GDL | Greenstein DeLorme & Luchs

John Patrick Brown Jr.
JPB@gdllaw.com
(202) 452-1400 x 2628

October 28, 2026

VIA IZIS AND BY HAND DELIVERY

Ms. Michelle Pourciau
Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: BZA Application of 912 New Hampshire Avenue, NW, LLC
on behalf of 7-Eleven, Inc.
Renewal of BZA Order Nos. 18319 and 18319-A
912 New Hampshire Avenue, N.W.
(Square 0028, Lot 0122) ("Property")

Dear Chairperson Pourciau:

On behalf of the Applicant, we submit the enclosed application to permanently renew a special exception pursuant to 11DCMR Subtitle X, §901.2 for a non-conforming retail grocery store first approved in 1982 under Subtitle C, §204.9. Enclosed please find two copies of the filing along with a check in the amount of $1,560.00 made payable to the D.C. Treasurer. The following supporting materials are attached:

1. Zoning Self Certification Form (BZA Form 135);

2. Letters of Authorization;

3. List of the Property Owners within 200 feet of the Property (and Two Sets of Self-Stick Mailing Labels); and

4. Statement of the Applicant, including the following Exhibits:

Exhibit A: BZA Orders Nos. 13596, 14196, 15526, 16261, 17021, 17632, 18319 and 18319-A

Exhibit B: Zoning Map

Exhibit C: Photos of Subject Property

Exhibit D: ANC 2A Letters of Support

We respectfully request that the Board schedule the application for a public hearing on the next available date.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to ask the Office of Zoning staff to contact the undersigned.

Very truly yours,

GREENSTEIN DELORME & LUCHS, P.C.



John Patrick Brown, Jr.



Lyle M. Blanchard

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Application was sent electronically on October 28, 2026 to the following:

ANC 2A
2A@anc.dc.gov

Commissioner Trupti ("Trip") Patel, ANC 2A Chairperson and SMD2A03
2A03@anc.dc.gov

Ms. Maxine Brown-Roberts
Associate Director, Development Review
Maxine.BrownRoberts@dc.gov

Mr. Erkin Ozberk
D.C. Department of Transportation
Erkin.Ozberk1@dc.gov



John Patrick Brown, Jr.

FORM 135 – ZONING SELF-CERTIFICATION

Project Information	Address(es)	912 New Hampshire Avenue, NW
	Square and Lot(s) *Note: Parcels start with "PAR"*	Square 0028, Lot 0122
	Zone District(s)	FB/R-3 (R-17)
	ANC Single Member District(s)	ANC 2A03

Certification *Select relief requested*	*The undersigned agent hereby certifies that the following zoning relief is requested from the Board of Zoning Adjustment in this matter (**include all relevant section citations, e.g. "E-210.1 and E-5201"**)*:		
	☐	Special Exception X § 901.2	*Zoning Regulations Section(s)*
	☑	Area Variance X § 1002.1(a)	*Zoning Regulations Section(s)*
			C §204.9
	☐	Use Variance X § 1002.1(b)	*Zoning Regulations Section(s)*

Pursuant to 11 DCMR Y § 300.6(b), the undersigned agent certifies that:

1. The agent is duly licensed to practice law or architecture in the District of Columbia;
2. The agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia; and
3. The applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.

The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief is a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Buildings harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the BZA.

The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter.

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this form is in violation of D.C. Law and subject to a fine of not more than $1,000 or 180 days imprisonment or both. (D.C. Official Code § 22-2405)

Owner Name (Print)	**Owner Signature**	
Robert Goldman		
Agent Name (Print)	**Agent Signature**	**DC Bar No. or Architect Registration No.**
John Patrick Brown, Jr.		DC Bar No. 417566
Date:		

NOTES AND COMPUTATIONS

All fields should be filled in completely, insert "N/A" where not applicable

Item	Existing Conditions	Minimum Required	Maximum Allowed	Provided by Proposed Construction	Deviation/ Percentage
Lot Area (sq. ft.)	N/A	N/A	N/A	N/A	N/A
Lot Width (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Lot Occupancy (building area/lot area)	N/A	N/A	N/A	N/A	N/A
Gross Floor Area (sq. ft.)	N/A	N/A	N/A	N/A	N/A
Floor Area Ratio (FAR) (floor area/lot area)	N/A	N/A	N/A	N/A	N/A
Principal Building Height (stories) *Check boxes applicable to proposed project below:* ☐ Basement ☐ Penthouse ☐ Cellar ☐ Rooftop Structure ☐ None	N/A	N/A	N/A	N/A	N/A
Principal Building Height (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Accessory Building Height (stories)	N/A	N/A	N/A	N/A	N/A
Accessory Building Height (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Front Yard (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Rear Yard (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Distance Beyond Rear Wall of Adjoining Buildings (R/RF zones) (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Side Yard (ft. to the tenth)	N/A	N/A	N/A	N/A	N/A
Open Court (width by depth in ft.)	N/A	N/A	N/A	N/A	N/A
Closed Court (width by depth in ft.)	N/A	N/A	N/A	N/A	N/A
Vehicle Parking Spaces (#)	N/A	N/A	N/A	N/A	N/A
Bicycle Parking Spaces (#)	N/A	N/A	N/A	N/A	N/A
Loading Berths (# and size in ft.)	N/A	N/A	N/A	N/A	N/A
Pervious Surface (%)	N/A	N/A	N/A	N/A	N/A
Principal Dwelling Units (#)	N/A	N/A	N/A	N/A	N/A
Accessory Dwelling Units (#)	N/A	N/A	N/A	N/A	N/A
Solar Shading of Abutting Properties (R/RF zones) (%)	N/A	N/A	N/A	N/A	N/A
Other:	N/A	N/A	N/A	N/A	N/A
Other:	N/A	N/A	N/A	N/A	N/A

912 NEW HAMPSHIRE AVENUE, NW LLC
1010 S. CREEK VIEW COURT
CHURCHTON, MD 20733

October 20, 2026

Board of Zoning Adjustment
Government of the District of Columbia
One Judiciary Square
441 4th Street, N.W., Suite 210-S
Washington, D.C. 20001

Re: Renewal of BZA Order Nos. 18319, 18319-A
912 New Hampshire Avenue, N.W.
Square 0028, Lot 0122 ("Property")

Dear Members of the Board:

Please be advised that 912 New Hampshire Avenue, NW LLC ("Owner"), hereby authorizes the law firm of Greenstein, DeLorme & Luchs, P.C., as authorized agent ("Agent"), to file a BZA Application (and any related material) for this Property on behalf of the Owner and to represent the Owner in any proceedings related to the BZA Application. Additionally, 7-Eleven, Inc., lessee and franchisor of the existing convenience store, is authorized to appear in this BZA case.

912 NEW HAMPSHIRE AVENUE, NW LLC

By: _____, Managing Member
Robert Goldman

The Agents have read the BZA's Rules of Practice and Procedure (11 DCMR, Subtitle Y) and are able to competently represent the Owner.

Greenstein DeLorme & Luchs, P.C.

By: _____
John Patrick Brown, Jr., Esq.
Agent

By: _____
Lyle M. Blanchard, Esq.
Agent

4937-1115-1322.v1

October 20, 2026

Board of Zoning Adjustment
Government of the District of Columbia
One Judiciary Square
441 4th Street, N.W., Suite 210-S
Washington, D.C. 20001

Re: Renewal of BZA Order Nos. 18319, 18319-A
912 New Hampshire Avenue, N.W.
Square 0028, Lot 0122 ("Property")

Dear Members of the Board:

Please be advised that 7-Eleven, Inc. hereby authorizes the law firm of Greenstein, DeLorme & Luchs, P.C., as authorized agent ("Agent"), to file a BZA Application (and any related material) for this Property on behalf of 7-Eleven, Inc. and to represent it in any proceedings related to the BZA Application.

7-ELEVEN, INC.

By: _____
Kimberly Murphy
Managing Counsel

The Agents have read the BZA's Rules of Practice and Procedure (11 DCMR, Subtitle Y) and are able to competently represent the Owner.

Greenstein DeLorme & Luchs, P.C.

By: _____
John Patrick Brown, Jr., Esq.
Agent

By: _____
Lyle M. Blanchard, Esq.
Agent

EXPEDITED REQUEST FOR PROPERTY OWNER LIST MADE/PAID ON OCTOBER 19, 2026

LIST PENDING

GDL | Greenstein DeLorme & Luchs

STATEMENT OF COMMUNITY OUTREACH

Pursuant to Subtitle Y-300.8(1), we will contact Trupti ("Trip") Patel, ANC 2A Chairperson and the Single Member District Commissioner (2A03) for the Property. We plan to present the application to the full ANC. A copy of the BZA application will be served by certificate of service to the Chairperson and ANC 2A.

GREENSTEIN DELORME & LUCHS, P.C.



John Patrick Brown, Jr.

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., October 20, 2026

Plat for Building Permit of :

SQUARE 28 LOT 122

Scale: 1 inch = 10 feet

Recorded in Book 23 Page 196

Receipt No. 27-00246

Drawn by: B.S.

Furnished to: CHRIS MILLER

"I hereby certify that the dimensions and configuration of the lot(s) hereon depicted are consistent with the records of the Office of the Surveyor unless otherwise noted, but may not reflect actual field measurements. The dimensions and configuration of A&T lots are provided by the Office of Tax and Revenue and may not necessarily agree with the deed description(s)."

Anup Shrestha

For Surveyor, D.C.

I hereby certify that on this plat on which the Office of the Surveyor has drawn the dimensions of this lot, I have accurately and completely depicted and labeled the following:
1) all existing buildings and improvements - including parking spaces, covered porches, decks and retaining walls over four feet above grade, and any existing face-on-line or party wall labeled as such, well as projections and improvements in public space - with complete and accurate dimensions;
2) all proposed demolition or raze of existing buildings duly labeled as such; all proposed buildings and improvements - including parking spaces, covered porches, decks and retaining walls over four feet above grade, any existing face-on-line or party wall labeled as such, as well as projections and improvements in public space and the improvements used to satisfy pervious surface or green area ratio requirements - with complete and accurate dimensions, in conformity with the plans submitted with building permit application _____; and
3) any existing chimney or vent on an adjacent property that is located within 10 feet of this lot.
I also hereby certify that:
1) my depiction on this plat, as detailed above, is accurate and complete as of the date of my signature hereon;
2) there is no elevation change exceeding ten feet measured between lot lines; or if so, this elevation change is depicted on a site plan submitted with the plans for this permit application;
3) I have/have not (*circle one*) filed a subdivision application with the Office of the Surveyor;
4) I have/have not (*circle one*) filed a subdivision application with the Office of Tax & Revenue; and
5) if there are changes to the lot and its boundaries as shown on this plat, or to the proposed construction and plans as shown on this plat, that I shall obtain an updated plat from the Office of the Surveyor on which I will depict all existing and proposed construction and which I will then submit to the Office of the Zoning Administrator for review and approval prior to permit issuance.
The Office of the Zoning Administrator will only accept a Building Plat issued by the Office of the Surveyor within the two years prior to the date DCRA accepts a Building Permit Application as complete.
I acknowledge that any inaccuracy or errors in my depiction on this plat will subject any permit or certificate of occupancy issued in reliance on this plat to enforcement, including revocation under Sections 105.6(1) and 110.5.2 of the Building Code (Title 12A of the DCMR) as well as prosecution and penalties under Section 404 of D.C. Law 4-164 (D.C. Official Code §22-2405).

Signature: _____
Date: _____

Printed Name: _____ Relationship to Lot Owner:_____

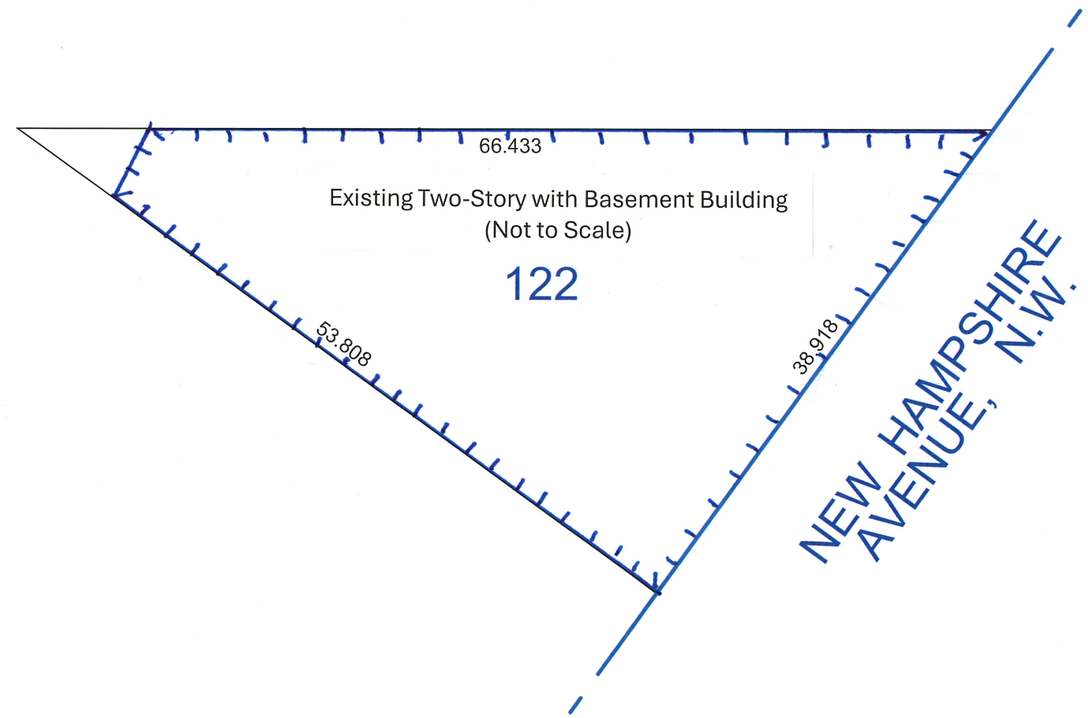
If a registered design professional, provide license number _____ and include stamp below.

0 10 30 50

SCALE: 1:10

SR-27-00246(2026) SHEET 1 OF 2

SQUARE 28



SR-27-00246(2026) SHEET 2 OF 2

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of 912 New Hampshire Avenue, NW, LLC on behalf of 7-Eleven, Inc.

BZA Case No. _____
ANC 2A03

STATEMENT OF THE APPLICANT

This application ("Application") is submitted on behalf of 912 New Hampshire Avenue, NW, LLC ("Owner") on behalf of 7-Eleven, Inc. ("Applicant"), by its attorneys, Greenstein DeLorme & Luchs, P.C., by John Patrick Brown, Jr., Esquire and Lyle M. Blanchard, Esquire, in support of an application for the special exception described below.

I. NATURE OF RELIEF SOUGHT

The Applicant, pursuant to Subtitle X, §901.2 of the Zoning Regulations, seeks permanent renewal of a special exception under Subtitle C, §204.9 to continue to operate a retail grocery store[1] with basement storage pursuant to the conditions established in BZA Order Nos. 18319, 18319-A, including twenty-four (24) hour operations.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Subtitle C, §204.9 and Subtitle X, §901.2 of the Zoning Regulations.

