

BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

Application of 1247 ESE, LLC (the Applicant)  
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1247 E Street, SE (the "Property")

PRELIMINARY STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF

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**I. Background**

The Property is located at 1247 E Street, SE (Square 1019, Lot 43). The lot is an L-shaped site located on the southwestern corner of the intersection of 13<sup>th</sup> and E Streets, S.E.; one block north of Pennsylvania Avenue. The Property is a single lot of record with 3,514 square feet of land area. It is improved with a large two-story plus basement brick row-house type structure (the "Building") built around 1898, according to available records. The Property, located in the R-4 zone district, is across the street from the Watkins Recreation Center. The area is generally characterized by row houses and other nonresidential uses such as Peter Bug's Academy on the northeast corner of the intersection, and the nearby Pennsylvania Avenue uses.

The Building was originally constructed as a mixed-use building, with a commercial space on the first floor, and residential units on the first and second floors. It has been used continuously in this manner since the original construction, with four (4) apartment units located on the rear portion of the first floor and all of the second floor, and nonresidential uses in the first floor commercial space (the "Commercial Space"). Attached as Exhibit A is a copy of the Zoning Map for the Property.

The most recent use of the Commercial Space was a non-profit office which operated by virtue of a use variance granted in BZA Order No. 15694 in 1992. Other previous uses in the Commercial Space included a private rugby club (the only matter-of right use), a confectionary store, and a grocery market. (Historical C of O copies are attached as Exhibit B.) The use of the Commercial Space for a private club, a permitted use in the R-4 zone, precluded the continuation of the previous nonconforming uses either as a continuation of the same nonconforming use or as a special exception pursuant to § 2003.1. This is why the nonprofit office use required a use variance and likewise why this proposal, and any other commercial use of the Commercial Space, requires use variance relief rather than § 2003.1 relief.

This Preliminary Statement provides the basic rationale for approval of the use variance request, and this Application provides general details about the proposed use. Both will be appropriately supplemented with more detailed information in the following months. The Applicant is proposing to use the Commercial Space for a neighborhood coffee shop and café. While the proposed use is likely to fall into the category of a restaurant for zoning purposes,

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EXHIBIT NO. 5

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rather than a prepared food shop, it is intended to be less intensive than a full-scale restaurant. Attached as Exhibit C is a proposed general floor plan for the proposed use. Attached as Exhibit D are photographs of the Property and the surrounding area.

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## **II. Burden of Proof**

In order to receive use variance relief, the applicant must satisfy a three-part test which requires: (1) a demonstration that the property is affected by some exceptional situation or condition; (2) without the requested variance relief, the strict application of the Zoning Regulations would result in undue hardship upon the property owner; and (3) the requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan.

### **A. The Property Is Affected by an Exceptional Situation or Condition**

As noted above, the Building on the Property was originally built around 1898 as a mixed-use building with apartment units and the first floor commercial space. The Property is an L-shaped property. The Building is a rectangular row-type structure, and at the rear of the property to the west of the Building is a large courtyard, which is accessed by vehicles through a pass-through under the Building, from 13<sup>th</sup> Street. This courtyard can fit 3 – 4 cars, and will be used only by the residential tenants. The courtyard will not be used in any material way by the eventual operators of the Commercial Space.

The exceptional conditions affecting this Property include the fact that the Building was originally designed and built, and has been continuously operated as, mixed use, with the first floor Commercial Space having never been used for residential purposes. This Commercial Space is improved with large show windows and has an extraordinarily high ceiling height. Because the Property is subject to restrictions of the Capitol Hill Historic District, the front Commercial Space windows and other facets of the façade cannot be altered. Also, in contrast to surrounding residential row structures, the first floor of the Building was built at street grade, in order to provide a commercial-retail-grade height to the first floor ceiling, easy access to shoppers, eye level display to pedestrians and also because natural light was not required in the basement which was designed for and used as storage.

The Property also has an exceptional zoning history. The Building, including the Commercial Space and the apartment units, was originally grandfathered in 1958 as a legally nonconforming use. Because the use in the Commercial Space at one point was changed to a permitted use - a private club – the Building forfeited its legally nonconforming use status. As

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<sup>1</sup> The provision of certain cooking instruments will prevent the Commercial Space from being labeled as a “prepared food shop” under the Zoning Regulations.

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such, any commercial use similar to the uses that preceded the private club use, were no longer permitted and did not have the ability to apply for special exception relief for a nonconforming use under § 2003.1. Therefore, just as in the case of the previous office use, any commercial use in this Commercial Space will required use variance relief.

**B. Strict Application of the Zoning Regulations Would Result in Undue Hardship to the Property Owner**

Due to the exceptional conditions noted above, it would be an undue hardship to the Property owner to convert the Commercial Space to a permitted use in the R-4 zone. Because the historic property was designed and built with this Commercial Space, with large show windows and glass areas throughout, multiple egresses, it would be an undue hardship to the Applicant to complete such a conversion to residential use and the result may not be very desirable for the following reasons:

1. Privacy concerns with large glass areas at street level on an exposed corner;
2. Large basement area has limited residential value with virtually no source of natural light

**C. Relief Can Be Granted Without Substantial Detriment to the Public Good or Substantial Impairment of the Zone Plan**

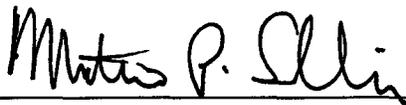
The requested relief can be granted without substantial detriment to the public good. As a small coffee shop/café, the Building will serve as a neighborhood serving facility and meeting place. The proposed use will be consistent with the historical use of the Commercial Space as a confectionary store, grocery store, and coffee shop. The proposed use is intended to include use of adjacent public space for outdoor seating, which will serve to improve the appearance of the public space – which is in the public right-of-way although within the wrought-iron fence between the Property and the sidewalks on both 13<sup>th</sup> and E Streets. The proposed use is not intended to be as intensive as a full-scale restaurant, but at the same time promises to be a vibrant addition to the neighborhood. The fact that the Property owner and Commercial Space operator will also be responsible to the tenants or owners of the four residential units within the same building structure as the Commercial Space ensures that the proposed use will not be detrimental to surrounding residential uses.

Regarding the integrity of the Zone Plan, the Commercial Space has historically been used for similar retail and related uses, such as grocery, confectionary store, and a coffee shop. The Property has also already received use variance relief, in 1992, for the office use which has just vacated the space. The Commercial Space cannot be used for residential purposes without incurring significant costs, loss (or impairment) of usable space, and because of historic

preservation concerns, cannot reasonably be converted to residential space. Therefore, almost any use of the Commercial Space would require variance relief.

**III. Conclusion.**

For the reasons noted above, the Applicant respectfully requests relief to operate the proposed coffee shop/café in the Commercial Space. The Applicant will provide additional details regarding the operations of the proposed use upon filing the prehearing statement, or sooner.



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Martin P. Sullivan, Esq.  
Sullivan & Barros, LLP

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**Exhibit List**

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|-----------|--|
| Exhibit A | Copy of the Zoning Map for the Property          |
| Exhibit B | Copies of Historical Certificates of Occupancy   |
| Exhibit C | Coffee Shop/Café Floor Plans                     |
| Exhibit D | Photographs of the Property and Surrounding Area |

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