

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18701 of 1247 ESE LLC, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to operate a restaurant in the first floor space within an existing apartment house under § 330.5 in the R-4 District at premises 1247 E Street, S.E. (Square 1019, Lot 43).¹

HEARING DATE: February 4, 2014
DECISION DATE: February 25, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6B, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report dated January 15, 2014, indicating that at a regularly scheduled, properly noticed meeting on January 14, 2014, with a quorum present, the ANC voted 10-0-0 in support of the application. (Exhibit 29.) The Office of Planning ("OP") submitted a timely report in support of the application, subject to conditions. (Exhibit 32.) The District Department of Transportation ("DDOT") submitted a report raising no objection to the approval of the application. (Exhibit 31.)

Letters of support for the application were submitted by neighbors Stephen Simpson, Sarah Gavian, and Eric Hall. (Exhibits 28, 27, and 26.)

¹ The Applicant amended the application from a fast food establishment to a restaurant use and the caption has been revised accordingly. (Exhibit 36.)

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As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the strict application of the use provisions in § 330.5. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

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.


VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle, and Anthony J. Hood (by absentee

ballot) to APPROVE; S. Kathryn Allen, not present or voting; one Board seat vacant.)

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. BORDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 27, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18701-A of 1247 ESE LLC, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to operate a restaurant in the first floor space within an existing apartment house under § 330.5 in the R-4 District at premises 1247 E Street, S.E (Square 1019, Lot 43) ¹

HEARING DATE: February 4, 2014
DECISION DATE: February 25, 2014

REVISED² SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *DC Register* and by mail to Advisory Neighborhood Commission ("ANC") 6B, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report dated January 15, 2014, indicating that at a regularly scheduled, properly noticed meeting on January 14, 2014, with a quorum present, the ANC voted 10-0-0 in support of the application. (Exhibit 29.) The Office of Planning ("OP") submitted a timely report in support of the application, subject to conditions. (Exhibit 32.) The District Department of Transportation ("DDOT") submitted a report raising no objection to the approval of the application (Exhibit 31)

Letters of support for the application were submitted by neighbors Stephen Simpson, Sarah Gavian, and Eric Hall (Exhibits 28, 27, and 26)

¹ The Applicant amended the application from a fast food establishment to a restaurant use and the caption has been revised accordingly (Exhibit 36)

² The Order has been revised to accommodate the Applicant's need to renovate the space for the new use.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18701-A
EXHIBIT NO. 41

Board of Zoning Adjustment
District of Columbia
CASE NO. 18701
EXHIBIT NO. 41

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As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the strict application of the use provisions in § 330.5. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

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.

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VOTE: **3-0-2** (Lloyd J Jordan, Jeffrey L Hinkle, and Anthony J Hood (by absentee ballot) to APPROVE, S Kathryn Allen, not present or voting, one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order

ATTESTED BY:  _____ *for*
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 27, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125 6

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130 6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED PURSUANT TO § 3129 9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129 2 OR 3129 7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY

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BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D C OFFICIAL CODE § 2-1401.01 ET SEQ (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18701-B of 1247 ESE LLC, pursuant to 11 DCMR § 3130, for a two-year extension of BZA Order No. 18701-A.

The original application was pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to operate a restaurant in the first floor space within an existing apartment house under § 330.5 in the R-4 District at premises 1247 E Street, S.E. (Square 1019, Lot 43).

HEARING DATE (Original Application):	February 4, 2014
DECISION DATE (Original Application):	February 25, 2014
FINAL ORDER ISSUANCE DATE (Order No. 18701-A):	February 27, 2014
DECISION DATE ON EXTENSION OF ORDER:	March 8, 2016 ¹

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18701-A

The Underlying BZA Order

On February 25, 2014, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for variance from the use provisions to operate a restaurant in the first floor space within an existing apartment house under § 330.5 in the R-4 District at premises 1247 E Street, S.E. (Square 1019, Lot 43) (the "Subject Property").² The Application, which was unopposed, was granted on February 25, 2014, and the Board issued its written order ("Order") on February 27, 2014. Pursuant to 11 DCMR §§ 3125.6 and 3125.9, the Order became final on February 27, 2014 and took effect 10 days later.

