

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.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

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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 2007³; 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).

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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 disabilities⁴ 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.

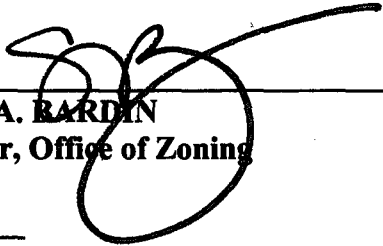
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VOTE: **5-0-0** (Meridith H. Moldenhauer, Marcie I. Cohen, Nicole C. Sorg,
 Lloyd L. Jordan, and Jeffrey L. Hinkle to Approve.)

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 08 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.

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As Director of the Office of Zoning, I hereby certify and attest that on **MAR 06 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 ANC's and SMD's 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:

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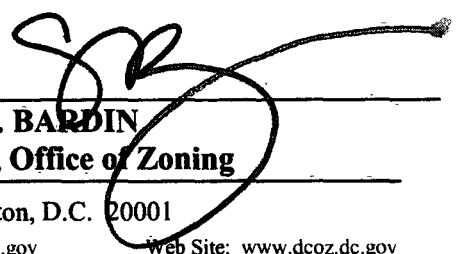
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