III. BACKGROUND OF THE CASE

The first floor and basement of 912 New Hampshire Avenue, N.W. (Square 28, Lot 122) (the **"Property"**) has been operating as a retail grocery store since March 22, 1982, when the Board of Zoning Adjustment (the **"Board"**) granted a special exception to change a nonconforming use from a grocery store to a grocery store and delicatessen on the first floor and

1 BZA Order Nos. 18319, 18319-A adopted "retail grocery store" (replacing "retail grocery store and delicatessen") to describe the use in order to be consistent with recent BZA decisions.

use of storage in the basement. The current retail grocery store has been in operation under seven (7) BZA approved special exceptions, pursuant to Sections 3104.1 and 2003.1 of the 1958 Zoning Regulations, for a period of more than forty-four (44) years. See attached BZA Orders Nos. 13596, 14196, 15526, 16261, 17021 17632, 18319 and 18319-A, Exhibit A. The special exception was last approved, with numerous conditions, for a period of five years by BZA Order Nos. 18319 and 18319-A. The Applicant only recently discovered that the prior approval inadvertently expired on March 16, 2017.

The Applicant seeks to permanently renew and continue the Board's approval in BZA Nos. 18319 and 18319-A in accordance with the enumerated conditions for twenty-four (24) hour operations. No physical changes or additional zoning relief are requested.

IV. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property, operating as a "7-Eleven", is zoned FB/R-3 (R-17) and located within the Foggy Bottom Historic District. The Property is located at 912 New Hampshire Avenue, N.W., near the intersection of 24th Street and New Hampshire Avenue, N.W. and just within the eastern boundary of the Foggy Bottom Overlay District, as shown on the attached Zoning Map. See Exhibit B. The store at the Property was in existence for ten years prior to the enactment of the Foggy Bottom Overlay District in 1992. Under the 1958 Zoning Regulations, the Property was originally zoned R-5-D, but then rezoned to R-3 with the enactment of the Overlay. The total gross floor area of the building is approximately 2,700 square feet, with approximately 913 square feet on each of the three levels (basement, first and second floors). The second (top) floor is used for residential purposes and is currently vacant. Since the building occupies almost the entire lot, there are no parking spaces for customers or employees. The Applicant rents and maintains an off-site parking space on 24th Street. To the north are three-story residential

buildings and a 9-story condominium apartment building. To the south are a two-story row house and a 7-story apartment building and row houses. See attached Photos of Subject Property, Exhibit C.

In addition to the Property being located within the eastern edge of the Overlay, the Property falls just outside of the George Washington University Campus boundary, which is across the street on 24th Street and the Foggy Bottom Metro Station is one block from the Property. The Applicant has successfully maintained 24-hour operations for fourteen (14) years which does not violate the purpose of the Foggy Bottom Overlay, as stated below, since no physical changes occurred at the Property or store which would harm either the residential character of the area or the integrity of the historic district. In fact, over the last forty plus years, this store was supported by, served and been relied upon by the residents of this neighborhood. Subtitle D, §900.2 of the 2016 Zoning Regulations state the purposes of the Foggy Bottom Residential House Zone (R-17) are as follows: (a) enhance the residential character of the area by maintaining existing low-scale residential uses, human scale streetscape, and historic character; (b) enhance the human-scale streetscape by maintaining the public space in front of the buildings as landscaped green spaces and limiting future curb cuts; (c) require a scale of development consistent with (1) the Comprehensive Plan and (2) the characteristics of the low scale harmony of rhythm is townhouses of a purely residential neighborhood that formed the basis on which the area was designated a historic district; (d) protect the integrity of the historic district, its small scale and open spaces; (e) preserve areas planned as open backyards and alleyways that provide the only access to historic alley dwellings; enhance the special human scale streetscape by maintaining public space in front of buildings as landscaped green spaces

and limiting future curb cuts; and (f) encourage greater use of public transportation through use of the nearby Metrorail Station.

There has been additional development in the immediate vicinity. The most significant construction was at nearby Square 54 consisting of a mixed-use development at 2200 Pennsylvania Avenue, NW. The development includes below-grade parking structure, a 10-story office building with 476,000 square feet of office space and a 335-unit apartment building. A Wholefoods grocery store opened at this site with an address of 2201 Eye Street, NW. The Wholefoods store (corner of 22nd Street and I Street) hours are 8:00 am to 10:00 pm daily with a coffee bar open at 7:00 am. In addition, a Trader Joe's opened approximately 3 blocks away at 1101 25th St NW (corner of 25th Street and L Street) and is open from 8:00 am - 10:00 pm. The Safeway store that had operated for 45 years within the Watergate Complex approximately 2 blocks away at 2550 Virginia Avenue closed in December 2011.

V. EXISTING AND INTENDED USE

The Applicant, through its same long-time family-run franchisee, continues to operate as a retail grocery store with basement storage and in compliance with the operating conditions in BZA Order Nos. 18319, 18319-A. The store provides neighborhood residents, employees and students with groceries, delicatessen items, coffee, newspapers and magazines. The store does not sell alcohol or any form of lottery tickets. The store has a core customer base of 26,493 people within a 0.1 mile radius consisting of those who live in the area, who work in the area and others passing through the area.

The Applicant, from the onset, voluntarily decided not to sell lottery tickets at this location, to alleviate any congestion this may cause, despite the fact that every other 7-Eleven store in D.C. sells lottery tickets in some form. The Applicant will continue this self-imposed

restriction as a courtesy to the neighborhood. An additional distinction between the Applicant's store and the typical urban 7-Eleven store is its size. The Applicant's store contains only 800 square feet of retail space on the first or ground floor, whereas the average D.C. 7-11 store size is substantially larger.

Generally, customers walk to the store. Such customers come by foot from their homes, apartments, condominiums, places of work and residence halls located in the vicinity, including those from the George Washington University and the University Hospital, which is located directly across the street from the store. Some nearby neighbors, especially the elderly and infirmed, have taken advantage of the Applicant's willingness to deliver grocery items to their home at no charge. The Applicant continued to operate during Covid.

The store actually helps improve the safety of the neighborhood by attracting a greater police presence since it provides a welcome resource to the various local law enforcement agencies by providing facilities for their use. There is also a bathroom for the officers to use, and the owner encourages all officers that stop by the store to continue to visit so they can access the facilities, drink coffee, monitor the customer activity inside and outside the store and have access to telephone and facsimile lines. The 24-hour operation will continue to allow these officers access to the store at all hours of the day creating an even safer community.

A. Request for Permanent Renewal of Longstanding Approvals

For more than forty-four (44) years and seven previous BZA approvals, the Applicant has demonstrated a consistent record of successful, respectful, and BZA compliant operations at this location. As a result, the Applicant requests the Board permanently approve this Application for 24-hour operations subject to the existing enumerated conditions in BZA Order Nos. 18319, 18319-A.

B. Demand and Benefits of 24-Hour Operations

In 2012, the BZA first approved 24-hour operations at this location which responded to customer demand and in keeping with 7-Eleven's nation-wide operations model. For fourteen (14) years, the Applicant has demonstrated that it can operate 24-hours and better serve its customers and the community.

In 2011, the subject property was the only 7-Eleven, out of 32 7-Elevens located in the District, that did not operate 24 hours a day. In the U.S. and Canada, approximately 99.4% of more than 12,000 7-Eleven stores are open around the clock. At 7-Eleven, a 24-hour operation is one of the cornerstones of its business and part of its commitment to serve the communities where they do business. As a general matter, studies show that Americans are staying up later and getting up earlier and need a convenient place to shop that can accommodate their schedules. Due to the store's proximity to the George Washington University Campus and the Hospital, the local residents, faculty, students and hospital workers are able to count on the store always being open.

In 2011 and 2013, the adoption of 24-hour operation was strongly supported by the neighbors and ANC 2A. See Exhibit D.

Labor utilization is also an advantage to a 24-hour operation. The late-night shift provides the store staff a chance to do tasks that are difficult to complete during the busier day hours, including cleaning, ordering and re-stocking.

Lastly, a 24-hour operation provides a safe environment for customers and employees throughout the night.

VI. COMPLIANCE WITH BZA ORDER NOS. 18319, 18319-A

The Board granted the approval in BZA Order Nos. 18319, 18319-A for 24-hour operations for a period of five years, with additional enumerated conditions 3 to 12. In its letter, ANC 2A noted that the Applicant and its franchisee "has maintained a good reputation among neighbors for keeping a clean and well-tended property in Foggy Bottom." See Exhibit D. The Applicant is in compliance with all of the conditions 3 to 12 established by the Board as set forth below.

3. **Deliveries from the 7-Eleven distribution center shall be between 8:00 pm and 10:00 pm only.**

   Applicant is in compliance.

4. **All other deliveries shall be on a scheduled basis between 9:30 am and 3:30 pm so that only one delivery vehicle is at the site at any given time.**

   Applicant is in compliance.

5. **All deliveries shall be made using the commercial loading zone on New Hampshire Avenue immediately adjacent to the site.**

   Applicant is in compliance.

6. **Applicant will empty the trash containers belonging to 7-Eleven and the District government in front of the store at least twice daily or more frequently as required.**

   Applicant is in compliance.

7. **Applicant will clean the sidewalk and gutter in front of the store to ensure they are clean at all times.**

   Applicant is in compliance.

8. **Applicant will clear trash from the sidewalks in front of the adjacent and nearby buildings to the north and south of the store on a regular basis.**

   Applicant is in compliance.

9. **Applicant will clear snow and ice from the sidewalk in front of the store to ensure safe passage.**

Applicant is in compliance.

10. **Applicant will maintain the exterior appearance of the premises in keeping with the residential character of the Foggy Bottom Historic District and Foggy Bottom Overlay District. Any exterior lighting shall be minimized and directed downward and away from all adjoining residential property. Applicant will take all reasonable measures to minimize the light visible from the inside of the store, and will maintain tinted windows and doors.**

Applicant is in compliance.

11. **No signs or poster will be posted in the windows and no public telephones, teller machines or other similar devices will be added to the exterior of the building. No electronic or mechanical amusement machines will be located on the premises.**

Applicant is in compliance.

12. **Applicant will ensure that the shrubs along the railing for persons with disabilities are of a height that covers the railing completely when seen from the sidewalk and that perennial and seasonal landscaping are provided so as to beautify the premises.**

Applicant is in compliance.

VII. COMMUNITY SUPPORT

Historically, the neighborhood and ANC 2A have recognized the Applicant's "good reputation among neighbors for keeping a clean and well-tended property in Foggy Bottom" and supported continued 24-hour operations. See Exhibit D.

VIII. SATISFACTION OF BURDEN OF PROOF FOR ZONING RELIEF

Specifically, the Application satisfies the requirements of Subtitle X, §901.2 of the Zoning Regulations that requires the special exception to be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps."

Beginning in 1982 and continuing through the six subsequent BZA approvals, the retail grocery store use was established as a valid nonconforming use under the requirements of Section 2003 of the 1958 Zoning Regulations. Under Subsection 2003.1, "a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in [Section 2003]." Accordingly, the proposed use shall "not adversely affect the present character or future development of the surrounding area" (2003.2), nor "create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor and design and siting effects." (2003.3). Furthermore, Section 2003 requires that when an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use (2003.4) and that in Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility (2003.5). Applicant's nonconforming use of the Property has repeatedly been considered a "neighborhood facility" as required by Subsection 2003.5. Since 1982, the Board, in BZA Case Nos. 13596, 14196, 15526, 16261, 17021, 17632, 18319 and 18319-A has repeatedly determined that the Applicant's use to be a "neighborhood facility." The use, structure, operations and franchisee at the Property are unchanged since those Orders, except for any modifications which have been required by the Board. As such, the evidence of record will continue to support a conclusion that the retail grocery store constitutes a neighborhood facility. In addition to serving neighborhood residents, the store serves pedestrians who work in the area or attend the George Washington University. As an established, beneficial and relied upon fixture in the neighborhood, the grocery store and

delicatessen will not be a substantial detriment to the public good or adversely affect the present or future general character of the neighborhood.

As a long-established valid non-conforming use under the applicable 1958 Zoning Regulations, the Applicant is in compliance with the relevant non-conforming use requirements in the 2016 Zoning Regulations under Subtitle D, §204.9(c)-(h), including the following:

(c) In the R and RF zones, the corner store provisions of the relevant subtitle shall apply;

Not relevant. The current use is not a corner store.

(d) The external impacts of the proposed use will be deemed to be no greater than the existing use;

The external impacts of the current valid non-conforming use have remained constant since first approved in 1982 and fully addressed by the conditions imposed over the last 44 years.

(e) The proposed use shall not adversely affect the present character or future development of the surrounding area within at least three hundred feet (300 ft.) of the site;

After 44 years of operation at this location, including 14 years of 24-hour operation, the longstanding use is firmly embedded as an integral part of the character of the neighborhood and has contributed to the ongoing development of the area.

(f) The proposed use shall not create any deleterious external effects, including, but not limited to, noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects;

Applicant has made a long-term and concerted effort to eliminate or severely limit any potential "deleterious external effects," including, but not limited to, noise, loitering, waste, traffic, parking, and loading. Under the conditions, in order to minimize such adverse effects to the neighborhood, Applicant has limited the hours of delivery from its distribution center between the hours of 8:00 p.m. and 10:00 p.m. Additionally, deliveries from independent vendors are limited to the hours between 9:30 a.m. to 3:30 p.m., and are scheduled so that only one truck delivers to the store at any given time. There are signs posted on New Hampshire Avenue in front of the store

which restrict the space as a loading zone to be used by commercial vehicles during delivery only. In addition to the above, Applicant's efforts also include trash maintenance and control of vagrancy and loitering. To this end, Applicant keeps both indoor and outdoor trash containers, emptying them as needed to maintain an orderly appearance, and sweeps clean the sidewalks, curb and gutter in front of the store. Tinted glass has been installed in the windows and doors to restrict the visibility of the interior lighting on the exterior of the building. Four (4) 60-watt light bulbs encased in colonial-style light fixtures provide low-level lighting on the outside of the building. Applicant has also posted a "no loitering" sign in the store, allowing the D.C. Police Vagrancy Task Force to move those who loiter away from the store.

(g) When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use; and

The valid non-conforming use approved by the Board has not changed since originally approved in 1982 and permanent 24-hour operations approved in 2013.

(h) The Board of Zoning Adjustment may require the provision of changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

The longstanding conditions imposed and the Applicant's compliance with those conditions have been effective and sustainable safeguards for the neighborhood values and enjoyment. As deemed necessary, the Applicant is amenable to additional reasonable conditions that the Board may impose.

The Applicant has made and shall continue to make vigorous efforts to ensure that this store is maintained and operated in a professional manner, which Applicant acknowledges is not only important for zoning purposes, but also for gaining the support and respect of the neighborhood residents and visitors who are the store's main customers. For these reasons, Applicant's use of the Property is "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps", per Section 3104.1, and does "not adversely affect the present character or future development of the area."