¹ The Motion for a Time Extension was initially scheduled for decision on February 23, 2016, but was postponed at the Applicant's request. (Exhibit 11.)

² This property is also the subject of a separate application and approval in Case No. 19196.

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Under the Order and pursuant to § 3130.1 of the Zoning Regulations³, the Order was valid for two years from the time it was issued -- until February 27, 2016. Order No. 18701-A is subject to seven conditions.⁴

Motion to Extend Validity of the Order Pursuant to 11 DCMR § 3130.6

On December 10, 2015, the Applicant submitted an application for a motion together with supporting documents, pursuant to 11 DCMR § 3130.6, for a two-year extension of Order No. 18701-A, which was due to expire on February 27, 2016. This request for extension is pursuant to § 3130.6 of the Zoning Regulations, which permits the Board to extend the time periods in § 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval. Moreover, the Applicant served on all parties to the application by the applicant, and all parties were allowed 30 days to respond, pursuant to § 3130.6(a). (Exhibit 3.)

To establish good cause for the request, the Applicant submitted a letter and supporting documentation dated December 10, 2015, that stated the reasons the Applicant was requesting a time extension. (Exhibits 3-3A.) The Applicant cited factors beyond its control that prevented it from moving forward and completing the project. The Applicant indicated that following issuance of the Order in this case, the Applicant renovated the first floor space as well as the residential portion of the building on the Subject Property. However, the Applicant, in its request for a time extension, indicated that the permit process and renovation of the space took longer than expected, as has the process of finding an appropriate tenant. The Applicant also noted that proposals to construct three nearby new residential developments, which were not anticipated at the time of the original approval, are expected to increase foot traffic within the neighborhood and thereby should increase the marketability of the site. (Exhibit 3.) The Applicant stated that it requested a two-year extension of the Order because of circumstances beyond its control from completing the project and which prevented it from vesting the Order for the reasons described.

Criteria for Evaluating Motion to Extend

Subsection 3130.6 of the Zoning Regulations authorizes the Board to extend the time periods for good cause provided: (i) the extension request is served on all parties to the application by the applicant, and all parties are allowed 30 days in which to respond; (ii) there is no substantial change in any of the material facts upon which the Board based its original approval; and (iii) the applicant demonstrates there is good cause for such extension. Pursuant to 11 DCMR §

³ Subsection 3130.1 states: “No order authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.” (11 DCMR § 3130.1.)

⁴ The conditions in Order No. 18701-A continue in force through the extension of time granted in this order.

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3130.6(c)(1), good cause is established through the showing of 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.

The Merits of the Request to Extend the Validity of the Order Pursuant to 11 DCMR § 3130.6

The Board found that the Applicant has met the criteria set forth in 11 DCMR § 3130.6. As required by § 3130.6(a), the motion for the time extension was served on all the parties to the application and those parties were given 30 days in which to respond. (Exhibit 3.) No party to the application objected to an extension of the Order.

As required by § 3130.6(b), the Applicant demonstrated that there is no substantial change in any of the material facts upon which the Board based its original approval in Order No. 18701-A. There have been no changes to the Zone District classification applicable to the Subject Property or to the Comprehensive Plan affecting the Property since the issuance of the Board's order. (Exhibits 3 and 8.)

The Board found that the motion has met the criteria of § 3130.6 to extend the validity of the underlying order. The reasons given by the Applicant were beyond the Applicant's reasonable control within the meaning of § 3130.6(c)(3) and constitute "good cause" required under § 3130.6(c)(1). To meet the burden of proof, the Applicant submitted a letter and supporting information describing the factors beyond its control that prevented it from moving forward with the project: unexpected delays in the permit and renovation process as well as the delay in the process of seeking a restaurant tenant. (Exhibits 3 and 3A.) Since the Board issued Order No. 18701-A in February of 2014, the Applicant has been working diligently to secure the necessary commitments and other approvals to move forward with the project approved by the Board. In addition to the letter signed by the Applicant, the Applicant submitted a project timeline outlining the Applicant's efforts to complete the project following the approval of Order 18701-A. (Exhibit 3A.)

