GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: September 16, 2003

SUBJECT: BZA Application 17021 - Request filed by Greenstein Delorme & Luchs, P.C. for a **special exception** to continue to operate a retail grocery/delicatessen and expand the hours of operation to 24 hours a day, proposed by Estelle Goldman for 912 New Hampshire Avenue, N.W.

APPLICATION
Application of Estelle Goldman for:

1) **Special exception relief pursuant to §2003 of Title 11 DCMR** to permit the continued use of a retail grocery/delicatessen and the expansion of the hours to 24 hours a day

for property located on the northwest side of New Hampshire Avenue, N.W., between 24th Street and I Street, Square 28, Lot 122. The property is zoned FB/R-3, row dwellings and Foggy Bottom Overlay District.

SUMMARY RECOMMENDATION
The Office of Planning recommends approval of the request for special exception relief for the continuation of the use as previously approved, but DENIAL of the request to expand the hours to twenty-four hours a day, seven days a week.

PROJECT DESCRIPTION
This proposal is to permit the continued use of the subject property as a retail grocery/ delicatessen on the first floor and basement, as permitted by Board Order No. 16261, but with the expansion of the hours of operation to twenty-four hours a day, seven days a week. Currently the business operates from 7:00 a.m. to 11:00 pm, seven days a week. The second floor is used as an apartment for the temporary housing of employees relocating to the Washington area. No building additions are proposed.

BZA
Case No. 17021
Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO. 17021
EXHIBIT NO. 43

The Board of Zoning Adjustment last granted permission for the operation of the subject use as permitted by Board Order No.16261 on October 1, 1997, subject to the condition "*that approval shall be for a period of **THREE YEARS***". That approval expired in 2000.

HISTORY

October 25, 1954: A Certificate of Occupancy, No. A 28685, was issued for the subject property for use of the first floor as a nonconforming grocery store within a residential zone

1981: BZA Application No. 13596 was filed for the subject property within the R-5-D District, for a:

1. Special exception to change a nonconforming use from a grocery on the first floor, to a grocery and delicatessen on the first floor;
2. Special exception to extend the use to include storage within the cellar; and
3. Variance to permit structural alterations to the building.

The application was granted by the BZA with a Final Order dated March 22, 1982, 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 form 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

1984: BZA Application No. 14196 was filed for a special exception to continue to use the first floor as a grocery and delicatessen and the basement for storage within an R-5-D District. The application was granted by the BZA on October 17, 1984, subject to the same conditions as the previous application, with the exception that the approval was "*for a period of SIX YEARS from the date of expiration of the prior order, namely from March 22, 1985*".

1991: BZA Application No. 15526 was filed for a special exception under § 2003 to continue to operate a retail grocery/delicatessen store with basement storage within an R-5-D District. The application was decided by the BZA on July 24, 1991. The final order granting the application is dated September 2, 1992, subject to the following conditions:

1. The 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.

1997: BZA Application No. 16261 was filed for a special exception under § 2003 to continue to operate a retail grocery on the first floor with basement storage within the FBOD/R-3 District. The application was decided by the BZA on October 1, 1997. The final order, dated November 12, 1997, granted the application subject to the condition that "approval shall be for a period of THREE YEARS".

A "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 &-11", and dated October 6, 1997, was made a part of the last approval. This agreement covers such things as, "Conditions relating to traffic and delivery of merchandise by trucks", "Conditions relating to sanitation and health", "Conditions relating to derelicts and panhandlers" and "Conditions relating to the appearance of the premises".

SITE AND AREA DESCRIPTION

The property consists of Lot 122 of Square 28, in the North West quadrant of the District and is 1,047 square feet in area. It is improved with a two-story plus basement building that consists of the retail grocery/delicatessen on the first floor and within the basement, and an apartment on the second floor. The subject property contains no off-street parking, no off-street loading and has no alley access. A loading space is designated within New Hampshire Avenue immediately to the front of the subject property. However, space is not restricted to any one business.



View of Subject Property from New Hampshire Avenue

The surrounding area is residential and university oriented in nature. To the north, within the FB/R-3 Zoning District, are three-story residential buildings, followed by a 9-story condominium apartment building. To the south, within the FB/R-3 Zoning District, is a two-story row house, followed by a 7-story apartment building and row houses. The 7-story apartment building and the row houses utilize the area to the front of the structures for off-street parking, eliminating the possibility of on street parking due to all of the curb cuts. A loading zone, to the front of the subject property, extending from 910 New Hampshire Avenue northeast to 24th Street, permits no parking between the hours of 7:00 am to 6:30 pm, Monday through Saturday. Across 24th Street and located within the R-5-D Zoning District, is the new George Washington University Hospital.

One block to the east is the entrance to the Foggy Bottom/GWU Metrorail Station (blue and orange lines).

The area has been identified on the Generalized Land Use Map as located within the moderate density residential land use category- "Row houses and garden apartments are the predominant uses; may also include low density housing."

EXISTING ZONING

The subject property is zoned FB/R-3, row dwellings and Foggy Bottom Overlay District.