IX. WITNESSES EXPECTED TO TESTIFY

Philip Giles, Jr., 7-Eleven, Inc., Market Leader DMV West – Capital Region

Sam Motamedi, Franchisee

X. EXHIBITS

Exhibit A: BZA Orders Nos. 13596, 14196, 15526, 16261, 17021, 17632, 18319 and 18319-A.

Exhibit B: Zoning Map

Exhibit C: Photos of Subject Property

Exhibit D: ANC 2A Letters of Support

XI. CONCLUSION

As an established, beneficial and relied upon fixture in the Foggy Bottom neighborhood, the retail grocery store will not be a substantial detriment to the public good or adversely affect the present or future general character of the neighborhood.

For the reasons set forth above, the Applicant, by and through counsel, submits that its Application should be granted on a permanent basis.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

By: _____
Lyle M. Blanchard

801 17th Street, N.W., Suite 1000
Washington, D.C. 20006
Telephone: (202) 452-1400

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13596, of Harold Weintraub, et al., pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Sub-sections 7104.2 and 7105.2 to change a non-conforming use from grocery store, first floor, to grocery store and delicatessen, first floor, and to extend that use as storage to the basement and for a variance to permit structural alterations to a conforming structure devoted to a non-conforming use (Paragraph 7106.111) in an R-5-D District at premises 912 New Hampshire Avenue, N.W., (Square 28, Lot 122).

HEARING DATES: November 10, and December 2, 1981
DECISION DATE: January 6, 1982

FINDINGS OF FACT:

1. The subject site is located near the intersection of 24th Street and New Hampshire Avenue, and is known as premises 912 New Hampshire Avenue, N.W. The site is on Lot 122, Square 28 and is zoned R-5-D.

2. The subject site is a triangular lot with 38.9 feet of frontage on New Hampshire Avenue and a 66.4 foot common boundary with the building that adjoins to the north and a 53.8 foot common boundary with the building that adjoins on the south. The rear of the lot abuts on private property. The lot is improved by a two story, brick structure that covers 913 square feet, or about eighty-seven percent of the 1,047 square foot lot. The New Hampshire Avenue frontage of the building is located on the property line. The north and south walls of the building are also on the property lines. The existing building is only thirty-five feet deep with a rear wall only 13.3 feet wide.

3. Across New Hampshire Avenue and 24th Street to the east is an open plaza, a part of which is used as a private parking lot by the Goerge Washington University. The plaza also contains an entrance to the "Foggy Bottom/George Washington University" Metrorail station. The George Washington University Hospital and the George Washington University Medical School are nearby. Condominium residence buildings occupy the lots to the north and west of the site and a single-family residence occupies the lot to the south.

4. The second floor of the building is used as a residential dwelling with a private entrance on the south front side of the premises. A grocery store occupies the first floor, as authorized by Certificate of Occupancy No. B-16924, dated March 26, 1956. The cellar is used for storage for the store without a certificate of occupancy.

5. The applicants have leased the lot and the building to the Soughland Corporation who, after making repairs and alterations, plan to operate a "7-Eleven" food store on the first level. The proposed store is considered a grocery store and delicatessen, since coffee, soup and other small items will be prepared on the premises for consumption off the premises. Both the existing use and the proposed use are permitted as a matter of right in a C-1 District. The operation of a "7-Eleven" store as a grocery store only involving no structural alterations to the building is permitted without approval from the Board as a continuation of an existing valid non-conforming use.

6. The applicants propose to renovate, alter and modernize the structure for the new store. The proposed alterations will increase the space available for grocery use by approximately seventy-five square feet. The existing staircases leading from the first level to the basement and from the first level to the second floor will be removed. Two new staircases will be constructed the bases of which will begin five feet nearer to the front wall of the building than the existing staircases. A loadbearing wall between the first level private entrance stair passage and the grocery store use will be removed and a new loadbearing wall be constructed approximately three feet closer to the new staircase. The moving of this wall will allow Southland to use a hallway that is now unused for the first level food store. The vertical structural column which stands in the middle of the first level retail sales area will be removed and a structural horizontal beam will be inserted in place thereof. A toilet room in the rear of the store will be removed and a private toilet in the basement level of the building will be added.

7. Other than the new toilet, Southland plans to make no further changes to the basement level of the building. That area is to be used for storage.

8. No changes will be made to the second level of the building which will remain a residential dwelling. No changes will be made to the second floor except to bring that part of the premises into conformity with current building code standards.

9. Southland proposes to extend the grocery and delicatessen use to the cellar but only for storage purposes. It would install a new toilet and hand basin to

replace the ones removed from the first floor, vermin proof the cellar and make other repairs that are required by municipal law or regulations.

10. On the exterior of the building, Southland will repaint the existing painted brick face, repair the windows, doors and trim, remove the existing grocery store sign and install a new non-lighted "7-Eleven" sign designed to be consistent with the streetscape. With the permission of the D.C. Government, Southland will also repair the brick pavement in the public space that is in the front of the building and install appropriate planters and trash receptacles. Southland also proposes to slope the brick in the front of the building to assist handicapped access to the store.

11. The subject premises is a peculiar-shaped, two-story building that was originally designed to contain office or store space because of the three door arrangement on New Hampshire Avenue.

12. Southland's traffic expert testified that he had performed an on-site traffic analysis of the site and concluded that the proposed use will have a negligible effect on existing traffic conditions. The conclusion was based on his observation of the existing traffic flow at the intersection of New Hampshire Avenue and 24th Street, found by him to be within acceptable levels, the similarity between the existing use and the proposed use, the resulting effect on traffic patterns and the metered parking in the vicinity of the site. The traffic expert further testified that a traffic count performed by him on a weekday morning and evening peak period revealed a "B" range of traffic use during those periods. He found an adequate capacity at the intersection of New Hampshire Avenue and 24th Street to accommodate additional traffic volumes which could reasonably be anticipated by the proposed use. The Board concurs in those findings and conclusions.

13. The additional first level grocery floor space is critical to the ability of the applicant to use the premises. Southland intends to operate the grocery store and delicatessen as a neighborhood facility attracting the bulk of its customers from the adjoining residential community and from nearby George Washington University.

14. The Southland Corporation operates "7-Eleven" facilities at three other District of Columbia locations that are similar in density and adjoining land uses. A representative of Southland testified that there were no significant problems at any of those stores with traffic, noise, litter or citizen complaints.

15. Southland's Division Manager submitted a letter in which he stated that: 1) trash will be picked up regularly; 2) loitering in and around the store will be discouraged; 3) there will be no electronic game machines at this location; 4) Southland actively recruits franchisees from the local minority communities; 5) Southland plans to lease the second floor of the building as a "first class bedroom apartment on a long-term basis"; and 6) Southland is able to operate the store on a less than 24 hour basis.

16. The Office of Planning and Development, by memorandum dated November 5, 1981 and by testimony at the public hearing, recommended that the application be denied. The OPD was of the opinion that the requested variance does not meet the standards of Paragraph 8207.11. The OPD was of the opinion that the increase in sales floor area is not an adequate justification. It was further the opinion of OPD that the proposed "7-Eleven" store would adversely effect the present character of the neighborhood. The proposed night-time and all-night operation is likely to be highly objectionable in terms of disruptive noise and illumination in a residential area. The all-night operation would attract the noise and lights of cars arriving and departing. In the middle of the night, the conversation of numbers of pedestrians coming to the site would be a disruption. There is also the possibility that electronic games may be installed, which are characteristically found in "7-Eleven" stores. The addition of deli service would likely add significantly to litter problems. The increased retail floor area and storage space are likely to result in much greater sales volume and coming and going of customers than the existing grocery. In general, the proposed use appears likely to be much more intensive and impose many more deleterious effects than the existing small grocery store, which has been a quiet, relatively unobtrusive neighborhood facility. The OPD noted that if the Board approved the application, the following kinds of conditions should be imposed:

a. Restricting hours of operation to respect expected hours of quiet in neighborhood areas;

b. Attractive landscaping;

c. Maintenance of residential appearance of building exterior;

d. Type and placement of trash receptacles;

e. Sign treatment (non-illuminated); and,

f. A time limit on approval, so that neighborhood impacts would be reassessed at short intervals.

The representative of OPD testified at the hearing that if the Board imposed strict conditions on an approval, especially limiting the hours of operation, the OPD's concerns over impact would be satisfied in large part.

17. Advisory Neighborhood Commission - 2A, by resolution dated October 20, 1981, opposed the application. The ANC was concerned about ensuring an sufficient supply of grocery stores for residents in the neighborhood. The ANC was also concerned to ensure that grocery stores are located in areas where they are needed and wanted by local residents and are compatible with the surrounding environment. The ANC believed that chain convenience stores are not an appropriate or desirable use in most of the residentially zoned parts of Foggy Bottom, and, that the proposed 7-11 store for 912 New Hampshire Avenue, despite some efforts by the Southland Corp. to make it blend with the surrounding neighborhood, is neither appropriate nor desirable and could contribute to litter, noise, traffic congestion and other social and environmental problems in the neighborhood.

18. The application was also opposed by several other neighborhood Associations, residents and property owners. The opposition argued that the proposed use of the property would result in problems of litter, noise, traffic congestion and other social and environmental problems. The basis for the opposition was derived from perception of how the proposed use would be operated as compared to other "7-Elevens" in surrounding areas.

19. The Board notes that both the applicant and the opposition cited the examples of other "7-Elevens" in other neighborhoods and other cities to support their argument that the proposed use would or would not be objectionable. The Board is unable to rely upon any of those assertions, as none are backed up by probative evidence to support the argument or disprove the counter-argument.

20. As to the issues raised by the OPD, the ANC and the other parties appearing in opposition, the Board finds as follows:

1. The proposed change of non-conforming use is to permit the addition of a delicatatessen to the existing grocery store. The delicatessen use is limited to the preparation and sale of coffee, soup and other small items for consumption off the premises. The grocery store use can be operated without Board approval. The addition of the sale of a small number of items for off-premises consumption to the other activities already permitted will have no material affect on traffic congestion, noise, litter or any other external impact.

2. The location and design of the proposed store, subject to the conditions specified in this order, are such that the proposed grocery store and delicatessen is not likely to cause objectionable conditions in the area.

3. The Board will approve this application for a period of THREE YEARS only, so that the actual effects of the proposed use as operated can be observed. Residents of the area will have the opportunity to directly advise the Board at the end of that period as to whether any actual adverse conditions result.

4. The variance sought is an area variance. The applicant through the testimony of the real estate representative of the Southland Corporation, has adequately demonstrated the practical difficulty that would result if the structural alterations were not permitted. The Board further finds that all of the structural alterations are minor in nature and that the integral parts of the structure are not effected by the changes.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and evidence of record, the Board concludes that the applicants are seeking two special exceptions, the granting of which requires proof that the applicants have complied with the requirements of Sub-sections 8207.2, 7104.1 and 7105.2 of the Zoning Regulations. Further, the applicant is seeking a variance from the provisions of Sub-paragraph 7106.111 upon proof that it has complied with the requirements of Paragraph 8207.11 of the Regulations.

As to the special exceptions, the Board concludes that the applicants have made the required showing. The proposed use is permitted in the most restrictive district in which the existing use is permitted. The proposed use is a neighborhood facility, serving both the residential and George Washington University segments of the area. The proposed additional delicatessen use will not adversely effect the present character or future development of the area. The proposed extension of the storage to the basement is part of the same structure as the existing use.

As to the variance, the Board concludes that the requested variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The use of the structure as a grocery is now permitted; the change and extension of the use are permitted by special exceptions.

What is at issue is the structural alteration to the building. The Board concludes that the fact that the building was constructed for a commercial building and the need to establish a commercial facility having a viable size and configuration are an exceptional condition causing a practical difficulty for the owners.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled by statute. The Board notes that it will impose as conditions to the granting of this application a series of strict conditions designed to protect adjoining and surrounding properties from potential adverse effects. The Board will further limit approval to an initial three year period, so that at the end of that period the Board can assess the actual operating impacts of the use. The Board advises the applicant that it be diligent in observing the conditions set forth by the Board, and in working with the surrounding residents to insure that any objectionable effects are minimal. The Board cautions that, if acceptable operating conditions do not obtain, an application for continuation of the use may well be denied.

The Board concludes that the applicant has made a sufficient showing to merit the conditional approval of this application. The Board concludes 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 maps. The Board further concludes that the special exceptions can be granted as in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said regulations and maps. It is therefore ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of THREE YEARS from the date of the Final Order.

2. Construction, including the type and placement of the sign, shall be in compliance with the plans as marked as Exhibit No. 9 of the record.

3. The hours of operation shall not exceed from 7 a.m. to 11 p.m.

4. Trash containers shall be provided on the interior of the store. Trash containers shall be located on the exterior subject to approval by the appropriate authorities of the District of Columbia.

5. There shall be no electronic or mechanical

amusement machines located on the premises.

6. Any exterior lighting provided shall be directed downward and away from all adjoining residential property. The applicant shall take all measures necessary to minize the light which is visible from the store, including providing tinted glass and/or appropriate shades, blinds or drapes.

7. Use of the second floor of the building shall be limited to an apartment.

VOTE: 4-1 (Walter B. Lewis, Connie Fortune, William F. McIntosh and Douglas J. Patton to GRANT; Charles R. Norris OPPOSED).

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

ATTESTED BY: _____
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: MAR 22 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "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 LICENSES, INVESTIGATIONS AND INSPECTIONS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14196 of Harold Weintraub, et al., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to continue to use the first floor of the subject premises as a grocery store and delicatessen and the basement for storage in an R-5-D District at premises 912 New Hampshire Avenue, N.W., (Square 28, Lot 122).

HEARING DATE: October 17, 1984
DECISION DATE: October 17, 1984 (Bench Decision)

FINDINGS OF FACT:

1. The subject site is located near the intersection of 24th Street and New Hampshire Avenue, and is known as premises 912 New Hampshire Avenue, N.W. The site is on Lot 122, Square 28 and is zoned R-5-D.

2. The subject site is a triangular lot with 38.9 feet of frontage on New Hampshire Avenue and a 66.4 foot common boundary with the building that adjoins to the north and a 53.8 foot common boundary with the building that adjoins on the south. The rear of the lot abuts on private property. The lot is improved by a two story, brick structure that covers 913 square feet, or about eighty-seven percent of the 1,047 square foot lot. The New Hampshire Avenue frontage of the building is located on the property line. The north and south walls of the building are also on the property lines. The existing building is only thirty-five feet deep with a rear wall only 13.3 feet wide.

3. Across New Hampshire Avenue and 24th Street to the east is an open plaza, a part of which is used as a private parking lot by the George Washington University. The plaza also contains an entrance to the "Foggy Bottom/George University" Metrorail station. The George Washington University Hospital and the George Washington University Medical School are nearby. Condominium residence buildings occupy the lots to the north and west of the site and a single-family residence occupies the lot to the south.

4. In BZA Order No. 13596, dated March 33, 1982, the Board granted this same applicant special exceptions under Sub-sections 7104.2 and 7105.2 to change a nonconforming use from grocery store, first floor, to grocery store and delicatessen, first floor, and to extend that use as storage to the basement and a variance to permit structural

alterations to a conforming structure devoted to a nonconforming use pursuant to Paragraph 7106.111. By Final Order of the Board, that zoning relief, with conditions, was valid until March 22, 1985. The applicants now seek a continuation of the use.