Given the totality of the conditions and circumstances described above in the Applicant's letter and other supplemental information provided, the Board found that the Applicant satisfied the "good cause" required under the third prong of § 3130.6. Moreover, despite the challenges the Applicant described in his submissions for the extension, the Applicant demonstrated that it has

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acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

The Office of Planning ("OP"), in its report dated February 16, 2016, reviewed the application for the extension of the Order for "good cause" pursuant to 11 DCMR § 3130.6 and recommended approval of the requested two-year extension. (Exhibit 8.)

The Subject Property is within the boundaries of Advisory Neighborhood Commission ("ANC") 6B. The ANC submitted a report recommending approval, dated February 10, 2016, with regard to the request for a time extension. The ANC's report stated that at its regularly scheduled and properly noticed public meeting of February 9, 2016, the ANC, with a quorum present, voted 7-0-0 to support the Applicant's request to extend the expiration date of the Order. (Exhibit 9.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the approval of the Applicant's request. (Exhibit 10.)

The Board concluded that extension of the relief is appropriate under the current circumstances.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirements of 11 DCMR § 3125.3, which required that the order of the Board be accompanied by findings of fact and conclusions of law. Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 18701-B for a two-year time extension of Order No. 18701-A, which Order shall be valid until **February 27, 2018**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing all required permits.

VOTE: **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May, to APPROVE; one Board seat vacant).

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: March 10, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18701-C of 1247 ESE, LLC, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 18701-A approving a variance from the use provisions to operate a restaurant in the first floor space within an existing apartment house under § 330.5 in the R-4 (now RF-1) District at premises 1247 E Street, S.E. (Square 1019, Lot 43).¹

HEARING DATE (18701):	February 4, 2014
DECISION DATE (18701):	February 25, 2014
FINAL DATE OF ORDER (18701 & 18701A):	February 27, 2014
FIRST TIME EXTENSION DECISION (18701B):	March 8, 2016
TIME EXTENSION DECISION:	April 18, 2018 ²

SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18701-A

The Underlying BZA Order

On February 25, 2014, the Board of Zoning Adjustment (the "Board") approved the Applicant's request³ for a variance from the use provisions to operate a restaurant in the first floor space within an existing apartment house under § 330.5 in the R-4 (now RF-1) District at premises 1247 E Street, S.E. (Square 1019, Lot 43) (the "Subject Property").⁴ The Application, which was

¹ The original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the "1958 Zoning Regulations") but which were repealed on September 6, 2016 and replaced with new text (the "2016 Zoning Regulations").

² The decision was originally scheduled for April 4, 2018, but was postponed at the Applicant's request to allow time for the Applicant to appear at the ANC. (Exhibit 10.) The Chair of the Board granted the request and rescheduled the matter for the public meeting of April 18, 2018. (Exhibit 11.)

³ This and all other references to the relief granted in Order No. 18701-A are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations"). The repeal of the 1958 Regulations has no effect on the validity of the Board's original decision or the validity of Order No. 18701-A.

⁴ This property is also the subject of a separate application and approval in Case No. 19196.

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unopposed, was granted on February 25, 2014, and the Board issued its written order and corrected order (18701 and 18701A) (the "Order") on February 27, 2014. Pursuant to 11 DCMR § 3125.9 in the 1958 Zoning Regulations (now Subtitle Y § 604.11 of the 2016 Regulations), the Order became final on February 27, 2014 and took effect 10 days later. Under the Order and pursuant to § 3130.1 of the 1958 Zoning Regulations (now Subtitle Y § 702.1 of the 2016 Regulations), the Order was valid for two years from the time it was issued -- until February 27, 2016. Order No. 18701-A is subject to seven conditions.

First Motion to Extend

On December 10, 2015, the Applicant submitted an application for a motion together with supporting documents, pursuant to 11 DCMR § 3130.6 (now Subtitle Y § 705), for a two-year extension of Order No. 18701-A, which was due to expire on February 27, 2016. The Board granted the Applicant's first request for a two-year time extension in Order No. 18701-B, noting that the Order would be valid until February 27, 2018. (Exhibit 5.)

