BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Estelle Goldman
on Behalf of 7-Eleven, Inc.

BZA Application No. 17021
Public Hearing: September 23, 2003
ANC 2A

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STATEMENT OF THE APPLICANT

I. Nature of Relief Requested

This is an application of Estelle Goldman, on behalf of 7-Eleven, Inc. ("7-Eleven") (formerly Southland Corporation) and its Franchisee, pursuant to 11 DCMR §3104.1, for a special exception to continue the use of a nonconforming retail grocery/deli (last authorized by BZA Order No. 16261, dated November 12, 1997) with hours of operation expanded to 24 hours a day under section 2003, in the FBOD/R-3 District at premises 912 New Hampshire Avenue, N.W., first floor and basement (Square 28, Lot 122).

II. Jurisdiction Of The Board

The Board has jurisdiction to grant the requested special exception relief pursuant to §3104.1 of the Zoning Regulations. The Applicant's clear satisfaction of the burden of proof is set forth below.

III. Background Of The Application

The subject property, Lot 122 in Square 28, is located near the intersection of 24th Street and New Hampshire Avenue, N.W. at 912 New Hampshire Avenue, N.W. The subject property is located almost immediately adjacent to the new George Washington University Hospital and

BZA
Case No. 17021
Exhibit No. 42

Board of Zoning Adjustment
District of Columbia
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EXHIBIT NO. 42A1

within easy walking distance of the Foggy Bottom Metro Station and the GW Campus. Lot 12 is triangular in shape, has a lot area of 1,047 square feet and contains a two-story with basement brick building constructed in approximately 1,900. The property is zoned FBOD/R-3[1/]. The total gross floor area of the building is approximately 2,700 square feet with approximately 913 square feet on each of the three (3) levels (basement, first and second floors). There is no vehicular or other access to the rear of the subject property, and therefore, all loading must be accomplished through the front of the store located on the public street. The second (or top) floor of the property is used for residential purposes by 7-Eleven for its employees relocating to this area. Additionally, the Franchisee maintains an off-site parking space on 24th Street.

Over the last twenty-one (21) years, 7-Eleven has continued to re-invest in the interior and exterior of the subject property for the benefit of its customers and the neighborhood. Beginning in 1982, 7-Eleven renovated and modernized the existing store. Over time, 7-Eleven has repainted the brick facade, repaired and replaced windows and doors, installed new signage consistent with the streetscape, repaired the public space, installed planters and trash receptacles, established a loading zone and generally maintained the property in an appropriate manner.

A. History of the Current Use

This is an application to renew the retail grocery store and delicatessen use of this property by 7-Eleven and its Franchisee, and expand the hours of operation to twenty-four (24) a day.

Prior to 1982, the subject property was used as a retail grocery store. In January 1982, 7-Eleven received Board approval in BZA Application No. 13596 to change a non-conforming

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1/ The subject property was originally zoned R-5-D when the first BZA Application was approved in 1982.

use from grocery store to grocery store and delicatessen on the first floor, and to allow storage in the basement, and a variance to permit structural alterations. See Exhibit A. Over the next twenty-one (21) years, 7-Eleven has continued to operate at the subject property in the same manner as originally approved by the Board in 1982. During this period, the Board has reviewed 7-Eleven's operations and approved continuing operations as a grocery store and delicatessen on three (3) separate occasions.

In October 1984, the Board by Bench Decision unanimously approved BZA Application No. 14196. See Exhibit B. In July 1991, the Board again approved the continued operation by 7-Eleven in BZA Application No. 15526. See Exhibit C. Most recently, in October 1997, the Board by Bench Decision and Summary Order in BZA Application No. 16261 again approved the grocery storage and delicatessen use. See Exhibit D. As part of the Board's most recent approval, 7-Eleven (and its Franchisee) and Advisory Neighborhood Commission 2A entered into a Management Agreement to control operations at the store. See Exhibit E. Under the Management Agreement, 7-Eleven and its Franchisee agreed to the following:

1. Traffic and delivery restrictions;
2. Trash and exterior litter control;
3. Loitering, panhandling and vagrancy limitations;
4. Exterior appearance and maintenance; and
5. Ongoing communication with ANC 2A and the community.

