

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 18701-F
1247 ESE LLC
1247 E Street, SE (Square 1019, Lot 0043)

HEARING DATE (18701): February 4, 2014
DECISION DATE (18701): February 25, 2014
ORDER ISSUANCE DATE (18701 & 18701-A): February 27, 2014

MODIFICATION OF CONSEQUENCE

DECISION DATE (18701-F): September 28, 2022

**SUMMARY ORDER ON REQUEST FOR
MODIFICATION OF CONSEQUENCE**

Pursuant to notice, at its September 28, 2022, public meeting, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) deliberated on a request for modification of consequence to BZA Order No. 18701-E to modify the approved hours of operation of the commercial use within an existing semi-detached two-story plus cellar apartment house in the RF-1 zone. The Board considered the request for modification of consequence under Subtitle Y § 703 of Title 11 of the DCMR (Zoning Regulations of 2016, the “**Zoning Regulations**” to which all references are made unless otherwise specified). For the reasons stated below, the Board **APPROVES** the request for modification.

ORIGINAL APPLICATION AND PREVIOUS TIME EXTENSIONS. In Application No. 18701, the Board approved a request by 1247 ESE LLC (the “Applicant”), under the 1958 Zoning Regulations, for a use variance to allow a restaurant in the first floor and cellar space within an existing apartment house at the subject property. The Board subsequently granted the Applicant’s requests for two-year time extensions in Order Nos. 18701-B, 18701-C, and 18701-D.

PREVIOUS MODIFICATION OF SIGNIFICANCE AND FOURTH TIME EXTENSION. In Application No. 18701-E, the Board approved a request for a modification of significance and a fourth two-year time extension to Order No. 18701 to expand the 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 by a use variance. The original conditions in Order No. 18701 were replaced by nine new conditions:

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Board of Zoning Adjustment
District of Columbia
CASE NO.18701F
EXHIBIT NO.12

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1. The ground floor and cellar may be devoted to:
 - a. Retail Use as permitted pursuant to Section U-512.1(k), as such use is defined and described in Section B-200.2(bb)
 - b. General Service Use as permitted pursuant to Section U-512.1(l), as such use is defined and described in Section B-200.2(cc)
 - c. Office Use pursuant to as permitted pursuant to Section U-510.1(r), as such use is defined and described in Section B-200.2(w)
 - d. Restaurant Use specifically as approved in BZA Order No. 18701
2. The modification of the use variance to allow retail and service uses shall be limited to a term of 12 years.
3. 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.
4. Subject to any conditions imposed by the Public Space Committee and Historic Preservation Review Board, trash cans shall be concealed and not visible from the street.
5. 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.
6. Outdoor seating shall be permitted if approved by the Public Space Committee.
7. Outdoor seating is not permitted between the entry door on E Street and the fence line of 1245 E Street, S.E.
8. No outdoor music shall be allowed.
9. Subject to any conditions imposed by the Historic Preservation Office, the boarded-up door facing 13th Street shall be reopened.

PROPOSED MODIFICATION. On June 30, 2022, the Applicant submitted a request for modification of consequence to Order No. 18701-E. (Exhibits 1-6.) The Applicant proposes to modify Condition No. 3 to read as follows:

Condition No. 3: Operating times shall not exceed 7:30 a.m. to 8:00 p.m., Monday through Thursday, and 7:00 a.m. to 8:00 p.m., Friday, Saturday and Sunday.

NOTICE OF THE REQUEST FOR MODIFICATION. Pursuant to Subtitle Y §§ 703.8-703.9, the Applicant provided proper and timely notice of the request for modification of consequence. (Exhibit 5.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6B.

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ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 13, 2022, at which a quorum was present, the ANC voted to support the modification. (Exhibit 11.) The ANC report raised no issues or concerns.

OFFICE OF PLANNING (“OP”) REPORT. OP submitted a report recommending approval of the modification. (Exhibit 9.)

DISTRICT DEPARTMENT OF TRANSPORTATION (“DDOT”) REPORT. DDOT submitted a report indicating that it had no objection to the modification. (Exhibit 10.)

CONCLUSIONS

The Board determines that the Applicant's request complies with Subtitle Y § 703.4, which defines a modification of consequence as a “proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board.” Based upon the record, the Board concludes that in seeking a modification of consequence, the Applicant has met its burden of proof under Subtitle Y § 703.4.

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

DECISION

It is therefore **ORDERED** that this application for a modification of consequence of BZA Order No. 18701 is hereby **APPROVED** subject to the following **CONDITIONS**, which shall replace and supersede the conditions of BZA Order No. 18701-E:

1. The ground floor and cellar may be devoted to:
 - a. Retail Use as permitted pursuant to Section U-512.1(k), as such use is defined and described in Section B-200.2(bb)
 - b. General Service Use as permitted pursuant to Section U-512.1(l), as such use is defined and described in Section B-200.2(cc)
 - c. Office Use pursuant to as permitted pursuant to Section U-510.1(r), as such use is defined and described in Section B-200.2(w)
 - d. Restaurant Use specifically as approved in BZA Order No. 18701
2. The modification of the use variance to allow retail and service uses shall be limited to a term of 12 years.
3. Operating times shall not exceed 7:30 a.m. to 8:00 p.m., Monday through Thursday, and 7:00 a.m. to 8:00 p.m., Friday, Saturday and Sunday.

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4. Subject to any conditions imposed by the Public Space Committee and Historic Preservation Review Board, trash cans shall be concealed and not visible from the street.
5. 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.
6. Outdoor seating shall be permitted if approved by the Public Space Committee.
7. Outdoor seating is not permitted between the entry door on E Street and the fence line of 1245 E Street, S.E.
8. No outdoor music shall be allowed.
9. Subject to any conditions imposed by the Historic Preservation Office, the boarded-up door facing 13th Street shall be reopened.


In all other respects, Order No. 18701 remains unchanged.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Joseph S. Imamura to APPROVE; Carl H. Blake not present, not participating)

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: October 4, 2022

PURSUANT TO 11 DCMR 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.