Second Motion to Extend Validity of the Order Pursuant to 11 DCMR Subtitle Y § 705.1

On February 27, 2018, the Applicant submitted an application for a second time extension requesting that the Board grant another two-year extension of Order No. 18701-A. This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations of 2016, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Pursuant to Subtitle Y § 705.1(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 § 705.1(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 § 705.1(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.

The Board finds that the motion has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. Pursuant to Subtitle Y § 705.1(a), the record reflects that the Applicant served the only party to the original application, Advisory Neighborhood Commission ("ANC") 6B, as well as the Office of Planning. (Exhibit 6.) ANC 6B did not submit a report. The Office of Planning ("OP") submitted a report, dated April 11, 2018, recommending approval of the request for the time extension. (Exhibit 13.)

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As required by Subtitle Y § 705.1(b), the Applicant demonstrated that there has been no substantial change in any of the material facts upon which the Board based its original approval in Order No. 18701-A. There have also been no substantive⁵ changes to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order that would affect the application.

To meet the burden of proof for good cause required under Subtitle Y § 705.1(c), the Applicant provided a statement and other evidence regarding factors causing a delay in obtaining a building permit. (Exhibit 4.) The good cause basis for the Request was the Applicant's inability to obtain a tenant due to economic and market conditions beyond its control, pursuant to Subtitle Y § 705(c)(1). The Applicant states that it renovated the outside shell of first-floor space as well as the residential portion of the building. The permit process and renovation took longer than expected and was not completed until February 2015, at which time a broker was hired to find a tenant. The Applicant applied for its first time extension in December 2015, due to the combination of permitting issues and construction which had left the Applicant with insufficient time to secure a tenant. The application cites the intense residential development within the surrounding neighborhood as potentially improving market conditions to better enable the Applicant to find a tenant. The space was originally designed and continues to be designed for commercial use. It was never used residentially and the space is not designed for such use. The Applicant has conducted a continuous search for a tenant for the commercial space expected to be operated as a coffee shop and provided a statement from its broker to that effect. The Applicant has endeavored to rent the space and will continue to do so as market conditions improve. (Exhibits 4 and 12.)

Given the totality of the conditions and circumstances described above and after reviewing the information that was provided, the Board finds that the Applicant satisfied the "good cause" requirement under Subtitle Y § 705.1(c), specifically meeting the criteria for Subtitle Y § 705.1(c)(1). The Board finds that the delay in securing a commercial tenant is beyond the Applicant's reasonable control and that the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

Having given the written report of OP great weight, the Board concludes that extension of the approved relief is appropriate under the current circumstances and that the Applicant has met the burden of proof for a time extension under Subtitle Y § 705.1.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

⁵ Since the last extension was granted by the Board and the Zoning Commission's adoption of the 2016 Regulations, the zoning of the property is now RF-1, the new classification for R-4.

BZA APPLICATION NO. 18701-C
PAGE NO. 4

Pursuant to 11 DCMR Subtitle Y § 702, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of a two-year time extension of Order No. 18701-A, which Order shall be valid until **February 27, 2020**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Peter G. May to APPROVE.)

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: April 20, 2018

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18701-D of 1247 ESE LLC, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two year time extension of BZA Order No. 18701-A approving a variance from the use provisions to operate a restaurant in the first floor space within an existing apartment house under § 330.5 in the R-4 (now RF-1) District at premises 1247 E Street, S.E. (Square 1019, Lot 43).

HEARING DATES (18701):	February 4, 2014
DECISION DATES (18701):	February 25, 2014
FINAL DATE OF ORDER (18701 & 18701-A):	February 27, 2014
FIRST TIME EXTENSION DECISION (18701-B):	March 8, 2016
SECOND TIME EXTENSION DECISION (18701-C):	April 18, 2018
THIRD TIME EXTENSION DECISION (18701-D):	July 22, 2020

SUMMARY ORDER ON THIRD REQUEST
FOR TWO-YEAR TIME EXTENSION

Original Application. In Application No. 18701, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by 1247 ESE LLC (the “Applicant”) for relief pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to operate a restaurant in the first floor space within an existing apartment house under § 330.5 in the R-4 District under the Zoning Regulations of 1958. The Board issued Order No. 18701 on February 27, 2020. Subsequently, the Board issued a corrected order – Order No. 18701-A. (Exhibit 3.) Pursuant to Subtitle Y § 604.11, the Order became effective ten days after issuance. Pursuant to Subtitle Y § 702.1, the Order was valid for two years from the time it became effective.

