

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 *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.)

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

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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.