7-Eleven and its Franchisee, as part of this Application are willing to continue to operate under the terms of the current Management Agreement or a new agreement incorporating additional terms which may be agreed upon with ANC 2A or requested by the Board.

B. Current Operations

The store currently operates from 7:00 a.m. to 11:00 p.m. daily. Three (3) employees work the day shift from 7:00 a.m. to 3:00 p.m., and three (3) employees work the evening shift from 3:00 p.m. to 11:00 p.m. Under the terms of the Management Agreement, daytime deliveries occur from 9:30 a.m. to 3:00 p.m. at a commercial loading zone on New Hampshire Avenue, N.W. and deliveries from the 7-Eleven distribution center are only scheduled twice a week during the evening from 8:00 p.m. to 10:00 p.m. No beer, wine, liquor or drug paraphernalia (e.g., rolling papers, etc.) of any kind are sold at the store. 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. 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. "No Loitering" signs have been installed and are enforced. No electronic or mechanical games are available at the store.

The store provides a necessary and convenient service to neighborhood residents and others in the immediate area. In BZA No. 14196, approximately 400 residents signed a petition in support, stating, "We are happy to have this 7-Eleven in our neighborhood." The store draws its customers primarily from within a one-half (1/2) mile radius. Historically, ninety percent (90%) of the customers are "walk-in", which results in little or no traffic or parking impacts. Sunday is a peak sales period when customers are mostly residents of the immediate area.

As noted previously by the Board, ANC 2A and Office of Planning, 7-Eleven and its Franchisee, have observed the BZA restrictions and "gone far beyond them in their successful efforts to be an exemplary neighbor "and" exceptionally diligent."

C. Proposed Expansion to Twenty-Four Operations

For over twenty-one (21) years, 7-Eleven has been operating at this location from 7:00 a.m. to 11:00 p.m. daily. Currently, 7-Eleven operates all of its stores in the District of Columbia twenty-four (24) hours a day, except this location. Given the overwhelming neighborhood "walk-in" customer-base, expanded hours of operation would provide an added convenience and service to the community without substantial impact.

IV. Applicants Meet The Requirements For The Requested Special Exception

Uses that are allowed by special exception are deemed compatible with other uses permitted in that particular zoning classification provided certain requirements are met. In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites of the Regulations are satisfied, the Board ordinarily must grant the application. See, e.g., Baker's Local Union No. 118 v. District of Columbia Board of Zoning Adjustment, 437 A.2d 176, 178 (D.C. 1981).

As set forth in greater detail below, approval of special exception relief in this case meets or exceeds all of the applicable requirements and is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use and enjoyment of nearby properties.

Under 11 DCMR §2003 the following enumerated criteria are to be applied by the Board:

- A non-conforming use may be changed to a use that is permitted as a matter-of-right in the most restrictive district in which the existing non-conforming use is permitted as a matter-of-right. (§2003.1)

- 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 feet) in all directions from the non-conforming use. (§2003.2)

- 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. (§2003.3)

- When an existing non-conforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a non-conforming use or less restrictive use. (§2003.4)

- In residential districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility. (§2003.5)

- 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 they may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood. (§2003.7)

A. <u>The Grocery Store and Delicatessen is a Permitted Use in the Most Restrictive Commercial District.</u>

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. 11 DCMR §701.4.

B. <u>The Continued Use Will Not Adversely Affect the Present Character or Future Development of the Surrounding Area.</u>

Over the last twenty-one (21) years, 7-Eleven has operated successfully and responsibly at this location. It has provided convenient and desired services and products to its customers which are drawn predominantly from the immediate area without adversely impacting that area. Through the Management Agreement, 7-Eleven and its Franchisee have acknowledged and responded favorably to issues raised by its neighbors. 7-Eleven has maintained and improved

the property, established and enforced operating procedures to minimize the impacts of its activities and been responsive and respectful to the views and interests of the community. In the future, 7-Eleven and its Franchisee will continue to be a good neighbor and respond to any issues which may arise. Expansion to twenty-four (24) hour operations will not have any adverse impact on the neighborhood.