First Request for Two-Year Time Extension. The Board granted the Applicant’s first request for a two-year time extension in Order No. 18701-B, noting that the Order would be valid until February 27, 2018.

Second Request for Two-Year Time Extension. The Board granted the Applicant’s second request for a two-year time extension in Order No. 18701-C, noting that the Order would be valid until February 27, 2020.

Third Request for Two-Year Time Extension. On February 25, 2020, the Applicant submitted a third request that the Board grant a two-year extension of Order No. 18701-A. (Exhibits 1-8.)

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 18701-D
PAGE NO. 2

Notice of the Request. Pursuant to Subtitle Y § 705.1(a), the Applicant provided proper and timely notice of the request for time extension to the parties to the underlying case. (Exhibit 5.)

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 March 10, 2020, at which a quorum was present, the ANC voted to support the request. (Exhibit 10.)

OP Report. Office of Planning submitted a report recommending approval of the time extension. (Exhibit 13.)

Request to Extend the Validity of the Order

This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Pursuant to Subtitle Y § 705.1(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 § 705.1(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 § 705.1(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 § 705.1 to extend the validity of the underlying order.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that the third request for two-year time extension to the validity of the Board's approval in Order No. 18701-A is hereby **GRANTED**, and the Order shall be valid until **February 27, 2022**.

BZA APPLICATION NO. 18701-D
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VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Carlton E. Hart, Michael G. Turnbull to APPROVE; one Board seat vacant)

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: July 27, 2020

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15694 of Contrast Holding, Co., Inc., pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 330.5) to allow a nonprofit office use in the basement and the first floor in an R-4 District at premises 1247 E Street, S.E. (Square 1019, Lot 43).

HEARING DATE: September 9, 1992
DECISION DATE: September 9, 1992 (Bench Decision)

SUMMARY

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6B and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 6B. ANC 6B, which is automatically a party to the application, filed a written statement of issues and concerns in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 330.5. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS.

1. The first floor and basement of the subject premises shall be used for a nonprofit organization.
2. The hours of operation shall be between 9:00 a.m. and 6:00 p.m., Monday through Friday.
3. The number of staff members shall not exceed seven (7).

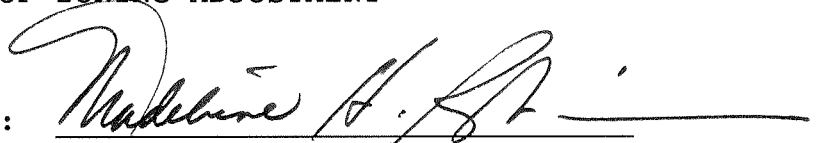
4. No articles of commerce shall be offered for sale at the subject premises.
5. Trash storage associated with the proposed nonprofit office shall be located within the first floor of the subject building and shall be picked-up no less than once per week.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.1 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: 5-0 (Angel F. Clarens, Sheri M. Pruitt, Maybelle Taylor Bennett, Paula L. Jewell and Carrie L. Thornhill to grant).

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

ATTESTED BY:



MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: SEP 22 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15694

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 22 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Contrast Holding Co., Inc.
5806 Baltimore Boulevard
Hyattsville, MD 20781

Henry McKinnon
509 13th Street, S.E.
Wash, D.C. 20003

Charles E. Kaufman
1247 E Street, S.E.
Wash, D.C. 20003

Jamie Platt, Chairperson
Advisory Neighborhood Commission 6-B
921 Pennsylvania Avenue, S.E., #108
Washington, D.C. 20003

A handwritten signature in cursive script, reading "Madeliene H. Robinson".

MADELIENE H. ROBINSON
Acting Director

DATE: _____

SEP 22 1992