

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 21157 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

DECISION AND ORDER

This self-certified application was filed on April 19, 2024 on behalf of 3428 O Street LLC, the owner of the property that is 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 Following a public hearing, the Board voted to approve the application subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by memoranda dated May 1, 2024 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation, Advisory Neighborhood Commission (“ANC”) 2E, the ANC in which the property is located, Single Member District 2E03, the Office of Advisory Neighborhood Commissions, the Department of Buildings, the Historic Preservation Office, the U.S. Commission of Fine Arts, the Councilmember for Ward 2 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on May 10, 2024 (71 DCR 5399).

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 2E were automatically parties in this proceeding. The Board granted a request for party status in support of the application submitted by Christopher Itteilag, who owns and lives in a dwelling on the north side of O Street approximately 80 feet from subject property (Exhibits 36, 36A). The Board also granted requests for party status in opposition to the application from Nabil and Caroline Emad, the owners of the abutting property on O Street (Exhibit 32), Julian Latimer Clarke, the owner of the abutting property on 35th Street (Exhibit 34), and Melinda Roth, who owns and lives in a dwelling in the

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

BZA APPLICATION NO. 21157
PAGE NO. 2

3400 block of O Street N.W. to the east of the subject property (Exhibits 37, 37A). The Board denied an untimely request for party status in opposition to the application submitted by Sean Flynn (Exhibit 145).

Applicant's Case. The Applicant provided evidence and testimony, including from Andrew Dana and John Murray on behalf of Call Your Mother, in support of the application for zoning relief to allow a corner store use in a portion of an existing building at the subject property. The application sought a special exception under Subtitle U § 254.14 as well as an area variance from Subtitle U § 254.6(g) to allow use of the first floor and cellar of the building as a corner store operating as a prepared food shop less than 750 feet from a Mixed Use zone.

OP Report. By memorandum dated June 7, 2024, the Office of Planning recommended approval of the application subject to six conditions intended “to mitigate potential impacts on the surrounding area.” (Exhibit 107.)

ANC Report. By letter dated June 5, 2024, ANC 2E submitted a report indicating that, at a public meeting on June 3, 2024 with a quorum present, the ANC adopted a resolution declining to support the application. (Exhibit 104.) By letter dated September 5, 2024, ANC 2E indicated that, at a public meeting on September 3, 2024 with a quorum present, the ANC adopted a supplemental resolution indicating its support for “the applicant’s request for an Area Variance to operate a corner store” at the subject property. The supplemental resolution stated that ANC 2E “has a disagreement over the Special Exception” to allow a prepared food shop, citing a lack of zoning expertise or enforcement power. Instead, “ANC 2E look[ed] to the BZA to make a judgment regarding the Special Exception relief sought by this applicant” and “to impose conditions that address the concerns regarding adverse impacts to residential quality of life” if the Board approved the application. (Exhibit 184.) By letter dated November 6, 2024, ANC 2E submitted comments, adopted at a public meeting on November 4, 2024 with a quorum present, in response to Board questions about outdoor seating and trash storage at the Applicant’s corner store. (Exhibit 210.)

Party in support. The party in support of the application provided evidence and testimony, including from Zachary Travers, a professional exterminator and owner of a company that has provided pest-control services to residences near the subject property since 2020. (Exhibits 36A, 122.)

Parties in opposition. The parties in opposition to the application provided testimony and evidence in support of their arguments that approval of the application would cause objectionable impacts, as demonstrated by the Applicant’s past operation of a corner store use at the subject property. The parties in opposition objected to the presence of a commercial use in a residential neighborhood and alleged that the use caused objectionable conditions related to a lack of fire safety, noise, trash, rodents, traffic and parking, long lines of customers, and the prevalence of customers sitting on the steps or front patios of nearby residences while eating food purchased at the Applicant’s corner store.

Persons in support. The Board received letters and heard testimony in support of the application, including from residents living near the subject property. The persons in support commented favorably on the Applicant's current operation, asserting that the existing business did not create objectionable conditions, including with respect to noise, traffic, parking, deliveries, trash storage, rodents, or its customers.

Persons in opposition. The Board received letters and heard testimony from persons in opposition to the application, including from residents living near the subject property. The persons in opposition asserted that the Applicant's current operation was "contrary to the zoning laws" and operating as a "restaurant" that should be located in a nearby commercial corridor, not in a residential neighborhood. According to the persons in opposition, approval of the application would result in objectionable conditions relating to crowds, trash, rats, vehicle traffic and parking, and the number of customers, including those arriving from outside the neighborhood and those using nearby curbs and properties "as a picnic area."

FINDINGS OF FACT

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).
2. The subject property is rectangular, extending approximately 30.29 feet along 35th Street and 20.38 feet along O Street. The lot area is 617 square feet.
3. The subject property is improved with a two-story wood frame building that occupies the lot.
4. The building has a door at its northwest corner providing access to the first floor from both abutting streets. Another door, located on O Street in the northeast portion of the building, provides access to the second floor. A stair on the west side, south of a bay window on 35th Street, provides access to the basement.²
5. The first floor of the building has one-story bay projections, containing large display-type windows, on both street frontages. Both bay windows project three feet into the abutting public spaces. On the north (O Street), the bay window extends 11.8 feet, and on the west (35th Street), the bay window extends 19.25 feet.³

² The application referred to the lowest level of the building variously as both a basement and a cellar. The use of "basement" in this order does not reflect a determination by the Board with respect to whether the lowest level of the building constituted either a "basement" or a "cellar" as those terms are defined in the Zoning Regulations. *See* Subtitle B § 100.2.

³ The configuration of the existing building was depicted on a surveyor's plat submitted as Exhibit 2 in Application No. 20135.