5. The applicants have leased the lot and the building to the Southland Corporation, which has completed the repairs and alterations authorized by Order No. 13596. The first floor of the premises is used as a 7-Eleven grocery and delicatessen. The basement is used as storage for the aforementioned store. The second level is used for residential purposes.

6. On the exterior of the building, Southland has repainted the existing brick face, repaired the windows, doors and trim, removed the pre-existing grocery store sign and installed a new non-lighted "7-Eleven" sign that is designed to be consistent with the streetscape. Southland has also repaired the pavement in the public space that is in front of the building and installed appropriate planters and trash receptables.

7. Southland's traffic expert performed an on-site traffic analysis of the site and concluded that the operation of the 7-Eleven store has not had, and will not have, an adverse impact on the traffic flow at the intersection of New Hampshire Avenue and 24th Street. He specifically found the traffic flow to be within acceptable levels. He found further that there is an adequate capacity at the intersection of New Hampshire Avenue and 24th Street to accommodate the additional traffic volumes that the existing use created. The Board so finds.

8. The store operates from 7:00 A.M. to 11:00 P.M. daily.

9. The store provides a necessary and convenient service to neighborhood residents. It provides benefits to the neighborhood and its residents in the form of improved access to convenience goods and services, savings in travel time, and related benefits in reduced energy consumption, air pollution and safety, in comparison to securing similar goods and services at more distant locations.

10. The store draws its customers primarily from within a one-half mile radius from the premises.

11. There are no video game machines in the store.

12. The store does not experience either loitering or crime problems.

13. The franchisees attend meetings of neighborhood groups, such as the Advisory Neighborhood Commission, for the purpose of ascertaining and solving any public problems the store may cause.

14. The Foggy Bottom and West End Advisory Neighborhood Commission 2A submitted a resolution, dated September 12, 1984, in support of the continuation of the existing use. The ANC reported that the applicant and operators have carefully observed the BZA restrictions and that the operators have "gone far beyond them in their successful efforts to be an exemplary neighbor." The resolution recommended that the application be approved for a period of six years. The Board concurs with the ANC's reasoning and recommendation.

15. A petition signed by some 400 residents in favor of the continuation of the subject use was filed of record. The signatures were prefaced by the comment "We are happy to have this 7-Eleven in our neighborhood."

16. The application was opposed by one local resident who submitted a letter complaining that the store operation causes traffic, parking, litter and loitering problems in the area. The Board finds that the letter bases its allegations upon the personal witness of the writer. The writer did not submit any evidence to substantiate her allegations, nor did she appear at the hearing to testify and subject herself to cross-examination. The Board finds such opposition to be contrary to the weight of evidence of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of facts and the evidence of record, the Board concludes that the applicants are seeking a special exception, the granting of which requires proof that the applicants have complied with the requirements of Sub-section 8207.2 and Paragraph 7106.11 of the Zoning Regulations.

The Board concludes that the applicants duly established the grocery and delicatessen, first floor, and storage use, basement, as authorized by the Final Order in Application No. 13596. The Board concludes that the applicant has met its burden of proof. The Board concludes further that the applicant has been diligent in observing the conditions set forth by the Board in Order No. 13596 and that the applicant has been successful in creating and operating a grocery and delicatessen store use that has attracted the support of the community.

The Board also concludes that it has accorded to the ANC the "great weight" to which it is entitled by statute. The Board notes that it will continue to impose as conditions to the granting of this application a series of strict

conditions designed to protect adjoining and surrounding properties from potential adverse affects. The Board will further limit approval to a six year period so that at the end of that period the Board can reassess the actual operating impacts of the use. The Board concludes that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the said Regulations and Maps. It is, therefore, ORDERED that the application is GRANTED, SUBJECT, to the following conditions:

1. Approval shall be for a period of SIX YEARS from the date of expiration of the prior order, namely from March 22, 1985.

2. Construction, including the type and placement of the sign, shall continue to be in compliance with the plan marked as Exhibit No. 9 in the record of BZA Application No. 13596.

3. The hours of operation shall not exceed from 7 A.M. to 11 P.M.

4. Trash containers shall be provided on the interior of the store. Trash containers shall be located on the exterior subject to approval by the appropriate authorities of the District of Columbia.

5. There shall be no electronic or mechanical amusement machines located on the premises.

6. Any exterior lighting provided shall be directed downward and away from all adjoining residential property. The applicant shall take all measures necessary to minimize the light which is visible from the store, including providing tinted glass and/or appropriate shades, blinds or drapes.

7. Use of the second floor of the building shall be limited to an apartment.

VOTE: 5-0 (Maybelle T. Bennett, Charles R. Norris, William F. McIntosh, Douglas J. Patton and Carrie L. Thornhill to grant).

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

ATTESTED BY: _____
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 28 NOV 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "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.

14196order/KATE14

SEP 1 1992

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15526 of Estelle Goldman, et al, pursuant to 11 DCMR 3108.1, for a special exception under Section 2003 to continue to operate a retail grocery/delicatessen store with basement storage as authorized by Board Order No. 14196, dated November 28, 1984, in the basement and first floor in an R-5 District at premises 912 New Hampshire Avenue, N.W. (Square 28, Lot 122).

HEARING DATE: July 17, 1991
DECISION DATE: July 24, 1991

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located on the west side of New Hampshire Avenue, N.W. between 24th and I Streets N.W. The property is known as 912 New Hampshire Avenue, N.W. It is located in an R-5-D District.

2. The subject property is triangular in shape and contains 1,047 square feet in land area. It has a frontage on New Hampshire Avenue that measures 38.9 feet. The subject site shares a 66.4-foot boundary wall with the adjoining property to the south. There is a 13.3-foot long wall at the rear of the property on the north side. However, there is no alley located to the rear of the site.

3. The site is improved with a two-story plus basement brick structure that occupies 913 square feet, or 87 percent, of the lot. The structure is 35 feet deep.

4. The area surrounding the subject site is characterized by townhouses, high-rise apartments and condominiums, offices and institutional uses such as the George Washington University (GWU). Condominium residential buildings are located to the north and west of the site and a single-family dwelling occupies the property to the south. George Washington University has expanded its campus and is the main landholder in the area. Across New Hampshire Avenue and 24th Street to the east is an open plaza, a part of which is used as a private parking lot by the George Washington University. The plaza also contains an entrance to the Foggy Bottom/GWU Metrorail station. The George Washington University Hospital and the Medical School are also located nearby.

5. By Order No. 13596 dated March 22, 1982, the Board granted special exception approval to change a nonconforming use of the property from a grocery store, first floor, to a grocery store and delicatessen, first floor, and to use the basement for storage. The applicant leased the property to the Southland Corporation to operate a "7-Eleven" store on the first level.

By Order No. 14196 dated November 28, 1984, the Board granted a special exception to continue the use of the first floor as a grocery store and delicatessen. The Board also approved the use of the basement for storage.

6. Some improvements were done since these approvals were granted. In August 1985, the interior was gutted and renovated. In the fall of 1990, the exterior of the store was repainted the same color that it was previously. This color was carefully chosen to be consistent with and aesthetically pleasing to the surrounding buildings. The brick walkway on the property was repaired and grouted and the site was landscaped.

7. The applicant is seeking a special exception to continue the first floor and basement use authorized in Board Order No. 14196. The second floor apartment will be used as temporary housing for employees. The applicant maintains that the proposal meets all of the requirements of Section 2003 of the Zoning Regulations which provide as follows:

2003 CHANGING USES WITHIN STRUCTURES

2003.1 If approved by the Board of Zoning Adjustment as authorized in Section 3105 through 3108, a nonconforming use may be changed to a use that is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, subject to the conditions set forth in this section.

2003.2 The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300') in all directions from the nonconforming use.

2003.3 The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

2003.4 When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.

2003.5 In Residential districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.

2003.6 For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:

(a) R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, and R-5-D;

(b) SP-1 and SP-2;

(c) C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5(PAD);

(d) W-1, W-2, and W-3;

(e) CR; and

(f) C-M-1, C-M-2, C-M-3, and M.

2003.7 The Board may require the provision of or direct changes, modifications, or amendments to, any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

8. The applicant stated that the proposed continuing use of the property as a grocery store and delicatessen for 7-Eleven operations is permitted as a matter-of-right in C-1, the most restrictive commercial district.

9. The applicant maintains that the proposed use will not adversely affect the present character or future development of the surrounding area. The applicant stated that the 7-Eleven facility has been operating successfully as a neighborhood facility since 1982. The store serves neighborhood residents with groceries, delicatessen items and literary materials. The 7-Eleven store is beneficial in the area because the services that it provides are not otherwise conveniently available. Southland has made a particular and vigorous effort to ensure that this store is constructed and operated in a professional manner. The applicant believes that achieving a quality environment is not only important for zoning purposes but also for gaining the support and respect of neighborhood residents who are the core of this store's customers.

10. The applicant maintains that the proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

At the hearing, the applicant's traffic consultant testified about the traffic conditions around the subject site. He testified that he was able to compare current traffic and parking conditions to conditions under the previous applications to the Board.

The traffic consultant stated that field studies were undertaken in May 1991. These studies included observations of vehicular and pedestrian traffic at the intersection of New Hampshire Avenue and 24th Street, N.W.; parking conditions related to the operation of the store; loading operations to serve the store; and regulations related to traffic and parking in the general area of the store.

Current Traffic and Parking Regulations. The regulations relative to traffic and parking have been modified only slightly since November, 1981 when data for the first special exception were considered.

To regulate traffic flow, stop signs have been placed on each approach of all three intersections located in the immediate vicinity of the site as follows:

New Hampshire Avenue and 24th Street	-	4-way Stop
New Hampshire Avenue and I Street	-	4-way Stop
I Street and 24th Street	-	3-way Stop

Parking regulations in the area have also remained stable with only changes being related to (a) the 3-hour meters north of Hampshire Avenue on the east side of 24th Street which are now restricted to operate from 9:30 a.m. to 4:00 p.m.; and (b) the time limit on meters on the east side of New Hampshire Avenue north of

24th Street which has been increased from one hour to two hours. The only other observation relative to the parking regulations is that the signage needs to be maintained so that missing and defaced signs are replaced.

Vehicle Traffic Volumes. Counts of vehicles using the intersection of New Hampshire Avenue and 24th Street were undertaken in 1981, 1984 and twice in May 1991. The volume of traffic observed during each of these counts has remained

relatively stable. In all cases the observed volumes indicate that traffic operates at a Level of Service A.

Pedestrian Volumes. Two types of pedestrian observations were undertaken. One was related to the store itself and determined the number of customers by hour and their mode of travel. The other, which had not been done previously, was a count of pedestrians crossing the two public streets.

The traffic consultant noted that based on the observations, the operation that preceded the 7-Eleven, Nichols Food Superette, was much more limited in scope. But the current operation has about the same number of vehicle users in the evening peak period as there were for the former operation of the store. The traffic consultant further noted that the operation as a 7-Eleven has a relatively constant level of customer use during the morning and mid-day hours with only the evening period showing an increase between 1984 and 1991.

The second set of pedestrian observations was related to persons crossing the public streets. The study showed that there are more persons crossing New Hampshire Avenue than there are crossing 24th Street.

Use of Loading Zone. A loading zone has been established along the curb immediately in front of the 7-Eleven store. The traffic consultant stated that even if the store were a conforming use built in accordance with current regulations, the gross floor area is less than that which would require off-street loading.

The use of the loading zone was observed for eleven hours on Monday, April 29, 1991. This day was selected because Mondays and Fridays were said to be higher use days for the loading zone than the days in the middle of the week. In terms of the time which vehicles occupied the loading zone, the following tabulation shows time ranges for occupancy of the loading zone and the percentage of vehicles in each range. The traffic consultant noted that over 75 percent of all vehicles occupy the loading zone for 30 minutes or less.

USAGE OF LOADING ZONE

New Hampshire Avenue, N.W. in Front of #912

Time Interval	Number of Vehicles	Percent of Total
1 - 5 minutes	4	16%
6 - 10 minutes	5	20%
11 - 15 minutes	3	12%
16 - 30 minutes	7	28%
31 - 60 minutes	3	12%
over 60 minutes	3	12%
TOTAL	25	100%

11. Based on the field studies and his personal observations, the traffic consultant reached the following conclusions related to traffic, parking and loading:

Traffic - The volume of traffic using the intersection adjacent to the store has remained stable over the period that the store has been in operation. The operation of the store has not changed the level of street use. Therefore, he concludes, operation of the store has not had a measurable effect on traffic operations.

Parking - The store is a predominantly pedestrian oriented use. Overall only about 10 percent of its customers arrive by automobile. In terms of the number of vehicles which were observed to park for the store, there is no significant difference between the amount of store generated parking under the current operation as a 7-Eleven and the prior use as Nichols Food Superette. The increase in activity generated by 7-Eleven has been by walk-in customers. Therefore, it is concluded that the current use has not had a "deleterious" effect on parking in the neighborhood.

Loading - The store is not large enough to require off-street loading space; therefore, the loading area for the store is provided by a loading zone on the public street. The citizens in the area and the consultant have observed that use of the loading zone, either by vehicles serving the 7-Eleven or other loading uses generated by the offices in the adjacent townhouses, can have an adverse effect on sight distance for vehicles and pedestrians

using the intersection of New Hampshire Avenue and 24th Street. In an effort to reduce this impact, the operations personnel at the Southland Corporation have already undertaken steps to reduce the effects of loading generated by the 7-Eleven. These steps are directed at closer regulation of the days and hours of deliveries as well as the duration of stay. Thus, it is concluded that the measures being undertaken by The Southland Corporation will mitigate any adverse impact of the operation of the store from the perspective of loading.

12. Nancy Wade, Market Manager for The Southland Corporation, testified at the hearing on behalf of the application. She indicated that she is responsible for the overall operation, including sales and profits, of 59 stores. This includes the store at the subject site. She stated that she visits each of these stores on a regular basis.

She testified that the convenience store offers a limited amount of food service such as cofee, hot dogs, and grocery type items. As required by the previous Board approval, trash containers are provided on the interior and exterior of the store. There are no electronic or mechanical game machines located on the premises. Tinted glass has been installed in the windows and doors to restrict the visibility of the interior lighting on the exterior of the building. Low-level lighting is provided on the outside of the building as required.

Ms. Wade testified that in August 1989, they closed the store for two months and completely gutted the interior to create more attractive, space efficient displays. The Southland Corporation wanted to offer its latest merchandizing program. She also testified about the repairs, painting and landscaping of the site. She testified that the store does not create any adverse impacts with respect to noise, lighting or design.

Ms. Wade testified that a Management Agreement was entered into between The Southland Corporation, the 7-Eleven Store and Advisory Neighborhood Commission (ANC) 2A. This agreement, drafted by the ANC, addresses the community's concerns with regard to operation of the store. The applicant agrees with all of the terms except the period of approval. The ANC wants a one year period; the applicant requests five years. The Market Manager then discussed the requirements of the agreement.