C. The Continued Use Shall Not Create Any Deleterious External Effects.

Working with the community, 7-Eleven and its Franchisee have responded successfully to operate in a manner which would not create adverse external impacts on the neighborhood. Given the predominantly local, "walk-in" customer base, the store is not a significant generator of traffic or a vehicular destination. A marked loading zone has been established and deliveries have been limited and scheduled to avoid peak traffic hours and minimize any impact. Internal and external lighting has been designed to achieve the desired public safety results without impact on the community. Trash receptacles have been installed and maintained, and efforts to police litter, debris and "spillage" have been successful in maintaining the appearance of the neighborhood. The exterior of the store has been well maintained and signage consistent with the streetscape installed. No loitering signs have been installed and enforced and free coffee is no longer offered to "homeless" persons to eliminate vagrancy and panhandling and protect the public safety and appearance of the store and neighborhood.

The proposed twenty-four (24) hour operations will not create any negative external impacts. Expanded hours will not increase the number or frequency of deliveries or change the local, "walk-in" customer base. The terms of the Board approvals and Management Agreement will continue to be met and exceeded with the same diligence as has been clearly established over the last twenty-one (21) years. During the expanded hours of operations, the resources

made available to law enforcement officers will continue to be offered and encourage an increased police presence in the immediate area.

D. The Long-Standing Non-Conforming Use Has Not Been Changed Back to a Conforming or More Restrictive Use.

For twenty-one (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.

E. The Long-Standing Use Is a "Neighborhood Facility".

It is well-established that the use of the subject property by 7-Eleven and its Franchisee is "neighborhood facility" under 11 DCMR §2003.5. The Board has made this determination in BZA Orders 13596, 14196, 15526 and 16261.

G. The Board May Require Changes or Restrictions to Protect the Value, Utilization or Enjoyment of the Neighborhood.

The Board has granted the four previous approvals subject to specific conditions and terms of the Management Agreement. 7-Eleven and its Franchisee have demonstrated their willingness and ability to fully and diligently comply with these conditions. 7-Eleven and its Franchisee have no objection to continuing to operate subject to similar conditions and the Management Agreement as it may be amended or re-executed. However, 7-Eleven requests that, based on its proven track record over twenty-one (21) years, the Board's approval not be for a limited period of time or the period of approval be extended to ten (10) years.

V. Witnesses

The following witnesses will testify in support of this Application:

1. Ms. Nancy Wade, 7-Eleven, Inc.

2. Mr. Sam Motamedi, Franchisee.

3. Other representatives of 7-Eleven, Inc.

VI. Exhibits In Support Of Application

Exhibit A: BZA Order No. 13596.

Exhibit B: BZA Order No. 14196.

Exhibit C: BZA Order No. 15526.

Exhibit D: BZA Order No. 16261.

Exhibit E: Management Agreement

VII. Conclusion

For the reasons set forth above, the requested special exception relief can be granted without impairing the intent, purpose and integrity of the Zoning Regulations. Applicant respectfully requests the Board to issue a Bench Decision and Summary Order.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

September 9, 2003

By: _____
John Patrick Brown, Jr.
Counsel for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Statement of the Applicant was served by hand-delivery, this 9th day of September, 2003, upon:

Ms. Dorothy Miller, Chairperson
Advisory Neighborhood Commission 2A
St. Mary's Court
725 24th Street, N.W.
Washington, D.C. 20037
(six copies)

Mr. Stephen Mordfin
Office of Planning
801 North Capitol Street, N.E.
Suite 400
Washington, D.C. 20001

John Patrick Brown, Jr.

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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 [illegible]

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.

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 22, 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
STEVEN E. SHER
Executive Director



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 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 restrictions 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:

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MADELIENE H. ROBINSON
Acting Director

DATE: SEP 2 [illegible]

15526Att/bhs