6. 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.
7. Past uses of the commercial space, since the grocery store closed in 1970, include a health food store (for approximately one year) and then an antique shop, which was permitted by the Board's approval of a change of nonconforming use (retail grocery store; first floor) to "antique shop (retail sales)" with an apartment on the second floor. The new use was anticipated to operate six days per week with a staff of two employees. *See* Appeal No. 11248 (Roy Herbert Jones; January 17, 1973). More recently, the commercial space was operated as a retail flower shop.
8. The second floor of the existing building is devoted to residential use, containing one dwelling unit.
9. 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, 3428 O Street LLC, 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.⁴ 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.
10. The total floor area devoted to the corner store operation, including the basement, is approximately 1,188 square feet.
11. As described by the Applicant, the planned corner store operating as an eating and drinking establishment at the subject property will sell bagels, bagel sandwiches, and other to-go items including cookies, chips, pickles, sodas, bags of za'atar seasoning, jams, peanut butter, eggs, milk, and juices. All food items will be prepared off-site and, if warranted, assembled and reheated at the subject property using a toaster or microwave oven.
12. The Applicant indicated that the corner store operation will not utilize a grease trap, which the building does not currently have.

⁴ The Applicant previously applied for a use variance from Subtitle U § 201.1 (which listed the uses permitted as a matter of right) to allow "an Eating and Drinking Establishment – Prepared Food Shop (bagel shop)," described as "a prepared food shop specializing in bagels on the first floor and basement" of the existing building at the subject property. The application, which stated the immediate prior use of the non-residential space in the building as storage in the basement and "an Antique Store, Flower and Gift Shop, and Office" on the first floor, was later amended to request 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. The Board approved the application subject to conditions. *See* Application No. 20135 (3428 O Street LLC; June 16, 2020). However, 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).

13. The first floor of the building contains a service counter. The basement contains storage space, a walk-in cooler, and a bathroom. An internal stair providing access between the first floor and basement is located along the south wall of the building. (Exhibit 6.)
14. The corner store use will utilize storage in the basement as well as on storage racks. The Applicant did not propose any external storage of materials at the subject property.
15. The corner store use will operate with approximately 15 to 20 employees, full- or part-time. Approximately six to nine employees will work at the corner store per shift.
16. The planned hours of operation are 7:30 a.m. to 2:00 p.m. each day. Employees will generally arrive around 6:30 a.m. and leave by 3:00 p.m.
17. The Applicant will receive deliveries for the corner store operation around 6:00 a.m. each day. Other deliveries from vendors will be made between 7:00 a.m. and 2:00 p.m. each day. The Applicant anticipated at least one delivery every day and a maximum of three deliveries per day.
18. The Applicant will not utilize food-delivery options at the subject property, either directly or by any third party (such as DoorDash or Uber Eats).
19. The Applicant did not plan any modifications to the building façade, including its windows and door openings, or any alterations to the subject property to accommodate the corner store use, such as grading changes or the addition of patios.
20. The Applicant installed one sign on the exterior of the building on the 35th Street frontage. The sign is flush mounted and is not illuminated.
21. The planned corner store operation will not have a seating area inside the building, except for benches that can seat “maybe eight people.” (Transcript of September 25, 2024, p. 75.) The Applicant will not provide any outdoor seating on the sidewalks adjacent to the subject property.
22. The Applicant will utilize stanchions on the sidewalk along 35th Street adjacent to the subject property to create and manage lines of customers waiting to enter the corner store.
23. The Applicant posted signs inside the corner store asking customers not to sit at any nearby property or obstruct the path to their doors. The signs are visible from the exterior of the building on both 35th and O Streets as well as inside the door as customers leave the building.
24. The Applicant provides copies of a map to customers to illustrate where public seating is available in the nearby area. The map identified more than a dozen locations that offer

public seating within walking distance from the subject property in addition to the options available on the Georgetown University campus.

25. The Applicant will assign an employee to monitor conditions outside the corner store on Saturdays, Sundays, and holidays when the temperature is between 40 and 90 degrees and it is not raining. The employee will remain outside for at least 45 minutes every hour when the corner store is open for “the purpose of picking up trash, keeping people off of any neighboring stoops, and otherwise monitoring operations from the outside to prevent or stop any potentially objectionable conditions.” (Exhibit 135.)
26. On weekdays, the Applicant will assign an employee to do “15-minute sweeps, checking outside spaces for the purpose of picking up trash, keeping people off of any neighboring stoops, and otherwise monitoring operations from the outside to prevent or stop any potentially objectionable conditions.” On Fridays, an employee will be outside to monitor the line of customers when needed.
27. The Applicant will provide three “recycle trash bins” inside the corner store.
28. The Applicant described its process for handling trash, based on its current operation, as follows. Before 7:30 a.m., an employee of the corner store moves two empty trash cans from inside the building to the sidewalk along 35th Street. At 2:00 p.m., when the corner store closes, an employee retrieves the two cans placed outside in the morning and brings them inside the building. Each day, usually between 3:00 p.m. and 5:00 p.m., a trash service provider under contract with the Applicant collects the trash from the two cans inside the building, as well as from a public trash can outside the building, and returns the Applicant’s two trash cans inside the building. (Exhibit 209.)
29. The Applicant will implement a pest control plan that includes weekly visits from a professional pest elimination company.
30. The corner store operation will not sell alcohol for on- or off-site consumption.
31. The Applicant will not provide any amplified music or other sound outside the building.
32. The Applicant did not propose any vehicle or bicycle parking associated with the corner store use.
33. The Applicant did not propose any on-site storage or use of dry-cleaning chemicals.
34. The lots abutting the subject property to the south and east are improved with two-story buildings that are attached to the Applicant’s building and are devoted to residential use.
35. Properties along 35th and O Streets in the vicinity of the subject property are primarily devoted to residential use in two- or three-story attached buildings. The surrounding area

contains a variety of uses, including residential (ranging from principal dwellings to apartment houses) as well as commercial, institutional, and educational uses. The campus of Georgetown University is located two blocks to the west of the subject property.