13. Deliveries/Traffic. Southland has agreed to restrict deliveries by independent vendors to the hours between 9:30 a.m. and 3:30 p.m. Southland agrees to work with the vendors to ensure that only one truck delivers to the store at a given time.

Southland has a distribution center located in Virignia that provides the store with most of the merchandise. A truck delivers goods once or twice a week, depending on need. Southland has agreed to restrict its own truck deliveries to between 8:00 p.m. and 10:00 p.m. and no more than twice a week.

Southland has agreed to post a conspicuous sign in the store, consistent with the requirements of the Vehicles and Traffic Regulations of DCMR Title 18, June 1987. The sign will contain language indicating that the loading zones are to be used for commercial vehicles only, during deliveries and by noncommercial deliveries only for drop-offs. The applicant hopes that this will cut down on the number of cars that use the loading zone for parking.

14. Trash Collection/Maintenance. Southland has agreed to step-up the maintenance of the store by emptying the outdoor trash containers belonging to Southland twice a day and emptying the city-owned containers in front of the store twice a day, or as frequently as possible to make sure that trash is not overflowing.

15. Southland has also agreed to do the following:

- clean the sidewalk in front of the store as often as necessary to remove coffee and food spills;
- clear the sidewalks in front of the store of snow to provide safe passage during the winter months;
- clear trash from the sidewalks in front of adjacent homes or buildings to the extent that the trash results from the 7-Eleven operation; and
- clean the gutter in front of the store as often as necessary to ensure that it is free from trash and debris at all times.

16. Vagrancy. Southland has agreed to post a "no loitering" sign in the store, which will allow the D.C. Police Department, specifically the Vagrancy Task Force, to step-up its efforts to move derelicts away from the store. This task force has made a commitment to intensify its foot patrol and the applicant will encourage the Police Department to honor its commitment. Until recently, the store manager had been giving free coffee and hot

dogs to the homeless. This obviously encouraged their presence. Store operator will no longer extend any hospitality to these vagrants to discourage their presence in the area.

17. Meeting with the Advisory Neighborhood Commission. Southland has agreed to meet quarterly with the ANC to monitor the store's progress and monitor implementation of the Management Agreement. Southland has also agreed to work with the ANC to develop long-term solutions to the delivery problems. Southland proposed to meet with the ANC over the four subsequent years as frequently as necessary.

If the application is approved, the applicant has agreed to request that the Board incorporate into its order, the terms of the agreement with the community. The applicant is also willing to be bound by previous Board orders approving the use by Southland.

18. Mr. Nassari, the store manager at the subject store, testified that he is responsible for the daily maintenance and operations at the store. He is also responsible for hiring and the supervision of eight employees.

The store manager testified that he will implement the terms of the agreement between The Southland Corporation and the community. First, with respect to deliveries, he will notify all of the independent vendors that they will be required to deliver, one at a time between the hours of 9:30 a.m. and 3:30 p.m. He has discussed this new policy with the various vendors, all of whom have agreed to a specific time slot. They are aware that they will not be able to arrive late and deliver at the same time as another driver. However, they will be allowed to return during the open periods listed on the schedule, provided that no other vendors are delivering at the time.

19. The store manager testified that he will be working with the Southland drivers to ensure that they deliver between 8:00 p.m. and 10:00 p.m. only and no more than twice per week.

The store manager testified that he will post a sign in the store indicating that the loading zones are to be used for commercial vehicles only while they are loading and unloading, and by noncommercial vehicles only for the drop-off and pick-up of passengers, in accordance with the requirements of 18 DCMR 2402.6. He will make every effort to ensure that everyone honors this policy. Further, he will seek the assistance of the D.C. Police Department in enforcing it.

20. The store manager will make sure that the outside of the store is well maintained. He will empty the garbage cans in front of the store as many times a day as is necessary to prevent trash overflow. He will pick-up any 7-Eleven trash which drifts onto the

properties of adjacent building owners. Also, he will scrub down the sidewalk in front of the store to wipe up any spills from coffee, sodas, slurpees or any other food products. During the winter, store operators will continue to shovel snow from the sidewalk in front of the store as they have always done.

21. To cut down on vagrancy, the store manager testified that he will discontinue the practice of giving free food and beverages to the homeless. He will work closely with the Vagrancy Task Force of the D.C. Police Department to move the derelicts along as they congregate in front of the store.

Finally, the store manager testified that he wants to make sure that this is the best operated and cleanest 7-Eleven Store in the area. He made a commitment to have each provision of the agreement carried out.

22. The applicant addressed the remaining provisions of Section 2003 in its written statement to the Board. The applicant stated that the continuing nonconforming use as a grocery store and delicatessen, has not been changed back to a conforming use or a more restrictive use.

23. The applicant stated that the proposed use is a neighborhood facility. The projected financial strength of this store is directly linked to the large number of people who live in a two-block radius. These neighborhood residents form the core customer support group for this store location. In fact, this store's busiest period is on Sunday when customer traffic is almost exclusively from people who live in the immediate area. On other days, the mix of customer traffic is predominantly neighborhood residents but also includes pedestrians who work or attend school in the area. Nonpedestrian customer traffic constitutes less than 15 percent of this store's customers and consists mostly of cab drivers working in the area and construction workers involved with nearby projects.

24. The applicant addressed Subsection 2003.7 which states that the Board may require the provision of or direct changes, modifications, or amendments to [the application] to protect the value, utilization, or enjoyment of property in the neighborhood.

The applicant stated that there were conditions imposed in connection with the approval of the two previous applications by Southland, respecting the placement of signage, location of trash containers, exterior lighting, and the prohibition on mechanical amusement machines. Southland has complied with, and will continue to comply with, the conditions of the Board's previous approval and would be supportive of the Board incorporating the terms of its agreement with the ANC into the conditions of this approval.

25. The Office of Planning (OP) by memorandum dated July 10, 1989 and through testimony at the hearing, recommended conditional approval of the application. OP noted the location of the site, the history of approvals and the proposed use. The Office of Planning provided a number of comments with regard to the application. Based on the information provided by the applicant, OP is of the opinion that the continued use of the subject property in its current capacity as a 7-Eleven store would not adversely affect the surrounding neighborhood in terms of noise, illumination, vibration, odors, design or siting effects. The proposed use is a neighborhood facility with the majority of its customers residing within the immediate area. The applicant and The Southland Corporation have made every effort to comply with the conditions imposed on the use of the property in previous Board orders. In many instances, these efforts have gone well beyond the conditions that were specified (i.e., new brick walkways in public space, renovations, and general property maintenance). Overall, the applicant has been exceptionally diligent in observing the conditions set forth by the Board with respect to the zoning relief requested. Loading and delivery activities, however, continue to cause traffic and parking problems directly in front of the store. The Office of Planning encourages the applicant and The Southland Corporation to continue to work closely with the neighborhood to solve these problems in a manner that is amenable to all those interested.

The Office of Planning is of the opinion that the applicant has met the burden of proof for the requested special exception under Section 2003 of 11 DCMR. In OP's opinion, the applicant has been successful in creating and operating a facility that is convenient to the neighborhood. Overall, the requested zoning relief in this case is in harmony with the general purpose and intent of the Zoning Regulations. Accordingly, the Office of Planning recommends approval of this application subject to the following conditions:

(1) Approval shall be for an appropriate period of time as determined by the Board.

(2) The hours of operation shall continue to be from 7:00 a.m. to 11:00 p.m., Monday through Sunday.

(3) The applicant shall continue to work with the surrounding neighborhood in solving the store-related loading and delivery problems.

(4) All remaining conditions set forth in BZA Order No. 14196 shall continue to be met by the applicant.

26. The Office of Planning submitted a supplemental memorandum to the Board dated July 15, 1992. According to OP, the community has indicated serious concerns related to the continued operation of the subject property as a 7-Eleven convenience store. Concerns were expressed with regard to loading, traffic, sanitation and loitering. The applicant continues to work with the community in seeking to resolve these issues. If this application is approved, the Office of Planning suggests that the Board consider some means for on-going monitoring of the store's operation to ensure the applicant's compliance with the conditions for approval and to mandate the applicant's continued cooperation with the community.

27. The Office of Planning referred the application to the following District of Columbia departments: Department of Public Works, Fire Department, Police Department and Department of Consumer and Regulatory Affairs.

28. By letter dated June 3, 1992, the Police Department stated that the property is located in the Second District and is patrolled by Scout Car 80. The Police Department stated that it does not appear that the applicant's proposal will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Therefore, the Police Department does not oppose the subject application.

29. The Department of Public Works (DPW) submitted a memorandum dated July 16, 1991 addressing the subject application. The Department of Public Works stated that the 7-Eleven grocery store is located on the northwest corner of 24th Street and New Hampshire Avenue, N.W. The width of 24th Street and New Hampshire Avenue at this intersection are 32 feet and 40 feet, respectively. I Street is located approximately 70 feet south of the intersection. These three streets consist of a junction area with a small triangular island located in the middle. All intersections are controlled by STOP signs. Field trip observations found that automobile traffic from all approaches is relatively light. However, the operational conditions are complicated by the presence of a high volume of pedestrians and by the heavy parking and loading activities in this area. The 45-foot loading space in front of the 7-Eleven is usually occupied by delivery trucks between 7:00 a.m. and 6:30 p.m. Truck deliveries frequently block the crosswalk area during loading and impede pedestrian flow. Also, some patrons of the store illegally park their vehicles in the southwest-bound lane next to the trucks, thereby blocking the through traffic. These activities and the sharp, 30-degree angle of the 24th Street and New Hampshire Avenue intersection encourage many pedestrians to illegally cross the intersection.

It has been suggested that a traffic signal would improve traffic safety and operational efficiency at this location. The Department notes that there are three (3) intersections with very limited distance between them, none of which meets the Traffic Signal Warrants. Due to these minimal distances, all three intersections would have to be signalized at the same time to avoid sudden stops of through traffic for pedestrians. The estimated cost of such signal installations would be approximately $300,000.00. The Department notes that there is no funding available at this time for installing these traffic signals. The Department believes, that an alternative solution can be worked out in terms of truck delivery scheduling. Therefore, the Department encourages the applicant and the community to agree to a mutually acceptable delivery schedule. DPW will consider amending its traffic regulations pertaining to this loading zone accordingly. Further, DPW will step up its enforcement activity for illegal parking in front of the store. The Metropolitan Police Department should be encouraged to enhance pedestrian traffic enforcement at this location as well. Accordingly, the Department of Public Works does not object to the subject application.

30. Advisory Neighborhood Commission (ANC) 2A by report dated July 12, 1991, expressed the position that it would not object to the application if the Management Agreement is signed prior to the public hearing and if the period of approval does not exceed one year. Attached to the ANC report was a resolution that addressed the following issues and concerns:

(a) Hazardous conditions are created when long trucks or several trucks attempt to deliver goods at the same time to the subject site. These trucks are generally parked illegally, because they protrude into 24th Street, N.W. are in a no loading or no parking zone, are double parked, block driveway entrances to adjacent buildings and the crossings for pedestrians (including the handicapped), and seriously obstruct visibility of both motorists and pedestrians. These hazardous conditions exist whether or not the loading zone in front of the 7-Eleven is vacant, being used legally by the truck deliveries to other premises, or being used illegally by parked vehicles;

(b) Unsanitary conditions exist in front of the store. Also, there is a spillover of trash to sidewalks in front of adjacent and nearby buildings to the north and south of the premises.

(c) Derelicts and panhandlers congregate in front of and around the 7-Eleven store, sometimes harassing pedestrians passing by or entering the store;

(d) The Southland Corporation, after negotiations with ANC 2A, has agreed to enter into a Management Agreement, under which Southland Corporation and its 7-Eleven franchisee will undertake certain specific measures aimed at improving the deleterious effects relating to truck deliveries, sanitation, and derelicts and panhandlers, which measures, if carried out and enforced, could lead to some mitigation of these deleterious effects; and

(e) The measures specified in the Management Agreement are expected to improve conditions only to some extent, but not completely. This is because the most effective precaution to reduce hazards to pedestrians and motor vehicles created by the use of the loading area directly in front of the above-cited premises would be the installation of traffic lights at the intersections of New Hampshire Avenue and 24th Street as well as New Hampshire Avenue and I Street. The installation of traffic lights cannot currently be undertaken by the District government due to lack of resources and The Southland Corporation will not finance the project.

Based on the foregoing issues and concerns ANC 2A resolved not to object to the continuation of the use for a period of one (1) year only. The nonobjection is based on the following contingencies:

(a) The applicant shall modify the special exception request to a one year period of approval.

(b) The Southland Corporation and 7-Eleven store manager shall agree to meet with ANC 2A on a quarterly basis (once every three months) at a regularly scheduled public meeting of ANC 2A to report on the status of implementing the conditions set forth in the agreement and to hear and respond to the concerns of the ANC and the community regarding their perspectives on its implementation.

(c) The Southland Corporation and 7-Eleven franchises shall agree to work closely with ANC 2A, the neighborhood community, and the appropriate agencies of the District government to help solve problems relating to traffic and delivery of merchandise by trucks, sanitation and health, derelicts and panhandlers. They shall also agree to report on the progress of their community involvement relating to these issues at the quarterly meetings with the ANC.

(d) The new Board order shall require compliance with relevant provisions of the prior Board Order Nos. 13596 and 14196 and with the appropriate provisions of the Management Agreement.

(e) The Management Agreement shall be executed prior to the public hearing on July 17, 1991.

31. At the public hearing, the Chairman for ANC 2A testified about the terms agreed upon and the promises made by The Southland Corporation and 7-Eleven. The ANC pointed out, however that The Southland Corporation was unwilling to reduce the approval period to one year.

The chairman testified that the ANC is requesting only one year because the 7-Eleven store has not had a positive record with the ANC. The ANC had sent a letter dated July 17, 1989, to the Southland Corporation notifying the market manager of the ANC's concern about traffic bottlenecks that develop in front of 7-Eleven when delivery trucks have blocked passage. The ANC described the congested condition in detail. The ANC chairman stated that the Southland Corporation failed to act to resolve this problem. Therefore, ANC 2A believes that the approval period should be shortened to one year so that there can be formal review by the ANC and the Board after that period of time has expired.

The ANC stated that the problems regarding traffic, truck deliveries, trash, derelicts and panhandlers adversely affect the present character of the surrounding area. These conditions have a deleterious external effect in this residential neighborhood.

The ANC believes that the proposed actions agreed on in the Management Agreement, may go a long way to address these effects, but it is not certain. A one year period will test the adequacy of this agreement.

The chairman testified that since the applicant is not willing to agree to a one year time limit, the ANC opposes the application and recomends that the Board deny it.

32. One neighbor testified in support of the application. She testified that she is an ANC Commissioner for the Ward Two Foggy Bottom District. She represents senior citizens. She is on the Executive Committee of the Foggy Bottom Association. She is also the beautification chairman for Foggy Bottom. This supporting neighbor testified that she has lived in the Jefferson House located next door to the 7-Eleven store for 29 years.

