

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Stephen J. Mordfin, Development Review Specialist  
*JL* Joel Lawson, Associate Director Development Review

**DATE:** January 21, 2022

**SUBJECT:** BZA Case 18701E to permit a Time Extension to extend the validity of the previously approved use variance for two years; and a Modification of Significance to the use variance that permitted a restaurant on the first floor and cellar to be expanded to permit any retail commercial, service commercial or office use for 1247 E Street, S.E.

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**I. OFFICE OF PLANNING RECOMMENDATION**

- a. OP recommends **approval** of the following Time Extension:  
Subtitle Y § 705.1 (two years permitted; two years requested).
- b. The Office of Planning (OP) recommends **approval** of the following Modification of Significance:  
Subtitle Y § 704, Restaurant use permitted pursuant to Order 18701 and Order 18701A, and as extended by Order 18701D requested; space currently vacant; expansion of uses permitted to include retail commercial, service commercial and office uses proposed; and

Subject to the following conditions, which are the same as the conditions attached to the previous use variance and associated time extensions:

- 1. Operating times shall not exceed 7:30 a.m. to 8:00 p.m., Monday through Friday, and 9:00 a.m. to 8:00 p.m., Saturday and Sunday.
- 2. Subject to any conditions imposed by the Public Space Committee and the Historic Preservation Review Board, trash cans shall be concealed and not visible from the street.
- 3. Deliveries shall only be allowed between 8:30 a.m. to 5:00 p.m., Monday through Friday, and 9:30 a.m. to 2:00 p.m., Saturdays only.
- 4. Outdoor seating shall be permitted if approved by the Public Space Committee.
- 5. Outdoor seating is not permitted between the entry door on E Street and the fence line of 1245 E Street, S.E.
- 6. No outdoor music shall be allowed.
- 7. Subject to any conditions imposed by the Historic Preservation Office, the boarded-up door facing 13<sup>th</sup> Street shall be reopened.

## II. LOCATION AND SITE DESCRIPTION

Address	1247 E Street, S.E.
Applicant	1247 ESE, LLC
Legal Description	Square 1019, Lot 43
Ward, ANC	Ward 6, ANC 6B
Zone	RF-1
Historic District	Capitol Hill
Lot Characteristics	Unusually shaped corner lot with no alley access
Existing Development	Two-story plus cellar mixed-use residential and commercial building with driveway access from 13 <sup>th</sup> Street, S.E.
Adjacent Properties	North: Across E Street, Watkins Park South and West: Row houses and flats East: Across 13 <sup>th</sup> Street, two-story multi-family building
Surrounding Neighborhood Character	Mixture of residential, commercial and institutional uses
Proposed Development	Expansion of uses permitted within a portion of the ground floor and cellar to include general retail and office uses, in addition to restaurant uses as previously permitted and extended pursuant to BZA 18701D; and a two-year time extension.

## III. ZONING REQUIREMENTS and RELIEF REQUESTED

<b>Zone: RF-1</b>	<b>Regulation</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Height E § 303	40-foot max.	22 feet	22 feet	None Required
Lot Width E § 201	40-foot min.	21.77 feet	21.77 feet	None Required
Lot Area E § 201	4,000 sq. ft. min.	3,514 sq. ft.	3,514 sq. ft.	None Required
Lot Occupancy E § 304	40% max.	60%	60%	None Required
Rear Yard E § 306	20-foot min.	None	None	None Required
Side Yard E § 307	None	None	None	None Required
Parking C § 701	None Required	None	None	None Required
Date of Order Issuance	February 27, 2014 (18701 & 18701A)			
Order Expiration	February 27, 2016 (18701 & 18702A)			
1 <sup>st</sup> Extension Expiration	February 27, 2018 (18701B)			
2 <sup>nd</sup> Extension Expiration	February 27, 2020 (18701C)			
3 <sup>rd</sup> Extension Expiration	February 27, 2022 (18701D)			

#### IV. TIME EXTENSION

**A. Recommendation: OP recommends the extension be granted.**

**B. Analysis**

**1. Photos of Site**



Google: June 2019



Google: May 2021

**2. EVALUATION OF THE EXTENSION REQUEST**

Subtitle Y Section 705 of the Zoning Regulations allows the extension of a BZA approval for “good cause” shown upon the filing of a written request by the applicant before the expiration of the approval, provided the BZA determines the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond.**

The application includes a Certificate of Service (Exhibit 8) documenting it was served on all parties to the original application on September 22, 2021, allowing thirty days for parties to respond. Section 705.1(a) provides that a time extension filed at least 30 days prior to the expiration date shall toll the expiration date to allow the BZA to consider the request.

- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board’s justification for approving the original application.**

**Zoning Regulations**

Since the last extension was granted by the BZA there have been no substantial changes to the Zoning Regulations.

### **Surrounding Development**

Since the last extension was granted by the Board, approximately 500 new residential units were completed within the surrounding neighborhood, which the applicant anticipated would increase the demand for restaurant space. However, as a result of the pandemic, demand for restaurant space has declined, including the closure of many previously existing restaurants.

### **Proposed Development**

No new development is proposed, with the exception of the outfitting of the existing commercial space within the building and potential use of public space as permitted by the Public Space Committee and the conditions of approval.

**(c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria.**

- (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;**
- (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or**
- (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.**

As discussed above, the current pandemic, which is beyond the applicant's reasonable control, adversely affected market demand for restaurant space, which could not have been anticipated by the applicant.

The space was originally designed and continues to be designed for commercial use. It was never used residentially, and is not designed as such. The applicant has endeavored to rent the space, and proposes to continue to do so.

## **V. Modification of Significance**

*704.1 The scope of a hearing conducted pursuant to Subtitle Y § 704.1 shall be limited to impact of the modification on the subject of the original application, and shall not permit the Board to revisit its original decision.*

### **1. Description of Requested Modification**

BZA 18701 and 18701A permit space within the building to be used for a restaurant use. This approval has been extended three times. The applicant in this case requests the existing commercial space be permitted to be used for any retail commercial, service commercial or office use, in addition to the restaurant use. This requires a Modification of Significance to the approved Order. This is intended to facilitate and ease the leasing of the space by not requiring potential lessors to wait for Board approval, and removing the uncertainty that the application would be granted.

This request would be consistent with historic uses of the space, which included office and retail, but not residential. The applicant proposes that any use of the space be subject to the same conditions of approval as was the previous use variance request.

## **2. Analysis**

To increase the marketability of the currently vacant space, and the potential to relet the space should any future tenants vacate, the applicant requests to expand the variety of uses permitted to include office, general retail or service commercial use, in addition to the previously approved restaurant use. This would be consistent with the historic use of the space, which never included residential. Permitting these additional uses would provide greater opportunity to activate this corner, and allow the applicant to lease the space to users that could potentially be less intrusive to the surrounding community than the current situation. Any use permitted would remain subject to the same conditions of approval as the previous applications (see Section I above, Office of Planning Recommendation) to ensure that potential impacts are minimized

## **VI. OTHER DISTRICT AGENCIES**

No other District agency comments had been submitted to the record as of the date of this report.

## **VII. ADVISORY NEIGHBORHOOD COMMISSION**

No comments from ANC 6B had been submitted to the record as of the date of this report.

## **VIII. COMMUNITY COMMENTS TO DATE**

No community comments had been filed to the record as of the date of this report.