36. The subject property is located in the Georgetown historic district and within the area subject to the jurisdiction of the Commission of Fine Arts.
37. The subject property and properties in adjacent squares are located in a Georgetown Residential House zone, R-3/GT.
38. An area to the south and west of the subject property is located in a Mixed Use (MU) zone, MU-3A, that extends along the west side of 36th Street between Prospect and N Streets. Properties located in the MU-3A zone along 36th Street are owned by Georgetown University.
39. The subject property is located one block north and one block east – approximately 550 feet – from the nearest property line of a lot in the MU-3 zone (*i.e.*, a property at the southwest corner of the intersection of 36th and N Streets, 1248 36th Street, N.W.).
40. The Residential House (R) zones are residential zones, designed to provide for stable, low-to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 101.1.) The provisions of the R zones are intended to (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low-to moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and lot width for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 101.2.)
41. The R-3 zone is intended to permit attached row houses on small lots. (Subtitle D § 101.9.)
42. In addition to the purposes of the R-3 zone, the purposes of the Georgetown Residential House zones, including R-3/GT, are to (a) protect the Georgetown National Historic Landmark District and its historic character, buildings, and open space in a manner consistent with the goals and mandates of the Historic Landmark and Historic District Protection Act of 1978, and the Old Georgetown Act, approved September 22, 1950 (64 Stat. 903; D.C. Official Code §§ 6-1201-1206); (b) protect the integrity of “contributing buildings,” as that term is defined by the Historic Landmark and Historic District Protection Act of 1978; (c) recognize the compatibility of any development with the purposes of the Old Georgetown Act and the Historic Landmark and Historic District Protection Act of 1978; (d) limit permitted ground coverage of new and expanded buildings

and other construction to encourage a general compatibility between the siting of new or expanded buildings and the existing neighborhood; and (e) retain the quiet residential character of these areas and control compatible nonresidential uses. (Subtitle D § 1100.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under Subtitle U § 254.14 to allow a corner store, operating as an eating and drinking establishment, 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). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, when, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific requirements. (*See* 11 DCMR Subtitle X § 901.2.)

A corner store may be permitted in any R-3 zone subject to the provisions of Subtitle U § 254. (Subtitle U § 254.1.) The provisions relevant to this application include Subtitle U § 254.14, which authorizes the Board to approve, as a special exception, a corner store use that would not meet the requirements for a matter-of-right corner store use stated in Subtitle U § 254.13. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 2E, the Board concludes that the application has satisfied the requirements for approval of the requested special exception.

The Board may grant a special exception to allow a corner store use provided that (1) the proposed use will be “located so that it is not likely to become objectionable to neighboring property because of noise, traffic, deliveries, or other objectionable conditions” (Subtitle U § 254.14(a)) and (2) the application demonstrated that “the proposed corner store use will not detract from the overall residential character of the area and will enhance the pedestrian experience...” (Subtitle U § 254.14(b)). For the reasons discussed below, the Board concludes that the Applicant’s planned corner store use, operated in conformance with the conditions of approval adopted in this order, is not likely to become objectionable to neighboring property or to detract from the overall residential character of the area and will enhance the pedestrian experience.

Potential objectionable conditions. The Applicant plans to operate the corner store on the first floor and the basement of an existing building, in a space that was constructed and has been consistently used for commercial purposes for around 175 years. The building is located on a corner lot, where pedestrian activity is facilitated by relatively wide sidewalks. The surrounding area is characterized predominantly by moderate-density residential use, especially in row houses, but also contains a variety of retail, service, educational, and institutional uses near the subject property.

The Applicant’s proposed corner store use is not likely to create objectionable conditions with respect to noise. The use will occur inside the building and will not generate significant noise.

The Applicant will not provide any music or amplified sound outside. The Board was not persuaded by the parties or persons in opposition that deliveries to the subject property would create an objectionable condition with respect to noise, including during early-morning hours. Their testimony was disputed by the Applicant as well as the party and persons in support of the application, whose comments included that the past operation of the corner store at the subject property had not created objectionable conditions related to noise, including with respect to deliveries, in part because of the presence of other noise in the vicinity, such as the noises associated with Metrobuses, delivery vehicles and waste management trucks unrelated to the corner store, and airplane and helicopter flights (see, e.g., Exhibits 122, 24, 27, 45, 54, 62).

The proposed corner store use is not likely to create objectionable conditions with respect to traffic, parking, or number of deliveries. Given the nature of the planned use and its location on a corner lot in an area with significant foot traffic, the Board agrees with the Applicant and the Office of Planning that approval of the requested special exception will not generate significant vehicle traffic or demand for parking because most customers will travel to the subject property on foot. The subject property is located in an area characterized by relatively narrow streets where the surrounding uses generate a demand for parking as well as vehicle traffic, including deliveries and trash collection. The Board credits the Applicant's testimony that the planned corner store use will not generate a significant number of deliveries to the subject property; the Applicant anticipated not more than three deliveries during an eight-hour period each day. The Applicant will not utilize food delivery services, which will avoid the generation of traffic, including vehicles, bicycles, and scooters, that could otherwise be associated with deliveries from the site. The Board notes that numerous letters in support of the application commented favorably on the location of the Applicant's corner store as a benefit for pedestrians in a walkable neighborhood (see, e.g., Exhibits 62, 73, 92, 96, 112, 117). The party in support of the application commented favorably on the nature of the parking demand created by the corner store use, testifying that the "'to go' nature" of the Applicant's existing operation allowed for "easy and quick turnaround for parking" on the block for customers who drive to the subject property and benefitted residents looking for a parking space near their home by keeping parking turnover more frequent on the block. (Exhibit 36A.)

The operation of the planned corner store as an eating and drinking establishment without on-site cooking will not generate objectionable conditions with respect to cooking odors. The Board concludes that operation of the Applicant's corner store use, in conformance with the conditions of approval adopted in this order, will not tend to create other objectionable conditions, including with respect to trash, rodents, or the number and behavior of customers. The Applicant and the party in support, as well as several of the persons in support of the application, disputed testimony by parties and persons in opposition with respect to the degree that objectionable conditions have occurred as a result of the Applicant's past or current corner store operation, whether the presence of persons in public space constitutes an objectionable condition, and the characterization of the Applicant's corner store as the source of objectionable conditions that occur periodically in the area, especially with respect to noise, traffic, parking, trash, and rodents. The Board concludes that the Applicant's planned corner store use, operated in conformance with the conditions of approval adopted in this order, is not likely to become objectionable to neighboring property. The

Applicant proposed to limit the hours of operation of the corner store, which will be open to customers less than seven hours each day. Especially considering the limited hours of operation, the lack of evening and late-night hours, and the absence of sales of alcohol, as well as the conditions of approval adopted in this order, the Board was not persuaded by the parties and persons in opposition that the corner store use will be objectionable to neighboring properties or that the conditions of approval adopted by the Board will be ineffective to avoid the creation of potential adverse impacts.