She stated that when operations first began, there were some complaints about rodents and the store being unkempt, among other things. She contacted Ms. Wade, the market manager, about these

concerns which the store manager was finding difficult to rectify. Ms. Wade quickly responded. The store was closed for two months. During that time, the store was fumigated, renovated, rearranged, painted and landscaped. New trash containers were placed outside and a new manager was hired.

The neighbor testified that she passes the store four or five times daily and that she is thrilled with its appearance. It is spotless and she has never heard of any fighting or other disruptive activities coming from this store.

She testified that many people use the store. Students from George Washington University stop in for snacks and senior citizens who shop there get a ten percent discount on their purchases. She testified that while the store was closed many people complained because it was inconvenient for them to go elsewhere to get what they needed. The fact that the store is always busy is an indication of how much it is needed. She requested that the Board approve the application because the store is very important for Foggy Bottom residents.

33. Three neighbors testified in opposition to the application. One neighbor, residing at 925 25th Street, N.W. testified that she has been a resident of Foggy Bottom for 40 years. She has observed traffic and parking conditions in the area and found them to be chaotic. When the loading zone is used by delivery trucks, it is difficult to have a clear sight of traffic. When the loading zone is already occupied, as it frequently is, trucks must double park, greatly worsening the situation.

The opposing neighbor testified that the intersection is a major hazard particularly for the many elderly people in the area. She stated that while the store might be a convenience for the residents of the Jefferson House, there are other issues, such as traffic, which are far more important. Therefore, she opposes the application.

34. Also testifying in opposition to the application was the ANC Commissioner for the district in which the 7-Eleven is located. She tesitified that her main concern is that the Management Agreement does not ensure that the disruption caused by the truck deliveries will be alleviated. This is because the wording of Section B, paragraph 11 of the agreement says that The Southland Corporation <u>will work</u> with other suppliers to the store to ensure that their truck deliveries are scheduled for one truck at a time between 9:30 a.m. and 6:30 p.m. It does not say that Southland <u>will ensure</u>. The clause lacks performance criteria such that the applicant can work to ensure it and not actually ensure it and still be within the letter of the Management Agreement.

She testified that agreeing to meet with the ANC is more of a burden on the ANC because it already meets twice a month. She would prefer an automatic review period because implementing an agreement is unchartered territory for the ANC.

She described an incident that occured where one truck was parked in the loading zone but the driver in the truck was not there to do business with 7-Eleven. He said he was taking his lunch. A Pepsi Cola truck, about 40 feet long, came down New Hampshire Avenue and attempted to enter the loading zone. However, he was unable to because the other truck was there. The Pepsi truck protruded halfway into 24th Street obstructing traffic. Even after the Pepsi truck driver blew his horn several times, the other truck remained in the loading zone. He did not move until the man from 7-Eleven asked him to. The witness testified that the horn-blowing caused quite a disruption. Also, the area is dangerous when pedestrians cannot see the cars coming down 24th Street because of trucks blocking the view.

She stated further that the people who use the 7-Eleven are not area residents. There are other stores nearby, such as a Safeway Store that are just as convenient and sell the same types of food. She stated that the majority of the area residents are concerned about the deleterious effects caused by the use. For all of the above reasons she urged the Board to limit any approval to one year.

35. The final witness to testify in opposition to the application resides at 949 25th Street, N.W. He has lived in the area for 26 years. He is mainly concerned with the logistics of implementing the delivery schedule. He noted that the period left open for deliveries at the end of the day is only one-half hour long. He stated that deliveries that normally take an hour and happen to miss their scheduled time cannot be reduced to a 30 minute time slot. He stated that there are three conditions that are likely to cause problems in trying to comply with the schedule. First, the loading zone can be legally used by others besides 7-Eleven suppliers. While others are using it, 7-Eleven cannot. Secondly, this loading area is often used illegally because the demand for parking is great. Finally, the store's inability to shorten the delivery period will cause problems.

In this witness' view, the question remains whether the deleterious effect of operating the parking area can be overcome. This is one reason for requesting a trial period that is shorter than five years. He stated that all parties agree that there are traffic problems. He stated that the Board is obligated to deny the application if deleterious external defects exist, regardless of their degree.

This opposing neighbor is of the opinion that the present operation adversely affects the Foggy Bottom Historic District. He stated that for the Board to approve the application, the applicant must give strong assurances that new policies will be implemented. The applicant must be able to prove that these policies would work. The assurances must take the form of a management agreement, binding the applicant to carry out these policies. Further, any improvement should be strictly limited and rigidly monitored until there is clear evidence that the agreement can be effectively implemented. Finally, he stated that any approval significantly exceeding 12 months would not be appropriate.

36. Responding to the opposing neighbor's concern about the delivery schedule, the applicant testified that the majority of the deliveries will take only about 20 minutes. Only one company, Embassy Milk, takes an hour to deliver. Therefore, meeting the schedule or rescheduling to the 30 minute open period should not create a problem.

FINDINGS OF FACT:

1. The Board finds that the delivery schedule established by the applicant is reasonable and should be able to accommodate all deliveries.

2. The Board finds that a period of one year will not give the applicant an adequate trial period before it would be necessary to reapply to this Board for further relief.

3. The Board finds that the Management Agreement was executed prior to the public hearing of July 17, 1991.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record the Board concludes that the applicant is seeking a special exception to continue to operate a grocery store/delicatessen with basement storage in an R-5-B District.

The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property. The applicant must also meet the requirements of 11 DCMR 2003 regulating changing uses within structures.

The Board concludes that the applicant has met the standards for granting the relief requested. The Board concludes that the applicant proposes to continue to lease the first floor of the premises for use as a 7-Eleven convenience store. The Board

concludes that the lessee, The Southland Corporation and the 7-Eleven franchise have entered into a Management Agreement with ANC 2A, the terms of which will help alleviate problems associated with noise, traffic, parking, loading and odor. The Board is of the opinion that the store manager or his assistant will be available to monitor the use of the loading zone and to implement the delivery schedule. The Board concludes that the upgrades done at the site will eliminate the deleterious effects caused by illumination, design or siting.

The Board believes that the plan for handling derelicts will alleviate problems with loitering in and around the store.

The Board concludes that the placement of trash containers inside and outside will help keep the grounds clean; and the frequent removal of trash from the containers and from the ground will eliminate odor.

The Board concludes that the applicant will not be installing video machines, therefore, there shall be no adverse effects associated with noise and vibrations.

The Board concludes that the application does not involve a nonconforming use that was changed to a conforming or more restrictive use. Therefore, Subsection 2003.4 is inapplicable.

The Board is of the opinion that the provision of the Management Agreement that requires the applicant to meet with the ANC on a quarterly basis will provide an excellent opportunity for these parties to address and resolve any problems associated with the 7-Eleven operation.

Finally, the Board concludes that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board has accorded ANC 2A the "great weight" to which it is entitled. In light of the foregoing, the Board concludes that the application is hereby GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FIVE YEARS.

2. The applicant shall comply with the conditions set forth in the agreement marked as Exhibit No. 36 of the record.

VOTE: 4-0 (William L. Ensign, Paula L. Jewell and Carrie L. Thornhill to grant; Sheri M. Pruitt to grant by proxy; Charles R. Norris not voting, not having heard the case).

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

ATTESTED BY: Madeliene H. Robinson
MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: SEP 2 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.

15526Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15526

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 2 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:

Angela E. Vallot, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Nancy Wade
3604 Dorshire Court
Pasadena, Maryland 21122

Henrietta Loltrow
922 24th Street, N.W.
Washington, D.C. 20037

Dorothy Ohliger
940 25th Street, N.W.
Washington, D.C. 20037

Geoffrey and Maria Tyler
949 25th Street, N.W.
Washington, D.C. 20037

Sara Maddux, Chairperson
Advisory Neighborhood Commission 2-A
1920 G Street, N.W., #100
Washington, D.C. 20006

MADELIENE H. ROBINSON
Acting Director

DATE: SEP 2 [illegible]

15526Att/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16261 of Estelle Goldman, pursuant to 11 DCMR 3108.1, for a special exception under Section 2003 to continue to operate a retail grocery/delicatessen store with basement storage as authorized by Board Order No. 15526, dated September 2, 1992, in the basement and first floor in an FBOD/R-3 District at premises 912 New Hampshire Avenue, N.W. (Square 28, Lot 122).

HEARING DATE: October 1, 1997
DECISION DATE: October 1, 1997 (Bench Decision)

SUMMARY ORDER

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) 2A and to owners of property within 200 feet of the site.

As directed BY 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which as necessary to establish the case for a special exception pursuant to 11 DCMR 2003.

The site of the application is located within the jurisdiction of ANC 2A. ANC 2A, which is automatically a party to this application, submitted a draft management agreement and a resolution expressing support for the application provided that approval be limited to three years. The Board acknowledges the existence of the agreement and the applicant's willingness to sign the agreement with the time limit established by the Board.

No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in 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 3108 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT** to the **CONDITION** that approval shall be for a period of **THREE YEARS.**

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 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.

VOTE: 3-1 (Laura M. Richards, Betty King and Susan Morgan Hinton to grant; Sheila Cross Reid opposed to the motion).

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

ATTESTED BY: Madeleine H. Mitchell

FINAL DATE OF ORDER: NOV 12 1997

PURSUANT TO D.C. CODE SEC. I-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY 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 TWO YEARS 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.

Ord16261/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16261

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 12 1997 a copy of the order entered on that date in this matter was mailed postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed blow:

Jerry Moore, III., , Esquire
Adam Smith, Esquire
Arter and Hadden
1801 K Street, N.W., Suite 400K
Washington, D.C. 20006

Arthur G. Tyler
949 25th Street, N.W.
Washington, D.C.

Bernard Mozer, Chairperson
Advisory Neighborhood Commission 2A
St. Mary's Court
725 24th Street, N.W.
Washington, D.C. 20037

Attested By: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

Date: NOV 12 1997

Attest/ljp

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17021 of Estelle Goldman, pursuant to 11 DCMR § 3104.1 for a special exception to continue the use of a nonconforming retail grocery/deli in the FBOD/R-3 District at premises 912 New Hampshire Avenue, N.W. (Square 28, Lot 122).

HEARING DATES: June 17, 2003 and September 23, 2003
DECISION DATE: October 7, 2003

DECISION AND ORDER

This application was submitted on April 11, 2003 by the owner of the property that is the subject of the application, Estelle Goldman (the applicant). Following a hearing on September 23, 2003[1] and a public meeting on October 7, 2003, the Board of Zoning Adjustment (the Board) voted to approve the special exception for a period of three years.

PRELIMINARY MATTERS

Self-certification The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The application The application was for a special exception to continue the use of a non-conforming retail grocery/deli that was last authorized by BZA Order No. 16261, dated November 12, 1997. The initial application also requested that the hours of operation be expanded to 24 hours a day under § 2003 of the Zoning Regulations. However, the applicant later withdrew her request to expand the hours of operation. As a result, the only issues remaining for the Board's consideration were the special exception approval and the terms and conditions of such approval.

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (ANC) 2A, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect.

ANC 2A The subject site is located within the jurisdiction of ANC 2A, which is automatically a party to this application. Although not required to do so under applicable law, the applicant met with ANC representatives, resulting in the development of a

[1] The hearing set for June 17, 2003 was continued at the request of the applicant until September 23, 2003.

proposed "Management Agreement Covering the Operations of the 7-11 Store at 912 New Hampshire Avenue" (the "Management Agreement").[2] The negotiated Management Agreement encompasses various issues and concerns of the ANC and provides that the ANC will not object to the continuation of the special exception with conditions. However, the applicant and ANC were unable to agree on the duration of the special exception and the Management Agreement makes clear that the ANC did not support a term exceeding 3 years. Thus, while the applicant requested Board approval for a 10 year period (or a minimum of 5 years), the ANC's final submission urged the Board to grant approval for only a 3 year period (Exhibit 51).

Requests for Party Status The Board granted party status to 2 neighboring property owners: Harold Talisman (Exhibit 26) and Benjamin Klotz (Exhibit 25).[3] Mr. Talisman and Mr. Klotz both urged the Board to limit the special exception approval to 3 years, citing examples of the applicant's alleged non-compliance with prior Board orders.

Persons in Opposition Several neighboring property owners appeared in opposition to the applicant's initial request for expanded hours of operation. However, they took no position once the applicant withdrew this request and the issues were narrowed.

OP Report OP's report (Exhibit 43) indicated that the application meets the tests for special exception approval, and recommended that the application be approved for a 3 year term with conditions. An OP representative testified that he recommended a 3 year term because it corresponded to what was negotiated by the ANC in the Management Agreement.

FINDINGS OF FACT

The Special Exception History

1. This application was filed on behalf of 7-Eleven, Inc. ("7-Eleven") and its franchisee for a special exception to continue the use of a non-conforming retail grocery/deli. The special exception was last approved by the Board in BZA Order No. 16261 on October 1, 1997. However, that approval was for a 3 year period that expired on or about October 1, 2000. Consequently, the applicant was operating without Board approval at the time this application was filed and heard.

2. Beginning in 1982, previous Board orders granted approval to operate a grocery and/or delicatessen at the site for terms ranging from 3 years to 6 years. In Order No. 13596 the Board granted approval in 1982 to operate for 3 years. In Order No. 14196

[2] The proposed Management Agreement (appended to Exhibit 52) had not been finalized at the time of the decision meeting on October 7, 2003.
[3] Neighboring property owner, Suzette Klein, also filed a request for party status (Exhibit 40). However, she withdrew her application when the applicant withdrew her request for expanded hours of operation.

the approval was for 6 years beginning in 1984; and in Order No. 15526 the approval was for 5 years beginning in 1991.

The Site and Surrounding Area

3. The subject property is located near the intersection of 24th Street and New Hampshire Avenue Avenue, N.W., almost immediately adjacent to the new George Washington University Hospital and within walking distance of the Foggy Bottom Metro Station and the George Washington University campus.

4. The property is zoned FBOD/R-3. To the north are three-story residential buildings and a 9-story condominium apartment building. To the south is a two-story row house and a 7-story apartment building and row houses.

5. The total gross floor area of the building is approximately 2,700 square feet, with approximately 913 square feet on each of the 3 levels (basement, first and second floors). The second (top) floor of the building is used for residential purposes by 7-Eleven for its employees. The franchisee also maintains an off-site parking space on 24th Street.

The Special Exception Operations

6. The store currently operates from 7:00 am to 11:00 pm daily. Three employees work the day shift from 7:00 am to 3:00 pm, and three employees work the evening shift from 3:00 pm to 11:00 pm. No beer, wine, liquor, or drug paraphernalia of any kind are sold at the store.

7. There is no vehicular or other access to the rear of the property. Therefore, all loading is accomplished at the front of the store on the public street. Deliveries occur from 9:30 am to 3:00 pm at a commercial loading zone on New Hampshire Avenue, N.W., except deliveries from the 7-Eleven distribution center occur only twice per week during the evening from 8:00 pm to 10:00 pm.

8. Interior and exterior trash containers are provided and regularly emptied by the franchisee, who is also responsible for ensuring that the front of the store is kept free from litter, debris and "spillage" on the public space.

9. Tinted doors and windows are used to prevent interior light from intruding beyond the store. Exterior lighting is provided to ensure public safety, but shielded to minimize disturbance to the neighborhood.

