

# BZA Application No. 18701E

1247 E STREET, SE  
1247 ESE, LLC  
February 2, 2022

Board of Zoning Adjustment

District of Columbia

CASE NO.18701E

EXHIBIT NO.21

**Sullivan & Barros, LLP**



# Overview and Requested Relief

- The Applicant obtained BZA Approval for a use variance in BZA Case No. 18701 & 18701-A to use the front portion of the first floor and cellar space below it as a restaurant, subject to certain conditions.
- Since then, and despite diligent efforts, the Applicant has been unable to find a tenant for the restaurant use.
- The impact of COVID-19 on the restaurant industry has been devastating, and the short and midterm outlook of new business formation in the restaurant industry is bleak, rendering the search for a restaurant tenant very challenging.
- From experience, it is equally challenging to market a use that is not already approved because prospective tenants do not want to deal with the uncertainty of BZA approvals.
- In order to increase the marketability of the Commercial Space, the Applicant would like to have the flexibility to use the Commercial Space for general retail, service, or office uses for the first floor and lower level of the building.
- Now, Applicant is requesting a Modification of Significance in order to change the approved use of the Commercial Space to allow for general retail, service, and office uses in addition to the approved restaurant use.
- The Applicant is not required to revisit the justification for the original use variance, only justify why the proposed use should be expanded to more than just restaurant use.

# Background and Original Conditions

- The Commercial Space is part of 6-unit mixed use building with 5 fully tenanted residential units
- The Commercial Space has been used for a variety of commercial uses, not just restaurant use.
- The currently approved restaurant use is more intense than any office, retail, or service use.
- The Applicant agrees to have the same conditions from the previous orders placed on the proposed general uses:
  - Operating times shall not exceed 7:30 am to 8:00pm., Monday through Friday, and 9:00am to 8.00 p.m., Saturday and Sunday; deliveries shall only be allowed between 8.30 am to 5:00 p.m., Monday through Friday, and 9.30 a.m. to 2.00 p.m., Saturdays only.
  - Subject to any conditions imposed by the Public Space Committee and Historic Preservation Review Board, trash cans shall not be concealed and not visible from the street.
  - Outdoor seating is not permitted between the entry door on E Street and the fence line of 1245 E Street, SE. Outdoor seating shall be permitted if approved by the Public Space Committee.
  - No outdoor music shall be allowed.
  - Subject to any conditions imposed by the Historic Preservation Office, the boarded-up door facing 13<sup>th</sup> Street shall be reopened.
- The Subject Property is located only three-tenths of a mile (0.3 mi.) from the Potomac Avenue Metrorail Station.
- The Applicant anticipates that any patrons, clients, or employees of the future commercial use will arrive by public transportation and therefore the use will not adversely impact the traffic conditions in the neighborhood.

# Agency Support and Conditions

- OP is recommending approval, CHRS supports, and DDOT has no objection.
- ANC 6B unanimously supports and proffered specific conditions which we agree to:
  - The modification to allow service and retail use is term limited to 12 years. This period is to ensure the applicant has enough time for a 10-year lease with two years to acquire a tenant and build out the space.
  - To the extent permissible by regulation, the Board should approve the identified premises for the previously approved restaurant use as well as any general retail, service, or office use, with the exception that the following uses be specifically prohibited:

## **Businesses whose principal activity consists of:**

- \*Appliance Repair
- \*Parcel Delivery/Copier services or sales
- \*Distribution
- \*Appliance Sale
- \*Sale of House Paints (but not excluding an arts supply store)

- \*The sale of guns or ammunition
- \*Drug store
- \*Phone store
- \*Sale of medical marijuana or CBD or tobacco
- \*Check-cashing service

Questions?