R-3 Districts: General Provisions

"The R-3 District is designed essentially for row dwellings, but there shall be included in an R-3 District areas within which row dwellings are mingled with one-family detached dwellings, one-family semi-detached dwellings, and groups of three (3) or more row dwellings. To maintain a family-life environment, permitted related uses are the same in R-3 Districts as in R-1 Districts." (§ 320.1)

Foggy Bottom Overlay District

"The Foggy Bottom Historic District is a unique resource to the District of Columbia that must be preserved and enhanced. The historic district was designated and included in the *National Register of Historic Places* in 1986 and 1987, respectively. It is characterized by low scale residential structures forming a cohesive neighborhood of modest dwellings. Given the high density development pressures caused by the proximity of the Central Employment Area, George Washington University, medical clinics, and hotels, strong protection is needed to retain the historic district's low-scale residential character, human scale streetscape, and historic character." (§ 1521.1)

RELIEF REQUESTED:

Special Exception pursuant to § 2003– Changing Uses within Structures

§ 2003 sets forth the specific criteria under which the Board of Zoning Adjustment may permit a change to a nonconforming use. Those criteria are as follows:

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

This application does not propose a change in the use, but rather a continuation of the existing use and an expansion of the hours.

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

The surrounding area is primarily residential, although the George Washington University Hospital is located across the street. However, the expansion of the hours to twenty-four a day, seven days a week will have the effect of increasing the nighttime activity around the subject property, located within an R-3 District. Additional activity, and any associated noise, could have an adverse affect on a residential neighborhood, especially during the nighttime hours when most residents can be expected to be at home and sleeping.

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.

The continuation of the proposed use, as approved by the BZA in 1982, should not have any deleterious external effects, as the use was granted with several conditions meant to control any potential adverse impacts it may have on the community. The expansion of the hours to twenty-four hours a day, seven days a week, would not be consistent with one of the conditions, which restricts the hours of operation to between 7:00 am to 11:00 pm, seven days a week.

The application indicates that the expansion of hours is to better serve the community and to serve the recently completed new George Washington University Hospital. However, the subject property is located within the R-3 District, a residential district within which the existing use is not permitted. As the existing nonconforming use is not permitted within the R-3, the expansion of the hours of operation within a residential neighborhood is not appropriate. Although the subject property is directly across the street from the new hospital, it is also located outside of the George Washington University Campus Boundaries, as defined in "The George Washington University Foggy Bottom Campus Plan, Years 2000 through 2009", filed May 3, 2002. Provision of retail uses to serve the University outside of the campus boundaries and within this residential district would constitute an expansion of uses serving the University (even if not affiliated with the University) into this residential neighborhood, which is not consistent with the moderate density residential land use recommendation of the Land Use Map. The Campus Plan does propose commercial/ investment areas, but they are located primarily along the south side of Pennsylvania Avenue, east of Washington Circle.

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.

This application proposes no changes to the use.

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

This application only proposes the continuation of a nonconforming use, and not the establishment of a new one.

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

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

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

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

The purposes of the Foggy Bottom Historic District include, *"[e]nhance the residential character of the area by maintaining residential uses*". The existing use has already been approved by the BZA with conditions to ensure that it does not become objectionable to the neighborhood. One of those conditions is the restriction on the hours of operation to 7:00 am to 11: 00 pm. Although the Board is empowered to change or alter this condition, the expansion of the hours of operation would be inconsistent with enhancing the residential character, and would not help to maintain residential uses due to the increased activity will result around the subject property between the nighttime hours of 11:00 pm and 7:00 am.

COMPREHENSIVE PLAN

This proposal will contribute toward the following Ward 2 objective for economic development:

"*Enhance the image of Ward 2 as a place to do business and to reside;*" (§ 1301.1(a))

This proposal will contribute toward the following Ward 2 objective in support of housing:

"*The District government shall improve neighborhood-level commercial services throughout the ward while at the same time protecting residential neighborhoods from disruptive uses,...*" § 1305.1(h))

This proposal will contribute toward the following Ward 2 objective for residential land use:

"*To conserve and enhance existing residential neighborhoods in Ward 2;*" (§ 1326.1(a))

This proposal will contribute toward the following Ward 2 action in support of residential land use:

> *"To carry out the policy in the Comprehensive Plan of "conserving and maintaining the District's sound, established neighborhoods through the strict application and enforcement of housing, building and zoning codes and maintenance of the general level of existing residential uses, densities, and heights," the city should continue to enforce the zoning regulations and recommendations of the Comprehensive Plan with respect to negative neighborhood impacts, ..."* (§ 1327.1(f))

COMMUNITY COMMENTS

ANC 2A has informed the Office of Planning by telephone that they are opposed to the expansion of hours for the retail grocery/delicatessen, but not opposed to the continuation of the use. The ANC is scheduled to vote on this application on September 17, 2003.