CONCLUSIONS OF LAW

The Special Exception

Generally, the Board is authorized to grant a special exception where, in its judgment, the special exception will "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1, D.C. Official Code § 6-641.07(g)(2)(2001). The Board concludes that the continued use of the property as a retail grocery/deli will be compatible with the surrounding area and will not adversely affect neighboring properties, so long as the conditions within this Order are complied with.

Each special exception permitted, however, must also meet all the conditions enumerated in the particular section pertaining to it. In this case, therefore, the applicant also has to meet the conditions listed in § 2003 of the Zoning Regulations. Section 2003 sets forth specific criteria under which the Board may permit a change to a nonconforming use, and will be discussed in the paragraphs that follow.

2003.1 *If approved by the Board of Zoning Adjustment, as authorized in § § 3103 and 3104 for variances and special exceptions respectively, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section.*

The longstanding and requested continuing use of the subject property as a grocery store and delicatessen for 7-Eleven operations is permitted as a matter-of-right in the C-1 district, the most restrictive commercial district. See, 11 DCMR § 701.4

2003.2 *The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300 ft.) in all directions from the nonconforming use.*

Provided there is no expansion of its hours of operation, and provided the applicant complies with the Conditions in this Order, the 7- Eleven retail grocery/deli will not adversely affect the present character or future development of the surrounding area.

2003.3 *The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.*

Provided there is no expansion of its hours of operation, and provided the applicant complies with the Conditions in this Order, the 7-Eleven retail grocery/deli will not create any deleterious external effects such as those enumerated above.

2003.4 *When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use of less restrictive use.*

For 21 years, 7- Eleven has maintained the same use as a grocery store and delicatessen and has not converted to a conforming or more restrictive use.

2003.5 *In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.*

In each previous Board order, it was determined that 7-Eleven and its franchisee use the subject property as a "neighborhood facility", and this Board adopts this determination.

2003.6 *For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:*

(a) *R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, R-5-D, and R-5-E;*
(b) *SP-1 and SP-2;*
(c) *C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD);*
(d) *W-1, W-2, and W-3*
(e) *CR; and*
(f) *C-M-1, C-M-2, C-M-3, and M.*

A retail grocery/delicatessen is first permitted within the C-1 District. Within the R-5 District, "foods, drugs and sundries" are permitted as an accessory use, but only within apartment houses and with no direct access to the outside.

2003.7 *The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.*

This property is within the Foggy Bottom Historic District, whose purpose includes "enhanc[ing] the residential character of the area by maintaining residential uses". Previous Board approvals have been subject to specific conditions and/or terms of a Management Agreement. Because the Board desires to protect the historic and residential character of the neighborhood, and because of the ongoing Management Agreement between the applicant and the affected ANC, the Board's approval will be subject to various conditions that address screening, landscaping, lighting, signage, loading, and hours of operation.

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Official Code § 1-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give "great weight" the Board must articulate with

particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns. In this case the ANC supported the applicant's request for continued approval, provided certain conditions of the Management Agreement were incorporated and, provided the approval was limited to a three-year term. However, the Board may impose only those conditions that are necessary to mitigate the potential adverse impact of the zoning relief granted. D.C. Official Code § 1-309.10 (2001). The Board is persuaded that most of the negotiated conditions proffered by the applicant and ANC are necessary in this respect. The Board is also persuaded based upon the evidence of record (including the applicant's more than three year period of operating without Board approval and neighborhood complaints regarding the applicant's non-compliance with prior special exception conditions) to limit the approval to the three-year period requested by the ANC.

In light of the foregoing, the Board **ORDERS** that the application is hereby **GRANTED** to allow the continued use as a special exception of the 7-Eleven as a retail grocery/delicatessen at 912 New Hampshire Avenue, N.W. (Square 28, Lot 122), **SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of **THREE (3) YEARS.**
2. The hours of operation shall be from 7:00 am to 11:00 pm daily.
3. Deliveries from the 7-Eleven distribution center shall be between 8:00 pm and 10:00 pm only.
4. All other deliveries shall be on a scheduled basis between 9:30 am and 3:30 pm so that only one delivery vehicle is at the site at any given time.
5. All deliveries shall be made using the commercial loading zone on New Hampshire Avenue immediately adjacent to the site.
6. Applicant will empty the trash containers belonging to 7-Eleven and the District government in front of the store at least twice daily or more frequently as required.
7. Applicant will clean the sidewalk and gutter in front of the store to ensure they are clean at all times.
8. Applicant will clear trash from the sidewalks in front of the adjacent and nearby buildings to the north and south of the store on a regular basis.
9. Applicant will clear snow and ice from the sidewalk in front of the store to ensure safe passage.
10. Applicant will maintain the exterior appearance of the premises in keeping with the residential character of the Foggy Bottom Historic District and Foggy Bottom Overlay District. Any exterior lighting shall be minimized and directed downward and away from all adjoining residential property. Applicant will take all reasonable measure to minimize the light visible from the inside of the store, and will maintain tinted windows and doors.
11. No signs or poster will be posted in the windows and no public telephones,

teller machines or other similar devices will be added to the exterior of the building. No electronic or mechanical amusement machines will be located on the premises.

12. No storage containers or items, except garbage receptacles, will be stored on the exterior of the store.
13. Applicant will maintain the exterior landscaping at the property as provided in the negotiated Management Agreement.

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, David A. Zaidain, Curtis L. Etherly, Jr., and Peter G. May to approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: FEB 2 3 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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, 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.

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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. 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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. SAG/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17632 of Estelle Goldman on behalf of 7-Eleven, Inc., pursuant to 11 DCMR § 3104.1, for a special exception to continue the operation of a retail grocery/delicatessen store with basement storage (last approved under BZA Order No. 17021) under subsection 2003.1, in the FB/R-3 District at premises 912 New Hampshire Avenue, N.W. (Square 28, Lot 122).

HEARING DATE: June 19, 2007
DECISION DATE: June 19, 2007 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

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) 2A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2A, which is automatically a party to this application. ANC 2A submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 2003. No parties appeared at the public hearing in opposition to this 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 OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2003.1, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT to the following CONDITIONS:**

1. Approval shall be for a period of **FIVE (5) YEARS.**

2. The hours of operation shall be from 7:00 a.m. to 11:00 p.m. daily.

3. Deliveries from the 7-Eleven distribution center shall be between 8:00 pm and 10:00 pm only.

4. All other deliveries shall be on a scheduled basis between 9:30 am and 3:30 pm so that only one delivery vehicle is at the site at any given time

5. All deliveries shall be made using the commercial loading zone on New Hampshire Avenue immediately adjacent to the site.

6. Applicant will empty the trash containers belonging to 7-Eleven and the District government in front of the store at least twice daily or more frequently as required.

7. Applicant will clean the sidewalk and gutter in front of the store to ensure they are clean at all times.

8. Applicant will clear trash from the sidewalks in front of the adjacent and nearby buildings to the north and south of the store on a regular basis.

9. Applicant will clear snow and ice from the sidewalk in front of the store to ensure safe passage.

10. Applicant will maintain the exterior appearance of the premises in keeping with the residential character of the Foggy Bottom Historic District and Foggy Bottom Overlay District. Any exterior lighting shall be minimized and directed downward and away from all adjoining residential property. Applicant will take all reasonable measure to minimize the light visible from the inside of the store, and will maintain tinted windows and doors.

11. No signs or poster will be posted in the windows and no public telephones, teller machines or other similar devices will be added to the exterior of the building. No electronic or mechanical amusement machines will be located on the premises.

13. Applicant will ensure that the shrubs along the handicapped railing are of a height that covers the railing completely when seen from the sidewalk and that perennial and seasonal landscaping are provided so as to beautify the premises.

VOTE: **4-0-1** (Ruthanne G. Miller, Curtis L. Etherly, Jr. John A. Mann II and Marc D. Loud to approve; No Zoning Commission member participating).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUN 25 2007

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

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, 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

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.

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17632

As Director of the Office of Zoning, I hereby certify and attest that on **JUNE 25, 2007**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John Patrick Brown, Jr., Esq.
Stephanie A. Baldwin, Esq.
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, D.C. 20036

Estelle Goldman
c/o 7-Eleven, Inc.
Chesapeake Division
5300 Shawnee Road
Alexandria, Virginia 22312

Chairperson
Advisory Neighborhood Commission 2A
725 24th Street N.W.
Washington, D.C. 20037

Single Member District Commissioner 2A03
Advisory Neighborhood Commission 2A
725 24th Street N.W.
Washington, D.C. 20037

Matthew LeGrant
Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W., Suite 106
Washington, D.C. 20004

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Alan Bergstein, Esquire
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, D.C. 20001

Jill Stern, Esquire
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18319 of Estelle Goldman on behalf of 7-Eleven, Inc., pursuant to 11 DCMR § 3104.1, for a special exception to allow the continued operation of a retail grocery store with basement storage as a nonconforming use under § 2003.1, pursuant to the conditions established in BZA Order No. 17632, including a five-year term and with a one-year trial period for 24-hour operations in the FB/R-3 District at premises 912 New Hampshire Avenue, N.W. (Square 28, Lot 122).[1]

HEARING DATE: February 28, 2012
DECISION DATE: February 28, 2012 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission ("ANC") 2A, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 2A, which is automatically a party to this application. ANC 2A submitted a letter, dated July 23, 2011, in support of the application. The ANC indicated that at a duly noticed and regularly scheduled public meeting on July 20, 2011, with a quorum of five out of six Commissioners present, the ANC voted unanimously (5:0) to support the application on the condition that the extension of hours is granted for a one-year trial period

[1] The description of the use as a "retail grocery/delicatessen store" in the caption was changed to "retail grocery store" for consistency with recent Board decisions. As the Board approved the requested relief pursuant to the conditions in BZA Order No. 17632, the conditions were left mostly unchanged other than Condition 2, which was altered to "the hours of operation shall be a 24-hour operation on a one-year trial basis." Also, the Board kept Condition 1, whereby the Order is approved for a five year term. In their deliberations, the Board addressed allowing the Applicant, at the end of the one-year trial period for 24-hour operations, to apply to the Board for a modification of this Order to extend the trial period.

BOARD OF ZONING ADJUSTMENT
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EXHIBIT NO. 38

Board of Zoning Adjustment
District of Columbia
CASE NO.18319
EXHIBIT NO.38

to assess the impact of the change to a 24-hour operation and that the franchisee remain the same.[2] (Exhibit 10.)

The Office of Planning ("OP") submitted a report recommending approval of the application to continue to operate a retail grocery/delicatessen, subject to the conditions previously approved by the Board in Order No. 17632 in 2007[3]; however, OP recommended deletion of the term of five years. OP stated that it does not recommend approval of the request for a one-year trial period for a 24-hour operation of the grocery/delicatessen. (Exhibit 33.) The District's Department of Transportation ("DDOT") submitted a report stating it had no objection to the application. (Exhibit 32.)

A party status request in opposition to the application was filed by Suzette Klein, 900 24th Street, N.W. (Exhibit 30.) Ms. Klein was not present at the hearing and therefore was not granted party status. There no parties, nor any witnesses or letters of support or opposition.

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 special exception under § 3104.1 from the strict application of the regulations pertaining to continued operation of a retail grocery store under § 2003.1. 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.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 2003.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with 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 WITH THE FOLLOWING CONDITIONS:**

1. Approval shall be for a period of five (5) years, beginning on the date upon which the order became final.

---

[2] While the ANC report was given great weight, the Board did not consider its request to condition the approval on the current franchisee remaining the same, as this would be an improper restriction on the user, rather than the use.

[3] OP's report provided the zoning history for the use of the first floor of the subject property as a nonconforming grocery store in a residential zone. The history shows that this use has been approved in 1981 (BZA Order No. 13596), 1984 (BZA Order No. 14196), 1991 (BZA Order No. 15526), 1997 (BZA Order No. 16261), 2003 (BZA Order No. 17021), and 2007 (BZA Order No. 17632).

2. The hours of operation shall be a 24-hour operation daily on a one-year trial basis, beginning on the date upon which the order became final. At the conclusion of the one-year trial period, the Applicant shall have the option to return to the Board for a modification of this Order with respect to this condition.

3. Deliveries from the 7-Eleven distribution center shall be between 8:00 p.m. and 10:00 p.m. only.

4. All other deliveries shall be on a scheduled basis between 9:30 a.m. and 3:30 p.m. so that only one delivery vehicle is at the site at any given time.

5. All deliveries shall be made using the commercial loading zone on New Hampshire Avenue immediately adjacent to the site.

6. Applicant will empty the trash containers belonging to 7-Eleven and the District government in front of the store at least twice daily or more frequently as required.

7. Applicant will clean the sidewalk and gutter in front of the store to ensure they are clean at all times.

8. Applicant will clear trash from the sidewalks in front of the adjacent and nearby buildings to the north and south of the store on a regular basis.

9. Applicant will clear snow and ice from the sidewalk in front of the store to ensure safe passage.

10. Applicant will maintain the exterior appearance of the premises in keeping with the residential character of the Foggy Bottom Historic District and Foggy Bottom Overlay District. Any exterior lighting shall be minimized and directed downward and away from all adjoining residential property. Applicant will take all reasonable measures to minimize the light visible from the inside of the store, and will maintain tinted windows and doors.

11. No signs or posters will be posted in the windows, and no public telephones, teller machines, or other similar devices will be added to the exterior of the building. No electronic or mechanical amusement machines will be located on the premises.

12. Applicant will ensure that the shrubs along the railing for persons with disabilities[4] are of a height that covers the railing completely when seen from the sidewalk and that perennial and seasonal landscaping is provided so as to beautify the premises.

---

[4] The wording of this condition has been changed to reflect current usage, by substituting the word "handicapped" with "persons with disabilities." Nonetheless, the meaning and intent of the condition remain unchanged.

VOTE: **5-0-0** (Meridith H. Moldenhauer, Marcie I. Cohen, Nicole C. Sorg, Lloyd L. Jordan, and Jeffrey L. Hinkle 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: MAR 0 6 2012

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 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 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

BZA APPLICATION NO. 18319

As Director of the Office of Zoning, I hereby certify and attest that on MAR 0 6 2012, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John Patrick Brown, Esq. and Kate M. Olson, Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, D.C. 20036-1410

Chairperson
Advisory Neighborhood Commission 2A
c/o West End Library
1101 24th Street, N.W.
Washington, D.C. 20037

Single Member District Commissioner 2A03
Advisory Neighborhood Commission 2A
955 26th Street, N.W., #709
Washington, D.C. 20037

Jack Evans, Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W., Suite 106
Washington, D.C. 20004

Melinda Bolling, Esq.
General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024

ATTESTED BY:

SARA A. BARDIN
Director, Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Order No. 18319-A of Application of Estelle Goldman on behalf of 7-Eleven, Inc., Motion for Modification of Condition No. 2 of Order No. 18319, pursuant to § 3129.7 of the Zoning Regulations.