The Board concludes that approval of the application will not tend to create objectionable conditions with respect to trash or rodents. The Applicant will provide two trash cans in which to accumulate trash while the corner store is open and will arrange for trash collection each day so that no trash is stored overnight at the subject property, either inside or outside the building. The Applicant will also contract with a professional pest-control company to avoid objectionable conditions related to rodents. The Board was not persuaded by the parties and persons in opposition who testified that the past operation of the Applicant's corner store use generated objectionable conditions with respect to trash or rodents and that the use is likely to do so in the future. The record reflects that issues pertaining to trash and rodents in the area around the subject property predate the Applicant's corner store operation and the Board was not persuaded that the corner store created new issues, especially in light of the Applicant's implementation of daily trash collection and preventive measures by a professional pest-control firm.

The Board concludes that the conditions of approval adopted in this order will avoid the creation of any objectionable conditions pertaining to the number and behavior of customers of the corner store. In addition to the limited hours of operation, the Applicant will post signs asking customers not to consume their purchases in front of neighboring residences and will reinforce that message by providing maps of nearby public seating, which is prevalent in the area, and by assigning employees outside to monitor conditions, including the location of customers. The Applicant will also employ measures to manage any lines of customers without impeding pedestrian travel on the sidewalks. The Board was not persuaded by the parties in opposition with respect to the alleged degree or severity of objectionable conditions related to past operation of the corner store or that the conditions of approval will be unenforceable or otherwise insufficient to ensure the operation of the corner store without creating objectionable conditions for neighboring properties. The Office of Planning testified in support of the Applicant's proposed conditions, which OP found would provide an appropriate mitigation strategy sufficient to avoid objectionable conditions related to number or behavior of customers. (Exhibit 107.) The party and several persons in support of the application disputed the characterization of the past operation of the corner store alleged by the parties in opposition and instead testified that the Applicant's operation was beneficial and not the source of adverse impacts, including with respect to customers. (*See, e.g.* Exhibits 24, 27, 36A, 40, 43-45, 62, 69, 92, 105, 113, 143, 159, 160, 171.)

Overall residential character and pedestrian experience. The Zoning Regulations direct applicants for approval of a special exception under Subtitle U § 254.14 to provide a variety of information for the Board's consideration in making a determination as to whether a proposed corner store would detract from the overall residential character of the area and whether the use would enhance

the pedestrian experience. The information requested of applicants includes a demonstration of conformity to the provisions of Subtitle U §§ 254.5 through 254.12; a description of proposed uses, activities, goods sold, or services rendered, including the proposed size and location of the corner store use with the principal building, the proposed number of employees at any one time and in total, the proposed hours of operation, proposed signage, any proposed amplified music or other sound outside the building, any outdoor seating associated with the corner store use, proposed vehicle parking, including its location and screening as well as the number of spaces, the proposed location of all storage associated with the corner store use, and the proposed location of trash storage as well as the method and timing for its removal. (Subtitle U §§ 254.14(b)(1) through (11).) Applicants are also directed to address (a) any alterations to the property proposed to accommodate the planned corner store use, including changes in grade, tree removal, and the addition of retaining walls, patios, or pervious surfaces, (b) any modification to the building façade, including changes to window and door openings, and (c) the maximum sales area devoted to the sale of alcohol for off-site consumption. (Subtitle U §§ 254.14(c) through (e).)

The Board concludes that the record contains sufficient information to demonstrate that approval of the application will not detract from the overall residential character of the area around the subject property and will enhance the pedestrian experience. The subject property is located in an area that is predominantly residential but also contains a significant number and variety of nonresidential uses, including businesses located on the ground floors of mixed-use buildings along 35th Street in the block south of O Street. The subject property is relatively small and contains a two-story building that is similar in size and design to other buildings in the vicinity. The Applicant's corner store will operate in a relatively small space in an existing building designed for commercial and residential uses on separate floors, similar to nearby nonconforming uses contained in similar buildings within the Georgetown historic district. The Applicant will utilize the ground floor and basement of the existing building, a space that has never been used for residential purposes, while the second floor of the building will continue in residential use. The ground floor of the existing building does not appear residential in character, especially considering the corner entrance and the large windows facing the abutting streets that were designed to facilitate the initial use of the space as a grocery store. The Office of Planning concluded that the planned corner store use, operating consistent with the conditions of approval, satisfied the requirements of the requested special exception, including that the corner store use would not detract from the residential character of the area and would enhance the pedestrian experience. (Exhibit 107.) ANC 2E did not object to the use of the ground floor of the Applicant's building as a corner store. (Exhibits 104, 184.) The Board notes the testimony of the party in support as well as numerous letters from persons in support of the application asserting that the Applicant's existing corner store use has contributed to the identity, character, and vitality of its location and the surrounding residential neighborhood, in a manner distinct from the businesses located in nearby commercial corridors that are not neighborhood-oriented. (See, e.g., Exhibits 35, 36A, 45, 62, 69, 74, 80-82, 93, 98, 106, 112, 116, 117, 127, 136, 146, 159, 161, 170, 171.)

Based on the findings of fact, the Board concludes that the application demonstrated compliance with Subtitle U §§ 254.14(c), (d) and (e), given that the Applicant did not plan to make any alterations to the building façade or to the subject property to accommodate the corner store use,

or to offer sales of alcohol. The application also demonstrated a high degree of conformity to the provisions of Subtitle U §§ 254.5 through 254.12. The planned corner store use will not exceed 1,200 square feet in total area and will be limited to the ground floor and basement (Subtitle U § 254.5). The Applicant's corner store use will be located on a corner lot in a principal building where the only other use is one dwelling unit; accordingly, the Applicant's corner store will not be located on an interior or an alley lot, or on a lot or within a building containing more than one dwelling unit or another corner store (Subtitle U § 254.7). The Applicant's corner store use will not entail any on-site cooking of food or the installation of a grease trap (Subtitle U § 254.8) and will not offer sales of alcoholic beverages (Subtitle U § 254.9). The application demonstrated that the planned corner store use will not involve the external storage of materials or trash with the exception of trash accumulated when the corner store is open, which will be removed each day, with the emptied bins stored within the building overnight (Subtitle U § 254.10).⁵ Operation of the planned corner store as an eating and drinking establishment will not involve the use or storage of dry-cleaning chemicals at the subject property (Subtitle U § 254.11). The Applicant installed one external sign, which was flush mounted and not illuminated, on the exterior of the building containing the corner store (Subtitle U § 254.12).

