

Board of Zoning Adjustment
District of Columbia
CASE NO. 17021
EXHIBIT NO. 42A2

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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

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

SUMMARY ORDER

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2A and to owners of property within 200 feet of the site.

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

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

No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT** to the **CONDITION** that approval shall be for a period of **THREE YEARS.**

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

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

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

ATTESTED BY: Madeleine H. Mitchell

FINAL DATE OF ORDER: NOV 12 1997

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

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

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

Ord16261/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16261

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

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

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

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

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

Date: NOV 12 1997

Attest/ljp



MANAGEMENT AGREEMENT COVERING THE OPERATIONS OF THE 7-11 STORE AT 912 NEW HAMPSHIRE AVENUE, N. W., BETWEEN ANC-2A, THE SOUTHLAND CORPORATION AND THE FRANCHISEE OF THE 7-11

Corrected Copy (Paragraph 15) - Monday, October 6, 1997

Made this 6th day of October, 1997 by and between the Southland Corporation [(lessee of property at 912 New Hampshire Avenue, N.W. (Square 28, Lot 122) -- 7-11], the 7-11 franchisee, and the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A).

1. Whereas the special exception expired on September 1, 1997 that was granted by the Board of Zoning Adjustment (BZA) under Order No. 15526, dated September 2, 1991 and that permitted a retail/delicatessen store on the first floor with the basement for storage to be operated in an R-5-D District at the above sited premises; and

2. Whereas on April 21, 1997, Estelle Goldman et al., owners of said property, filed an application before the BZA for a special exception to continue the nonconforming use at the above-cited premises; and

3. Whereas the BZA will hold a hearing on the above application on October 1, 1997; and

4. Whereas the premises at 912 New Hampshire Avenue, N.W. are within the boundaries of ANC-2A and are located in the Foggy Bottom Overlay District, the boundaries of which coincide with those of the Foggy Bottom Historic District; and

5. Whereas the Foggy Bottom Overlay District, established in Chapter 15, Section 1521, of 11 DCMR, is zoned R-3, a purely residential and more restrictive category than the previous R-5-D and R-5-B; and

6. Whereas the Foggy Bottom Overlay District was established by the Zoning Commission to ensure inter alia that the historic and residential character of the Overlay District is preserved and enhanced; and

7. Whereas 11 DCMR 2003.3 dealing with nonconforming uses specifies the following : "The proposed use shall not create any deleterious effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor and design and siting effects,"; and

8. Whereas since the Management Agreement of 1992 was concluded, there have been improvements in the operation but problems regarding cleanliness, landscaping, design, siting effects and, in particular, parking and loading have still arisen;

9. Whereas parking and loading pose special problems at the premises because of the unusual geometry of the intersection of 24th Street and New Hampshire Avenue, N.W., the fact that

customers of the operation frequently use the loading zone, the fact that delivery trucks do not always obey the delivery schedule as regards its timing and the obligation to have only one delivery truck at a time, all of which cause problems for nearby residents, and hazardous conditions for pedestrians and motorists, as well as impacting adversely on the residential character of the Foggy Bottom Overlay District; and

10. Whereas problems, including derelicts and panhandlers remain a potential problem, as does cleanliness because of customers' actions; and

11. Whereas the parties desire to continue an agreement setting forth understandings regarding the operation of the 7-Eleven; and

12. Therefore in consideration of the above-cited conditions and the covenants and promises set forth below, the parties agree as follows:

13. **Conditions relating to traffic and delivery of merchandise by trucks**

To reduce the hazardous conditions to pedestrians and motor vehicles resulting from the use of the loading zone fronting the above-cited premises, Southland Corporation agrees to undertake the following:

a. Southland Corporation delivery trucks will make their deliveries between 8.00 PM and 10.00 PM only and no more than twice per week and such deliveries will be made from the Southland's depot in Fredericksburg, Virginia, where consolidation of merchandise will take place;

b. Southland Corporation will work with other suppliers to the 7-Eleven store to ensure that their truck deliveries are scheduled, one truck at a time, between 9.30. AM and 3.30. PM only; and

c. Southland Corporation will post a conspicuous sign inside the premises consistent with the requirements of 18 DCMR 2402.6 that sign indicates that loading zones are to be used by commercial vehicles for delivery only and by noncommercial vehicles for drop-off only, to the extent that such use does not interfere with commercial deliveries.