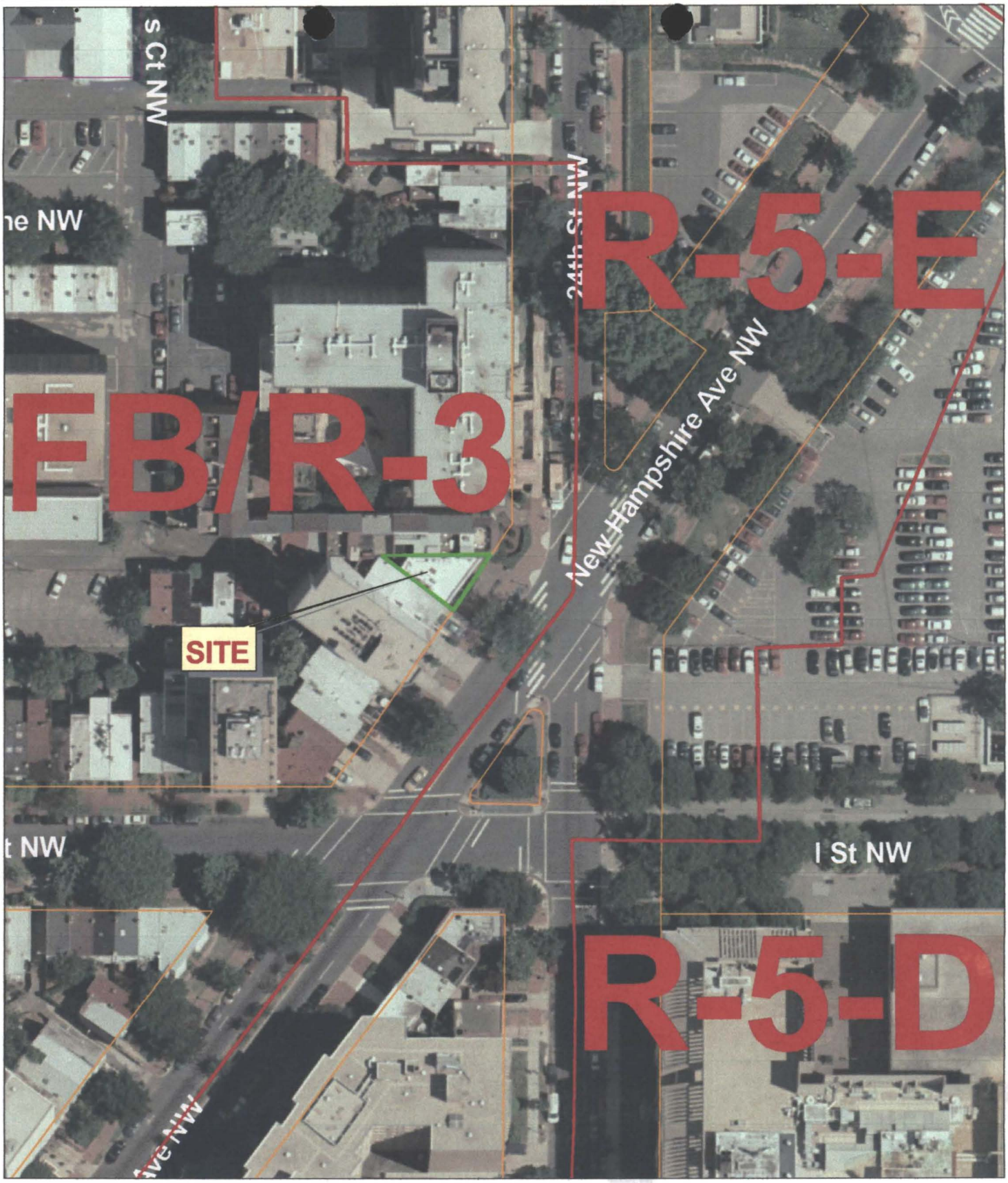
RECOMMENDATION

The Office of Planning has reviewed the application in terms of the property's zoning, the intensity of use, the character of the neighborhood and the standards for special exception. The Office of Planning concludes that the special exception for the continuation of the nonconforming retail grocery/delicatessen can be granted "without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map," provided it conforms to the conditions that have previously been imposed to protect the neighborhood. This includes restricting the hours to between 7:00 a.m. and 11:00 p.m. Therefore, the Office of Planning recommends DENIAL of the request to expand the hours of operation to twenty-four hours a day, seven days a week.

The Office of Planning recommends approval of the following:

> **Special exception pursuant to §2003.1 of Title 11 DCMR** to permit the continued use of a retail grocery/delicatessen, but not an expansion of the hours, subject to the following conditions:
>
> 1. Approval shall be for a period of THREE YEARS from the date of the Final Order;
> 2. The hours of operation shall not exceed from 7 a.m. to 11 p.m.;
> 3. 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;
> 4. There shall be no electronic or mechanical amusement machines located on the premises;
> 5. Any exterior lighting provided shall be directed downward and away form 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; and
> 6. Use of the second floor of the building shall be limited to an apartment.

AA/sjm$_{AICP}$



Feature Key

Zoning Boundaries

Square Index

Ortho-Photography was taken in 1999.

Board of Zoning Adjustment
Application No. 17021

DC Office of Planning
July 22, 2003

Scale 1:969

25 0 25 50 75 100 Feet

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Attachment 1