With respect to Subtitle U § 254.6, the Board notes that the subject property is a corner lot located in the R-3/GT zone at the intersection of two generally perpendicular streets.⁶ The Applicant asserted, and the Office of Planning agreed, that the subject property is not located within 500 feet of any other corner stores. The parties in opposition countered that "[t]here are in fact 5 other lots with a 'corner store use' within 500 feet," citing Coffee Republic (formerly Saxbys Coffee) 82 feet from the subject property at 3500 O Street; a barber shop 27 feet away at 1329 35th Street; a research firm, formerly a hardware and shoe repair store, 212 feet away at 1305 35th Street; Georgetown Cleaners & Tailors, 230 feet away at 1303 35th Street; and Custom TV Solutions, 249 feet away at 1301 35th Street.⁷ (Exhibit 123B.) The Board was not persuaded by the "distinct

⁵ The parties in opposition contended that the Applicant's trash arrangement required approval as a use variance from Subtitle U § 254.10 ("All storage of materials and trash shall occur within the building area devoted to the corner store. There shall be no external storage of materials or trash."). According to the Applicant, "collecting the trash in two outside cans during operating hours does not constitute 'storage.'" (Exhibit 209.) For the reasons explained in this order, the Board did not agree that a variance was needed and instead concluded that the application met the requirements for approval of a special exception under Subtitle U § 254.14 because the planned corner store use, including its planned location of trash storage and the method and timing for removal, would not detract from the overall residential character of the area and will enhance the pedestrian experience given that the Applicant's trash arrangement will provide for a place to dispose of trash while the corner store is open as well as for the daily collection of the accumulated trash by a trash hauler, the storage of the emptied trash bins inside overnight, and no overnight storage of trash at the subject property, inside or outside the building. See Subtitle U § 254.14(b)(11).

⁶ Accordingly, Subtitle U §§ 254.6(d), (e), and (f) are not relevant to this application.

⁷ Public records reflect that 1301, 1303, and 1305 35th Street each occupies a mixed-use building located on a single Assessment and Taxation lot (Lot 805 in Square 1228). Prior zoning decisions for Lot 805 in Square 1228 include Application No. 14117 (Ray Sullivan and Mary Cairns; August 17, 1984) (Board granted special exception, subject to conditions, to allow a change in nonconforming uses on the first floor from "handweaving studio, retail sales handweaving equipment and products, also retail sale of small gifts and greeting cards" to "retail sales of fabrics, home furnishing and small gifts"; basement would be used for storage and second floor contained one dwelling unit), Application No. 14832 (Mary Cairns and Roy Sullivan; August 18, 1988) (Board granted special exception, subject to conditions, to allow a child development center for 20 children and four staff in the basement and first floor),

difference” alleged by the parties in opposition between “corner stores” and “corner store use” or that any of the establishments cited by the parties in opposition was in fact a “corner store” as defined in the Zoning Regulations. In the absence of evidence that any of the establishments mentioned by the parties in opposition operates as a “corner store” consistent with the zoning definition, the Board concludes that those establishments are likely operating as nonconforming uses that were legally established but became nonconforming under the 1958 Zoning Regulations, which did not contain a provision comparable to Subtitle U § 254.⁸ Accordingly, the Board concludes that the application demonstrated conformity with the provisions stated in Subtitle U §§ 254.6(b) and (c).⁹

With respect to Subtitle U § 254.6(g), the application indicated that the subject property is closer than 750 feet to the property line of a lot in a Mixed Use zone. The Board does not find that the Applicant’s planned corner store will detract from the overall residential character of the area due to the proximity of the subject property to the closest Mixed Use zone. The corner store will utilize a relatively small space, less than 700 square feet, on the ground floor of the existing building, which will maintain a residential use on the second floor. The distance between the subject property and the Mixed Use zone, as measured at the street level consistent with a pedestrian’s experience, and the mixed-use but generally residential character of the area as a whole are sufficient to avoid a perception that the corner store use at the subject property could be considered an extension of the non-residential uses permitted in the Mixed Use zone. The small size of the

Application No. 15497 (Kurt Hansen; May 13, 1991) (special exception, subject to conditions, to allow continued operation of a child development center of 22 children and four staff in the basement and first floor), and Application No. 16241 (Curt Hansen; June 12, 1997) (use variance, granted subject to conditions, allowing retail sale of flowers, plants, and floral supplies and the sale of antique greeting cards in the basement and first floor). Certificates of occupancy issued for Lot 805 authorized uses as “flower shop, garden plants, supplies and antiques retail sales. 8 pm closing time” (2010), “shoe repair shop” (2011), “tailoring and pressing, (basement & 1st floor)” (2012), and “tailor shop (with pickup services)” (2019). Certificates of occupancy for other addresses cited by the parties in opposition authorize use as a barber shop (at 1329 35th Street) and a prepared food shop (at 3500 O Street). In 1971, the Board denied a request for permission to change a nonconforming use – to add delicatessen to the existing nonconforming uses of patent medicine and soda fountain – at 3500 O Street, N.W. (Square 1227, Lot 87). See Appeal No. 10588 (Raymond Sullivan; January 19, 1971).

⁸ The 2016 Zoning Regulations allow a “corner store” – defined as “A limited commercial and service use in residential rowhouse zones, oriented to serve the immediate neighborhood” (Subtitle B § 100.2) – that is established in accordance with Subtitle U § 254. A nonconforming use is defined in the 2016 Zoning Regulations as “Any use of land or of a structure ... lawfully in existence at the time this title or any amendment to this title became effective that does not conform to the use provisions for the zone in which the use is located...” (Subtitle B § 100.2.)

⁹ Nonconforming uses are recognized in derogation of the general zoning scheme in order to protect the interests of property owners. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1345 (D.C. 1981) (citations omitted). A property containing a nonconforming use could be devoted to various activities, depending on the historic use of a given property, and would not necessarily be consistent with the requirements for a corner store stated in Subtitle U § 254. Accordingly, the Board did not agree with the parties in opposition that the reference in Subtitle U § 254.6 to “corner stores” – a defined term for zoning purposes – was intended to encompass nonconforming uses, which is also a defined term for zoning purposes but does not denote a specific use. Nonetheless, in deliberating on an application for a special exception to allow a corner store use, the Board could find the existence of nonconforming uses relevant to an assessment of whether a proposed corner store use would detract from the overall residential character of the area in accordance with Subtitle U § 254.14(b).