14. **Conditions relating to sanitation and health**

Southland Corporation will ensure that the 7-Eleven franchisee will;

a. Empty the trash containers belonging to 7-Eleven and to the District government directly in front of the 7-Eleven store twice a day or more frequently if needed;

b. Clean the sidewalk and gutter in front of the 7-Eleven to ensure that they be clean at all times;

c. Clear trash from the sidewalks in front of the adjacent and nearby buildings to the north and south of the 7-Eleven to the extent that such trash results from the operation of the 7-Eleven store;

d. As required by law and regulations, clear snow and ice from the sidewalk in front of the premises to provide safe passage; and

e. Comply with all aspects of the Civil Infractions Act and the Litter Control Administration Act, any alleged violations of which, if left uncorrected, may be referred by ANC-2A to the appropriate agency.

15. Conditions relating to derelicts and panhandlers

Southland Corporation together with the 7-Eleven franchisee will ensure that:

a. Hospitality (such as free coffee or food) will not be extended to derelicts and other people loitering in front of the store that encourage their presence in the area;

b. The franchisee will work closely with the Metropolitan Police department and call the police when needed to remove derelicts and panhandlers way from the store and its immediate surroundings.

16. Conditions relating to the appearance of the premises

Southland Corporation and the 7-Eleven franchisee shall pay special regard to maintain the exterior appearance of the premises consistent with its characteristic as a contributing residential townhouse in the Foggy Bottom Historic District. In particular, no signs, posters in the windows, public telephones, teller machines or like devices will be added to the exterior of the building that detract from the residential character of the Foggy Bottom Historic District. Southland Corporation and the 7-Eleven franchisee will ensure that the shrubs along the handicapped railing are of a height that covers the railing completely when seen from the sidewalk and that perennial and seasonal landscaping be provided so as to beautify the premises. In the event that alterations are proposed to the exterior of the premises, the Southland Corporation and the 7-Eleven franchisee will discuss this with the Commissioner of SMD 2A03 and ANC-2A prior to any application to the DC Historic Preservation Review Board.

17. Southland Corporation and the 7-Eleven franchisee store manager will meet with the Commissioner of SMD 2A03, or with ANC-2A at the request of either or at its own request to discuss any such problems as may arise from the operation of the 7-Eleven and to hear and respond to the concerns of the ANC and the community regarding their perspectives on its implementation.

18. In particular, the Southland Corporation and the 7-Eleven franchisee shall work closely with the Commissioner of SMD 2A03, ANC-2A and the community and with appropriate agencies of the District government to help solve any problems that may arise.

19. ANC-2A and the Southland Corporation will request that the terms of this agreement be incorporated as conditions in any BZA Order approving the application. Any envisaged change to 7-Eleven's operations and the undertakings by the Southland Corporation or its franchisee that would affect the terms of this Agreement will be brought to the attention of ANC-2A and will not be implemented without prior approval by ANC-2A which approval shall not be unreasonably withheld, and the BZA, if necessary.

20. **Conclusion**
In consideration of, and in reliance upon, the above commitment reflected in paragraphs 13, 14, 15 and 16 above, ANC-2A will communicate with the BZA its non-objection to Southland Corporation's pending application for a special exception to operate a nonconforming use in the Foggy Bottom Overlay District.

21. To ensure that the conditions and undertakings entered into in this Agreement will be adequate to protect the adjoining and surrounding area from potential adverse effects, ANC-2A limits its non-objection to the application before the BZA for a period of three years only and the applicant agrees to modify its request to a period of three years only for the special exception to continue nonconforming use on the premises.

22. Except to the extent that they are inconsistent with the terms of this Agreement, the parties further agree that the provisions of the prior Orders Nos. 14596, 14196 and 15526 (including provisions such as hours of operation and signage) with respect to nonconforming use of this site shall be incorporated as conditions of approval of said application.

23 . The parties further agree that any failure by the Southland Corporation or its 7-Eleven franchisee would constitute grounds for ANC-2A to petition the BZA for the issuance of an order to Southland Corporation and its franchisee to show cause why the special exception should not be revoked.

Bernard Mozer
Chair, ANC-2A

Nancy Wade
Marketing Manager
Southland Corporation

Maria Tyler
Commissioner, ANC-2A03

Franchisee, 7- Eleven