STATEMENT

OF EXPLANATIONS AND REASONS

SUPPORTING AN APPLICATION

TO THE BOARD OF ZONING ADJUSTMENT

OF THE DISTRICT OF COLUMBIA

FOR A USE VARIANCE

PURSUANT TO SECTIONS 330 and 3103

OF THE DISTRICT OF COLUMBIA ZONING REGULATIONS

1326 Park Road, N.W.

(SQUARE 2843, LOT 35)

BZA Case No.

D.C. OFFICE OF ZONING
2002 SEP 16 PM 4:04

BZA
Case No. 16940
Exhibit No. 4

Board of Zoning Adjustment
District of Columbia
CASE NO.16940
EXHIBIT NO.4

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INTRODUCTION

This is a Statement of Explanation and Reasons supporting the application of El Rinconcito Café II, Inc., and its President, Mauricio Arias, (hereinafter "applicant") for a variance from the provisions governing the R-4 Zone District to use the first floor and basement for a restaurant seating 75 persons.

DESCRIPTION OF THE APPLICANT

For seven years, Mr. Arias has owned and managed the El Rinconcito Restaurant at 11th and M Streets, N.W., a successful Mexican and Salvadoran restaurant. He purchased the building on Park Road in 2001 with the intention of opening a restaurant on the first floor and basement. It was in a terrible state of disrepair when he purchased it.

THE SUBJECT PROPERTY

A. Location and Description of the Property

The property which is the subject of this Application is located at 1326 Park Road, N.W., Square 2843, Lot 35. It is a row dwelling in which a 50-seat restaurant and pool hall had occupied two floors until six years ago when the building was abandoned. Mr. Arias has reopened the restaurant under a temporary extension of that Certificate of Occupancy. There are three residential units on the second and third floors.

B. Area Surrounding the Property

The Property is on the south side of Park Road midblock between 13th and 14th Streets. The neighborhood is mostly residential. However, across the street is the parking lot for the Giant Food Store being erected behind the Tivoli Theater. A laundry and beauty salon are two doors away.

C. Zoning History and Use History

The area is zoned R-4. Normally restaurants would not be permitted in an R-4 zone. However, a certificate of occupancy issued in 1995 recorded the zone district as C-2-A and noted that the first floor and basement of the premises could be used for a 50-seat restaurant. The application for that C of O also notes that the prior use was a 50-seat restaurant. The building was purchased with a good faith belief that restaurant use was permitted. When Mr. Arias reapplied for a Certificate of Occupancy in February, 2002, he was informed that a mistake had been made on the previous certificates. He was granted a temporary certificate of occupancy which terminates in March of 2003 and was advised to seek relief from the BZA.

D. Operations

Mr. Arias is seeking a 75 seat restaurant in the first floor and basement. It will serve Mexican-Salvadoran food from 10:30 am to Midnight on weekdays; from 10:00 am to 2:00 am on Fridays and Saturdays; and from 10 am to midnight on Sunday.

REASONS IN SUPPORT OF THE APPLICATION FOR A VARIANCE

A. Compliance with D.C. Zoning Regulations

Extraordinary or exceptional conditions creating a hardship

For many years this property was used for a restaurant. When Mr. Arias bought the property he followed proper procedures for due diligence by obtaining the previous certificate of occupancy. But for the District's inadvertent granting of the certificate of occupancy in 1995 (and earlier) for a restaurant, Mr. Arias would not have assumed that he could have restored the property to restaurant use. Clearly the existence of an improper certificate of occupancy and the other neighboring commercial uses make this a unique case.

Hardship

DC Zoning Regulations permit a variance from a permitted use when the applicant can show a hardship. On the strength of the 1995 certificate of occupancy granted by the District, and before learning from the Zoning Administrator that there was a mistake in the C of O, Mr. Arias expended considerable capital to rehabilitate the building and prepare the new restaurant for opening. He sought and received a liquor license. The Applicant will have considerable difficulty converting the first floor and basement of this building back to an apartment.

Discontinuance of use

Section 2005 of the Zoning Regulations (11 DCMR §2005.1) provides:

> Discontinuance ... of a nonconforming use of a structure ... for a period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

"Prima facie" evidence is not "conclusive" evidence. (Webster's defines "prima facie as "legally sufficient to establish a fact or a case unless disproved") That is to say, prima facie evidence is sufficient to make a finding so long as there is no other persuasive evidence to the contrary. In order to show that the owner intended to discontinue the use of the premises for a restaurant, one must presume that he or she knew the use was non-

conforming. Clearly, the existence of the Certificate of Occupancy mitigated against such awareness and one must assume the opposite, that the owner believed that the restaurant use conformed to applicable zoning and that he or his successor could resume such use at any time. The most reasonable interpretation of the provision quoted above is that the Board has the authority to ignore the lapse of over three years in the restaurant use.

B. No Adverse Affects

The use of this property for a restaurant for many years did not appear to have any negative impact on the block or reduce property values. Moreover, the proximity to other commercial uses, such as the supermarket across the street, will enhance the urban experience of apartment and home owners just as the mixture of commercial and residential uses in Dupont Circle has enhanced the urban experience in that neighborhood. As evidence that the neighbors value the return of a good restaurant in that location, and appreciate Mr. Arias' track record for operating a high quality, neighborhood-sensitive establishment, the Advisory Neighborhood Commission voted overwhelmingly to support the granting of a liquor license.

This small restaurant, seating no more than 75 persons on two floors, will not likely add to the parking and traffic burden of the area, even though there is no parking on the site. This is a neighborhood restaurant largely attracting diners from the immediate neighborhood. In addition, the location is less than a block from Metro.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

A. Appropriate Residential Use

Economic development is an important objective in Ward 1 and the enhancement of the Park Road, 14th Street commercial center is a high priority. Section 1200.5 of the Comprehensive Plan for the District of Columbia provides as follows:

> The economic development goal is to retain, expand, and attract new businesses and industries that are compatible with the adjoining residential neighborhoods, create jobs for the ward's residents, and facilitate and develop business ownership and employment advantages for the under-represented in the district's economy. (10 DCMR §1200.5)

Among the recommended actions to implement economic development objectives is the following:

> 1203.1(m) To revitalize and improve the function and appearance of the following areas, with the emphasis on retaining small business:... (7) Park Road and 14th Street. (10 DCMR §1203.1)

1203(v)(8) To encourage the use of minority contractors, suppliers, and other persons by businesses involved in development at 14th and Park Road.

CONCLUSION

The Applicant should be granted a variance to allow the use of the first floor and basement for a 75-seat restaurant. Arguably, the previous use for a restaurant had no negative effect on the neighborhood and its reinstatement will, similarly, have no effect. The current plans for revitalization of the neighborhood as a major commercial center will be enhanced by the restaurant. Moreover, such a use will be in harmony with the purpose and intent of the Zoning Regulations. Finally, the approval of a variance in this case will rectify an error by the District many years ago.

Respectfully submitted,

Stephen N. Gell, Esq.