Applicant's corner store operation will not adversely affect properties or impair the non-residential uses located in the Mixed Use zone.

Subtitle X, Chapter 9. The Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is required for approval of a special exception under Subtitle X § 901.2. As discussed above, the Board determined that the planned corner store use, operated consistent with the conditions of approval adopted in this order, will be located so that it is not likely to become objectionable to neighboring property. For the same reasons, the Board concludes that approval of the requested special exception will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.

Approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. A corner store use operating as an eating and drinking establishment is permitted by special exception in accordance with the requirements of Subtitle U § 254.14; as discussed above, the Board determined that those requirements were met in this application. Approval of the requested special exception is consistent with the Residential House zones, which are designed to provide for stable residential areas suitable for family life and supporting uses, and with the purposes of the R zones to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development, to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, and improvements to the overall environment to the health of the city, and to allow for limited compatible non-residential uses. Approval of the requested special exception is also consistent with the purpose of the Georgetown Residential House zones to protect the Georgetown National Historic Landmark District and its historic character and buildings consistent with the Historic Landmark and Historic District Protection Act and the Old Georgetown Act, to protect the integrity of contributing buildings, and to retain the quiet residential character of these areas and control compatible nonresidential uses.

The Board did not agree with the Applicant or the parties in opposition that any variances were needed to allow the proposed corner store use, or with the view of ANC 2E that the Applicant requested an area variance to allow a corner store as well as a special exception to allow operation of the corner store as a prepared food shop. "It is the Board, not the Zoning Administrator, which has final administrative responsibility to interpret the zoning regulations." *Bannum, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 894 A.2d 423, 431 (D.C. 2006), quoting *Murray v. District of Columbia Bd. of Zoning Adjustment*, 572 A.2d 1055, 1058 (D.C. 1990) and citing D.C. Code § 6-641.07(g)(4)). See also, e.g., *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 318 A.2d 894, 896 (D.C. 1974) ("it is the Board's responsibility to interpret the zoning regulations adopted by the Zoning Commission"), citing *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 232 (D.C. 1973); *Keefe Co. v. District of Columbia Bd. of Zoning Adjustment*, 409 A.2d 624, 625, FN2 (D.C. 1979) (in affirming Zoning Administrator's determination, the Board did not engage in rule-making but was interpreting a phrase within its statutory authority; "In this jurisdiction the Zoning Commission promulgates the regulations, but

it is the responsibility of the BZA to interpret the regulations adopted by the Commission”); *Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1242-1243 (D.C. 1993) (Board is charged with interpreting the zoning regulations promulgated by the Zoning Commission).

A corner store use may be permitted as a matter of right in accordance with Subtitle U § 254.13, which necessitates *inter alia* a showing of *compliance with the requirements* of Subtitle U §§ 254.5 through 254.12. The Board is authorized under Subtitle U § 254.14 to approve, as a special exception, any proposed corner store use that cannot meet the requirements for a matter-of-right use. As required under Subtitle U §§ 254.14(a) and (b), approval of the special exception necessitates a showing that the proposed use (i) would not create any objectionable conditions, (ii) would not detract from the residential character of the area, and (iii) would enhance the pedestrian experience. In deliberating on the latter two criteria for approval of the special exception, the Board is directed to consider the elements listed in Subtitle U §§ 254.14(b)(1) through (11). These elements include a *demonstration of conformity* with Subtitle U §§ 254.5 through 254.12. (Subtitle U § 254.14(b)(1).)

Giving effect to the plain wording of Subtitle U §§ 254.13 and 254.14, the Board concludes that Subtitle U §§ 254.5 through 254.12 state requirements for a matter-of-right corner store use and benchmarks or guidelines for the Board’s consideration in making a determination as to whether a given proposed corner store use would satisfy the requirements for approval of a special exception; specifically, whether the proposed use would detract from the residential character of the area and whether it would enhance the pedestrian experience. To the extent that an applicant for a special exception under Subtitle U § 254.14 can demonstrate that the proposed corner store use would have a high degree of conformity with provisions in Subtitle U §§ 254.5 through 254.12, which are requirements only for a matter-of-right corner store use, the application is more likely to demonstrate a sufficient basis for the Board to conclude that the proposed use would not detract from the residential character of the area and would enhance the pedestrian experience, provided that the Board must also consider the other elements listed in Subtitle U §§ 254.14(b)(2) through (11) as well as Subtitle U §§ 254.14(c), (d), and (e).

To the extent that an application cannot demonstrate a high degree of conformity with Subtitle U §§ 254.5 through 254.12, an applicant may nonetheless address how a proposed corner store use would not detract from the residential character of the area and would enhance the pedestrian experience, and the Board may conclude that the application satisfies the requirements for approval of a special exception under Subtitle U § 254.14. The requirement of a “demonstration of conformity” for purposes of seeking a special exception does not state a need for “compliance with requirements” of the elements necessary for operation as a matter of right, and therefore no variance is required from anything listed in Subtitle U §§ 254.5 through 254.12 when an applicant cannot satisfy every element listed in those provisions. Instead, for purposes of deliberating on a special exception, the Board is directed to make a determination about whether, under the total circumstances presented in an application, a proposed corner store use would create any objectionable conditions, detract from the residential character of the area, and enhance the pedestrian experience.

Partly for that reason, the Board was not persuaded by the parties or persons in opposition that the application should be denied as incomplete on the ground that additional variances were needed to allow the proposed corner store use. Additionally, the Board has consistently held that arguments asserting the need for additional or different zoning relief are irrelevant to its consideration of an application for special exception relief,¹⁰ and that assertions of an erroneous certification are irrelevant to its review of applications.¹¹

Variance. The Applicant requested an area variance from Subtitle U § 254.6(g), which states that “A corner store shall only be located as follows: ... (g) In the R-3/GT zone, no nearer than seven hundred and fifty (750 ft.) to a property line of a lot in an MU or NMU zone.”¹² The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. See 11 DCMR Subtitle X § 1000.1.

