance should be denied.

Apply the law. This is not about which way their front door opens, how the line snakes, how long the line takes, or the \$1.3 million dollars and lawyers they have behind them. This is about applying the standards that have been established in order to receive such a variance and the clear facts that CYM does not meet them. We would be happy to have their retail shop for as long as it can afford to stay open as our neighbor. We would be unhappy to have their restaurant open with a lifetime variance to change forever the character of our street.

If the variance should be granted for some reason, many of us – longtime residents – would move. And in most cases, we would leave DC because we cannot trust the very institutions that were established to protect our rights as homeowners and taxpayers. Should the variance be granted, we would appeal such a decision and many of us will plan our exit from this neighborhood.

We had a meeting with the Mayor's office already and will meet the Mayor as soon as she is able to schedule us on this issue, likely next week. We will go to the press and the court of public opinion of how the law only matters for some people and is not applied equally.

So, please let them open as a matter of right! I personally will be in line to buy my bagels and support them as a retail establishment, and happy to have them. But, please, apply the law and do not grant the variance just because they want one.

Thank you for your consideration.

Melinda Roth