

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 18701-E
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 SIGNIFICANCE AND
FOURTH TIME EXTENSION**

HEARING DATE (18701-E): February 9, 2022
DECISION DATE (18701-E): February 16, 2022

**SUMMARY ORDER ON REQUEST FOR
MODIFICATION OF SIGNIFICANCE AND FOURTH TWO-YEAR TIME
EXTENSION¹**

Pursuant to notice and after a public hearing, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) deliberated at a public meeting on a request for a modification of significance and two-year time extension to BZA Order No. 18701 to include general retail, service, and office uses in addition to the previously approved restaurant use within an existing, semi-detached, two-story with cellar, apartment house the RF-1 zone. The Board considered the request for modification of significance and two-year time extension under Subtitle Y §§ 704 and 705 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 of significance and two-year time extension.

ORIGINAL APPLICATION. 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 approval was subject to seven conditions:

¹ The Board previously approved three time extensions for the original Order No. 18701 and 18701-A in Order Nos. 18701-B (order issued March 10, 2016), 18701-C (order issued April 20, 2018), and 18701-D (order issued July 27, 2020).

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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 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 13th Street shall be reopened.

PREVIOUS TIME EXTENSIONS. The Board granted the Applicant's three previous requests for two-year time extensions in Order Nos. 18701-B, 18701-C, and 18701-D, which extended the validity of the original Order until February 27, 2022. (Exhibit 5.)

PROPOSED MODIFICATION AND REQUEST FOR TWO-YEAR TIME EXTENSION. On September 22, 2021, the Applicant submitted a request for modification of significance and for a fourth two-year time extension to Order No. 18701. (Exhibits 1-9, 23.) Based on the proposed modifications, the Applicant requests 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.

NOTICE OF THE REQUEST FOR MODIFICATION AND TIME EXTENSION. Pursuant to Subtitle Y §§ 704.5 and 705.2(a), the Applicant served the request for modification of significance and time extension on the parties to the original application. (Exhibits 8 and 23.) The Office of Zoning referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

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

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 11, 2022, at which a quorum was present, the ANC voted to support the modification and time extension. (Exhibit 17.) The ANC's support was subject to three conditions regarding the allowable uses of the space, the term limit of the modification, and the applicability of the conditions in the original Order 18701. The original conditions proposed by the ANC were later modified and the Applicant was in agreement with these conditions. The Board adopted the modified versions as conditions of the Order. (Exhibit 26 and 27.)

OFFICE OF PLANNING (“OP”) REPORT. OP submitted a report recommending approval of the modification and time extension, subject to the same conditions attached to Order No. 18701. (Exhibit 15).

DISTRICT DEPARTMENT OF TRANSPORTATION (“DDOT”) REPORT. DDOT submitted a report indicating that it had no objection to the modification. (Exhibit 16.)

CONCLUSIONS

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence² requires a public hearing and is a modification of significance. The Applicant’s request complies with Subtitle Y § 704, which provides the Board’s procedures for considering requests for modifications of significance.

As directed by Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of significance.

Pursuant to Subtitle Y § 705.2(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.2(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.2(c), good cause for the extension must be demonstrated 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.

Based upon the record before the Board and having given great weight to the appropriate recommendations and reports filed in this case, the Board finds that the Applicant has met the criteria of Subtitle Y § 705.2 to extend the validity of the underlying order.

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 significance and request for a two-year time extension to the validity of the Board’s approval of BZA Order No. 18701 is hereby **APPROVED** to:

² See, Subtitle Y §§ 703.3 and 703.4.

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- include general retail, service, and office uses in addition to the previously approved restaurant use within an existing, semi-detached, two-story with cellar, apartment house the RF-1 zone
- extend the validity of Order No. 18701 until **February 27, 2024**

subject to the following **CONDITIONS**, which shall replace and supersede the conditions of BZA Order No. 18701:

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.

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

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

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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: March 1, 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.