The Applicant proposed a corner store use at a location that is not at least 750 feet from a property line of a lot in a Mixed Use zone located to the southwest of the subject property. According to the Applicant, the subject property and the closest property in the closest MU zone are approximately 550 feet apart when measured “as the crow flies” but at least 750 feet when measured at the ground level by a person traveling on O Street to 36th and N Streets. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the report of ANC 2E, the Board concludes that the application satisfied the burden of proof with respect to the requested variance.

¹⁰ See, e.g., Application No. 18263-B (Stephanie and John Lester; order on remand issued July 25, 2013).

¹¹ See, e.g., Application No. 16974 (Tudor Place Foundation; July 29, 2004) (the most that can be said in response to an argument that a self-certified application was incomplete is that the applicant would also need variance relief; that fact did not require the Board to deny a request for a special exception because the Board’s inquiry was limited to the narrow question of whether the applicant met its burden under the general and specific special exception criteria); accord Application No. 18250 (Raymundo B. Madrid; May 10, 2012); Application No. 17537 (Victor Tabb; July 27, 2007) (“The question of whether an applicant should be requesting variance relief is not germane to the question of whether a special exception should be granted”). These holdings are consistent with the Court of Appeals’ admonition that “[i]n evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought.” *Georgetown Residents Alliance v. District of Columbia Bd of Zoning Adjustment*, 802 A.2d 359, 363 (D.C., 2002).

¹² The Board considered the Applicant’s request but did not determine that the variance relief requested in the self-certified application was necessary to allow the proposed corner store use.

The Board concludes that the subject property is faced with an extraordinary or exceptional situation or condition as a result of a confluence of factors that uniquely affect the Applicant's lot. Generally, an owner's desire to utilize property for a certain use is not by itself sufficient to create an extraordinary or exceptional condition under the zoning regulations. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972). However, in this case, the Applicant's property is now zoned residential but contains a building that was designed and built to accommodate a commercial use on the ground floor. The subject property is a corner lot located in a Residential House zone and is improved with a building whose first floor and basement have never been used for residential purposes since the building was built almost two centuries ago. Unlike the majority of buildings in the vicinity, which are devoted to residential use, the portion of the Applicant's building at issue in this proceeding is not configured for residential purposes but contains features, such as a corner entrance and large display windows, intended to facilitate a commercial use. The construction of the building and the non-residential use of its ground floor and basement predate the mapping of both the current Georgetown Residential House zone and the nearby Mixed Use zone. The subject property is characterized by its extraordinary and exceptional situation or condition as a corner lot in a residential zone that contains a building that is uniquely suited for commercial use on the ground floor and is also in proximity to a subsequently mapped Mixed Use zone.

The Board concludes that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the owner of the subject property.¹³ The R-3/GT zone permits one dwelling unit per lot as a matter of right (see Subtitle U §§ 200.2, 201.1) and various other uses as accessory uses or by special exception (see Subtitle U §§ 205, 250, 251, 253, 254). The Board credits the Applicant's testimony that the strict application of the Zoning Regulations would result in practical difficulty due to the restrictions on permitted uses at the subject property. The building has been, since its construction almost two centuries ago, configured for commercial use in a manner that is not readily conducive to residential use, especially considering the large display windows that project into abutting public space, which are designed to provide views into the building from the abutting sidewalks, the location on a corner lot, and the lack of front setbacks to provide any distance between the building and pedestrians. The subject property is located in a historic district, where historic preservation requirements limit the Applicant's ability to alter the exterior of the building. The Applicant indicated that the expense of a potential conversion would also be complicated by the need to remove a large walk-in cooler that was installed for the prior

¹³ The Board has consistently held that, for purposes of variance relief, the practical difficulty or undue hardship created by the strict application of the zoning regulations must accrue to the owner of the subject property; any practical difficulty or undue hardship to a lessee, or other persons who merely use a property, is irrelevant under the Zoning Act. *See, e.g.,* Application No. 16643 (D.C. Public Schools/Michael Sussman/Georgetown Flea Market; March 29, 2001) (Board denied an application for a use variance that would have allowed use of a public school's parking lot by a weekly market selling antiques and collectibles where applicant testified about the benefits of the current site for the market and their inability to locate an alternative site but did not demonstrate that the owner of the parking lot would suffer undue hardship from the loss of lease revenues from the market or that any undue hardship would result to the owner of the property because of the strict application of the zoning regulations; Board cited *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1971) ("The statute expresses in clear and unambiguous language that the showing, whether of 'practical difficulties' or 'undue hardship,' must be upon the owner.")).

use as a retail flower shop and has been used more recently by the Applicant's corner store operation.

The second floor of the Applicant's building currently contains one dwelling unit and has historically been used for residential purposes. The non-residential use of the ground floor and basement became nonconforming when the subject property was zoned residential. While the lower floors of the Applicant's building were previously devoted to nonconforming non-residential uses, the Applicant cannot now resume any nonconforming use since the prior certificate of occupancy has expired and the most recent nonconforming use was discontinued more than three years ago. The right to a nonconforming use can be abandoned and the discontinuance of a nonconforming use, for any reason, for a period of more than three years is recognized as *prima facie* evidence of no intention to resume active operation as a nonconforming use. *Gorgone v. District of Columbia Bd. of Zoning Adjustment*, 973 A.2d 692, 694 (D.C. 2009), citing § 2005.1 of the 1958 Zoning Regulations; see also Subtitle C § 204.4. In Application No. 20135, the Applicant testified that the retail sales of bagels by the current tenant would be a permitted alternative to the proposed corner store operating as a prepared food shop. Since that alternative is no longer available, the relevance of the existing lease of the ground floor and basement of the Applicant's building to a showing of practical difficulty to the owner has diminished. In this proceeding, the tenant indicated an intent to end operation at the subject property absent approval of the planned corner store use. Without assessing either the owner's or the tenant's options under the terms of the lease, which is not in the record in this proceeding and is not related to the Board's zoning expertise, the Board finds no basis to conclude that the existence of the lease would ensure payment of the anticipated rent by the current tenant in the event the corner store use is not permitted. The strict application of the Zoning Regulations to the subject property would cause practical difficulty to the owner of the subject property by precluding a corner store use of the portion of the building that was not designed or ever used for residential purposes, and where a nonconforming use is no longer permitted. In this case, the Applicant requested a variance from a distance requirement which the Applicant asserted would preclude non-residential use of the subject property, not specific to the particular corner store use operating at the subject property. Contrast Application No. 20564 (Jemal's Prospects, LLC; February 29, 2024) and Application No. 20201 (DC Superpack LLC; April 1, 2025) (applications for area variances requested for operation of tenants' businesses were denied where applicant failed to show practical difficulty resulting from the strict application of the Zoning Regulations to the building owners).