The original application was pursuant to 11 DCMR § 3104.1, for a special exception to allow the continued operation of a retail grocery store with basement storage as a nonconforming use under subsection 2003.1, pursuant to the conditions established in BZA Order No. 17632, with a one-year trial period for twenty-four hour operations in the FB/R-3 District at premises 912 New Hampshire Avenue, N.W. (Square 28, Lot 122).[1]

HEARING DATE (original application):	February 28, 2012
DECISION DATE (original application):	February 28, 2012 (Bench Decision)
FINAL ORDER ISSUANCE DATE (original application):	March 6, 2012
HEARING DATE ON MODIFICATION:	April 9, 2013
MODIFICATION DECISION DATE:	April 9, 2013

SUMMARY ORDER ON REQUEST FOR MODIFICATION

Background

On February 28, 2012, the Board of Zoning Adjustment (the "Board" or "BZA") approved Estelle Goldman on behalf of 7-Eleven, Inc.'s (the "Applicant") original request for a special exception under § 2003.1 to allow continued operation of a retail grocery store with basement storage pursuant to 12 enumerated conditions, including a five-year term (through March 6, 2017) and in Condition No. 2, a one-year trial period for 24-hour operations in the FB/R-3 District at premises 912 New Hampshire, Avenue, N.W. (Square 28, Lot 122) (BZA Order No. 18319, issued March 6, 2012). Specifically, Condition No. 2 stated:

[1] The description of the use as a "retail grocery/delicatessen store" in the caption was changed to "retail grocery store" for consistency with recent Board decisions. As the Board approved the requested relief pursuant to the conditions in BZA Order No. 17632, the conditions were left mostly unchanged other than Condition 2, which was altered to "the hours of operation shall be a 24-hour operation on a one-year trial basis." Also, the Board kept Condition 1, whereby the Order is approved for a five year term. In their deliberations, the Board addressed allowing the Applicant, at the end of the one-year trial period for 24-hour operations, to apply to the Board for a modification of this Order to extend the trial period.

BOARD OF ZONING ADJUSTMENT
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CASE NO. 18319-A
EXHIBIT NO. 45

Board of Zoning Adjustment
District of Columbia
CASE NO.18319
EXHIBIT NO.45

> The hours of operation shall be a 24-hour operation daily on a one-year trial basis, beginning on the date upon which the order became final. At the conclusion of the one-year trial period, the Applicant shall have the option to return to the Board for a modification of this Order with respect to this condition.

BZA Order No. 18319, approving the original request, was issued March 6, 2012. (Exhibit 38.) As approved in BZA Order No. 18319, the approval allowed continued operation of a retail grocery store with basement storage pursuant to 12 enumerated conditions, including a five-year term (through March 6, 2017) and in Condition No. 2, a one-year trial period for 24-hour operations.

Motion for Modification

On March 7, 2013, the Applicant filed a Request for Modification of Condition No. 2 in Order No. 18319, pursuant to § 3129.7 of the Zoning Regulations together with a Certificate of Service showing that notice was provided by electronic mail and first class mail to the other parties in the case: the Office of Planning ("OP") and Advisory Neighborhood Commission ("ANC") 2A, the affected ANC. (Exhibit 40.) In the Motion, the Applicant requested that 24-hour operations be approved for four additional years to run concurrently with the underlying special exception approval for the retail grocery store which will expire on March 6, 2017.

Pursuant to § 3129.7, the Board conducted a hearing on the requested modification on April 9, 2013. OP filed a supplemental report dated March 26, 2013 (Exhibit 41) recommending approval of the requested modification and appeared at the hearing. The affected ANC, ANC 2A, which was a party in support to the underlying case, filed a report dated April 8, 2013 in support of the request to extend 24-hour operations until March 6, 2017, the expiration date of the underlying Board approval. The ANC's report indicated that at a regularly scheduled, properly noticed meeting with a quorum present, the ANC voted unanimously (7:0:0) to support the request for the extension of 24-hour operations. (Exhibit 42.)

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3129, that the requested modification can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. No parties opposed this modification. Accordingly, a decision of the Board to grant this modification would not be adverse to any Party.

The Board concludes that the Applicant's proposed Modification of Condition No. 2 is well supported and consistent with the requirements of § 3129.7 of the Zoning Regulations and

represents a modification that does not change the material facts the Board relied upon in approving the original application.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law.

It is therefore **ORDERED** that this application for modification of Condition No. 2 be **GRANTED SO THAT CONDITION NO. 2 IS MODIFIED TO READ AS FOLLOWS:**

2. Approval of 24-hour operations shall be for a period running concurrently with the underlying approval in Order No. 18319 and will expire simultaneously with the underlying approval on March 6, 2017.

In all other respects Order No. 18319 and the conditions approved therein remain unchanged.

VOTE on Original Application (February 28, 2012): **5-0-0**

(Meridith H. Moldenhauer, Marcie I. Cohen, Nicole C. Sorg, Lloyd J. Jordan, and Jeffrey L. Hinkle, to APPROVE.)

VOTE on Modification of Condition No. 2 of Order No. 18319: **4-0-1**

(Nicole C. Sorg, Anthony J. Hood, S. Kathryn Allen, and Jeffrey L. Hinkle, to APPROVE; Lloyd J. Jordan, not present, not voting.)

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

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

FINAL DATE OF ORDER: April 17, 2013

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.

EXHIBIT B

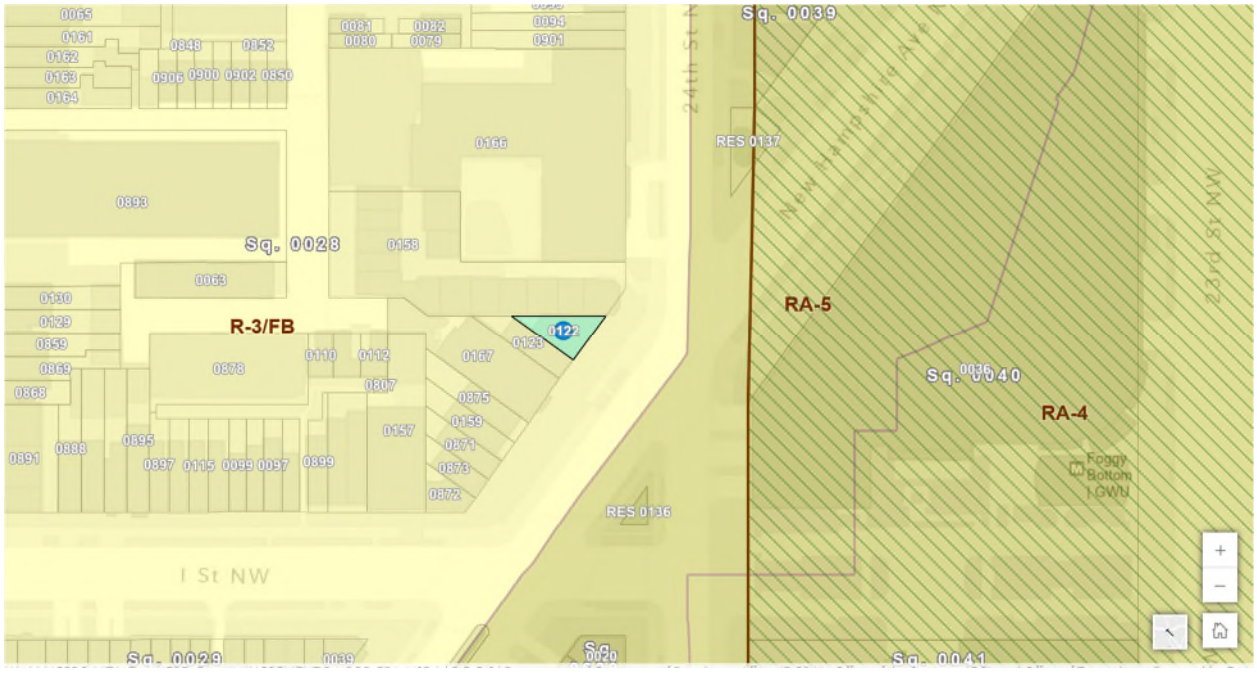

Sq. 0039
RES 0137
Sq. 0028
R-3/FB
RA-5
RA-4
Sq. 0040
RES 0136
I St NW
Sq. 0029
Sq. 0041
Foggy Bottom | GWU

EXHIBIT C




7-ELEVEN


7-ELEVEN


7-ELEVEN
912


7-ELEVEN
New Hampshire
900
24
900

EXHIBIT D

Government of the District of Columbia
Foggy Bottom and West End
Advisory Neighborhood Commission 2A

c/o West End Library | 1101 24th St., N.W. | Washington DC 20037

RECEIVED
D.C. OFFICE OF ZONING
2011 OCT 17 PM 3:26

July 23, 2011

Meridith Moldenhauer, Chairperson
DC Board of Zoning Adjustment
441 4th St., N.W. Suite 200
Washington, DC 20001

Re: BZA Case No. 13596, 912 New Hampshire Avenue, NW

Dear Chairperson Moldenhauer and Members of the Commission:

At its duly noticed, regular monthly meeting on July 20, 2011, with 5 of 6 commissioners present constituting a quorum, ANC 2A voted unanimously (5 to 0) on the following resolution:

WHEREAS on November 10 and December 2 1981, the District of Columbia Board of Zoning Adjustment considered the application of 7/11 at 912 New Hampshire Avenue, NW to operate a small "grocery store and delicatessen" within the Foggy Bottom residential community;

WHEREAS ANC 2A protested this application and zoning change before the Board of Zoning Adjustment on the grounds that it was a "chain store" that would bring negative impacts to the surrounding neighbors including increased litter and noise;

WHEREAS the 7/11 at 912 New Hampshire Avenue NW is seeking to extend their operating hours to 24 hours a day;

WHEREAS many of the neighbors surrounding the 7/11 support the extension and there has been no expression of opposition from surrounding neighbors;

WHEREAS the 7/11 at 912 New Hampshire Avenue NW has maintained a good reputation among neighbors for keeping a clean and well-tended property in Foggy Bottom;

BOARD OF ZONING ADJUSTMENT
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CASE NO. 18319
EXHIBIT NO. 10

Board of Zoning Adjustment
District of Columbia
CASE NO.18319
EXHIBIT NO.10

WHEREAS 24 hour operation still could present certain problems to the Foggy Bottom residential community such as unwanted noise;

THEREFORE BE IT RESOLVED THAT ANC 2A supports the application of the 7/11 at 912 New Hampshire Avenue NW on the condition that the extension be granted for a one year trial period for the community to assess the impact of this change and that the franchisee remain the same.

ON BEHALF OF THE COMMISSION

Respectfully submitted,

Rebecca Coder
Chair

Cc: Commissioner L. Asher Corson, 2A-01

RECEIVED
D.C. OFFICE OF ZONING
2011 OCT 17 PM 3:26

BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

FORM 129 – ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

Before completing this form, please review the instructions on the reverse side.

Pursuant to §§ 3012.5 and 3115.1 of Title 11 DCMR Zoning Regulations, the written report of the Advisory Neighborhood Commission (ANC) shall contain the following information:

IDENTIFICATION OF APPEAL, PETITION, OR APPLICATION:

Case No.:	18319	Case Name:	Estelle Goldman (7-Eleven)
Address or Square/Lot(s) of Property:	912 New Hampshire NW (Square 18, Lot 122)		
Relief Requested:	Extension for 4 add'l years of special exception to operate 24 hours		

ANC MEETING INFORMATION

Date of ANC Public Meeting:	2	0	/	0	3	/	1	3	Was proper notice given?:	Yes	✓	No

Description of how notice was given: ANC website, Listserve, Current newspaper

Number of members that constitutes a quorum:	4	Number of members present at the meeting:	7

MATERIAL SUBSTANCE

The issues and concerns of the ANC about the appeal, petition, or application as related to the standards of the Zoning Regulations against which the appeal, petition, or application must be judged (*a separate sheet of paper may be used*):

Applicant seeks extension for four additional years to operate for 24 hours daily, e.g., modification of BZA Order No. 18319 to authorize 24-hour daily operation of the grocery store for four additional years.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18319
EXHIBIT NO. 42

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2013 APR -9 AM 8:2

The recommendation, if any, of the ANC as to the disposition of the appeal, petition, or application (*a separate sheet of paper may be used*):

ANC 2A is happy to support this application. Mr. Sam Motamedi, operator of the 7-Eleven at 912 New Hampshire Avenue NW, is an exemplary operator and has widespread community support. Accordingly, ANC 2A voted unanimously 8-0 to support the request to modify BZA Order No. 18319 to authorize 24-hour daily operation of the grocery store for four years until the expiration of the BZA's current approval in March 2017.

AUTHORIZATION

ANC	2	A	Recorded vote on the motion to adopt the report (i.e. 4-1-1):	7-0-0
Name of the person authorized by the ANC to present the report:			Florence Harmon	
Name of the Chairperson or Vice-Chairperson authorized to sign the report:			Florence Harmon	
Signature of Chairperson/ Vice-Chairperson:	Florence Harmon		Date:	4/8/13

ANY APPLICATION THAT IS FOUND TO BE INCOMPLETE MAY NOT BE ACCORDED "GREAT WEIGHT" PURSUANT TO 11 DCMR §§ 3012 AND 3115.

Board of Zoning Adjustment
District of Columbia
CASE NO.18319
EXHIBIT NO.42

Government of the District of Columbia
Foggy Bottom and West End
Advisory Neighborhood Commission 2A

c/o West End Library 1101 24th St., N.W. Washington DC 20037

April 7, 2013

VIA HAND-DELIVERY

Lloyd J. Jordan, Esquire
Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210 South
Washington, DC 20001

Re: Request for Modification of
BZA Order No. 18319
912 New Hampshire Avenue, N.W.
(Square 18, Lot 122)

Dear Chairperson Jordan and Members of the Board:

At its duly noticed, regular monthly meeting on March 20, 2013, with all eight Commissioners constituting a quorum, ANC 2A voted unanimously (7-0-0) on the following resolution:

WHEREAS, BZA Order No. 18319, dated March 6, 2012 approved continued operation of the 7-Eleven grocery store for five (5) years (until March 2017) subject to the enumerated conditions, including a one-year trial period for 24-hour operations daily;

WHEREAS, the grocery store has operated at this location since 1982, subject to five BZA approvals;

WHEREAS, the Applicant has completed the one-year trial period and filed a Request to Modify BZA Order No. 18319 to allow 24-hour operations daily for four (4) additional years to expire in March 2017 at the same time as the current five year approval;

WHEREAS, the Commission has not received any complaints about objectionable conditions related to 24-hour operations during the just completed one year trial period;

WHEREAS, several Commissioners and neighbors of the grocery store praised the long-standing operations by Mr. Sam Motamedi and his family, the franchisee/operator, and did not object to continued 24-hour operations until March 2017;

NOW THEREFORE BE IT RESOLVED THAT ANC 2A supports the Request to Modify BZA Order No. 18319 to authorize 24-hour daily operation of the grocery store for four years until the expiration of the BZA's current approval in March 2017, subject to all the current conditions.

On behalf of the Commissioners.

Respectfully submitted,

Florence Harmon
Chair

cc: Commissioner L. Asher Corson, 2A-01
Mr. Stephen Mordfin, Office of Planning
John Patrick Brown, Jr., Esq.