For the reasons already discussed, the Board concludes that approval of the requested area variance will not cause substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The application proposed a use – a corner store operating as an eating and drinking establishment – that the Board determined met the requirements for approval as a special exception under Subtitle U § 254.14 and Subtitle X § 901.2.

Great weight. The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) For the reasons discussed above, the Board agrees

with OP's recommendation that, in this case, the application should be approved subject to conditions to mitigate potential adverse impacts on the surrounding area.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A)).) In this case, ANC 2E initially adopted a resolution declining to support the application. Citing "nearly four years of observations to judge whether [the Applicant's current operation] has in fact become objectionable," ANC 2E "conclude[d] that it has" because of "the large crowds that critically cannot be contained within the establishment." According to ANC 2E, the crowds "create a routine objectionable condition" but the Applicant's attempts to address "the detrimental impact" "have not and will not succeed without a fundamental shift in shop operations." The ANC stated "no objection to this property operating as a corner store in conformity with the relevant corner store regulations concerning use, which among other things prohibit the sale of prepared foods without the aforementioned special exception." (Exhibit 104.)

ANC 2E subsequently adopted a resolution that reiterated its support for the Applicant's request for an area variance to operate a corner store at the subject property and looked to the Board "to make a judgment" on the Applicant's request for a special exception. The ANC acknowledged recent changes by the Applicant, such as "a new practice to retain staff who stand on the sidewalk during peak periods to monitor the activity of its patrons and, as needed, request that the patrons not loiter or eat on residents' stoops or block public property while consuming food from their business" as well as "assigning staff to remove any trash in public areas." Recognizing "both the quality-of-life complaints and those who see the benefit of the business," ANC 2E urged the Board "to impose conditions that address the concerns regarding adverse impacts to residential quality of life" if the Board approved the requested special exception. (Exhibit 184.) In a third resolution, ANC 2E stated its view that "a removable table or even any 'sidewalk seating'" would not provide "a solution to address the current situation." (Exhibit 210.)

The Board concluded that ANC 2E did not state any issues or concerns regarding the use of the subject property as a corner store, including with respect to its proximity to a Mixed Use zone, but ANC 2E did not expressly support the Applicant's proposal to operate a corner store as an eating and drinking establishment. The Board fully considered the resolutions submitted by ANC 2E in this proceeding as well as the testimony of the ANC's authorized representatives. For the reasons discussed above, the Board determined that the application met the requirements for approval of zoning relief to allow a corner store operating as an eating and drinking establishment at the subject property, consistent with the conditions of approval adopted in this order. As the ANC noted, the Applicant proposed conditions of approval to address potential objectionable conditions related to the collection of discarded trash and to the activity of the patrons of the corner store. In addition to those conditions, the Board adopted a term of approval for the zoning relief permitting the corner store use as well as other conditions addressing potential adverse impacts to the residential quality of life.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof for a special exception under Subtitle U § 254.14 and for an area variance from Subtitle U § 254.6(g) to allow a corner store use, operating as an eating and drinking establishment, 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). Accordingly, it is **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS**:

1. The zoning relief approved in this order shall be valid for a period of 10 years, beginning on the date when the order became final.
2. The hours of operation of the corner store shall not exceed 7:30 a.m. to 2:00 p.m., Monday through Sunday.
3. The Applicant shall maintain posted signs asking patrons to consume their products off-site and not to sit on any neighboring stoops. The Applicant shall provide flyers to customers with a similar message, including a map of off-site public seating.
4. The Applicant shall manage trash storage and collection substantially as shown in Exhibit 209 and in Finding of Fact No. 28. Employees of the corner store may bring empty trash cans from inside the building to the 35th Street sidewalk before 7:30 a.m. each day and return them inside the building when the corner store closes at 2:00 p.m. The Applicant shall arrange for daily trash collection so that no trash is stored overnight at the subject property, either inside or outside the building, and shall ensure that the trash cans are stored inside the building overnight.
5. The Applicant shall implement pest control measures that include, at a minimum, weekly visits to the subject property by a company providing professional pest control services.
6. The Applicant shall utilize stanchions for the purpose of managing any lines of customers waiting to enter the corner store on the sidewalk on 35th Street abutting the subject property. The stanchions shall not impede pedestrian travel on the sidewalk.
7. The Applicant shall not utilize or permit music or other amplified sound outside the corner store.
8. The Applicant shall not provide outdoor seating on sidewalks adjacent to the corner store.
9. The Applicant shall not provide sales of alcohol for consumption on- or off-site at the corner store.
10. The Applicant shall not utilize or permit the use of food-delivery services at the subject property, either directly or by any third party such as DoorDash or Uber Eats.

11. On Saturdays, Sundays, and public holidays, the Applicant shall assign an employee to remain outside the building at the subject property, for at least 45 minutes of every hour during operating hours, for the purpose of picking up trash, keeping customers off of any neighboring stoops, and otherwise monitoring operations from the outside to prevent or stop any potential objectionable conditions associated with the operation of the corner store.
12. On weekdays, the Applicant shall assign an employee to do 15-minute sweeps outside the corner store for the purpose of picking up trash, keeping customers off of any neighboring stoops, and otherwise monitoring operation of the corner store from outside to prevent or stop any potential objectionable conditions associated with the operation of the corner store. On Fridays, the Applicant shall assign an employee outside to monitor any line of customers waiting outside the building, as necessary.
13. The Applicant shall assign an employee to serve as a community liaison for the purpose of receiving and addressing any questions or concerns about the operation of the corner store. The community liaison shall provide contact information to the public and attend a public meeting of ANC 2E at least quarterly.

VOTE: **4-1-0** (Frederick L. Hill, Lorna L. John, Carl H. Blake, and Anthony J. Hood voting to APPROVE; Chrishaun S. Smith opposed)

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: September 9, 2025

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.

PURSUANT TO SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE

APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.