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

D.C. BOARD OF ZONING
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POST HEARING STATEMENT OF
HAROLD L. TALISMAN

I. Background

Applicant seeks a special exception pursuant to Sections 3104.1 and 2003.1 of the Zoning Regulations to allow an existing nonconforming use (retail grocery store and delicatessen with basement storage) at 912 New Hampshire Avenue, N.W. to continue in a FB/R-3 District. It has been operating a 7-Eleven store at this location. The most recent special exception granted to the Applicant was by Order No. 16261, dated November 12, 1997, but that approval was limited to "a period of THREE YEARS." (Application, Exh. D). Thus, the authorization expired on November 12, 2000 and Applicant has been operating without proper zoning authorization for almost three years. Applicant has offered no justification for this violation of the zoning laws.

Nevertheless, Applicant requests in its prehearing statement (p.8) 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 time or the period of approval be extended to ten (10) years." At the hearing, Applicant's counsel suggested the possibility of five years.

Initially, Applicant also proposed expansion of its hours of operation (presently 7:00 am to 11:00 pm) to 24-hours a day, but at the opening of the hearing Applicant's counsel withdrew that proposal.

Applicant notes that the "Board has granted the four previous approvals subject to specific conditions and terms of the Management Agreement" and states that "7-Eleven and its Franchisee have no objection to continuing to operate subject to similar conditions

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and the Management Agreement as it may be amended or re-executed." (Statements, p.8). While Applicant states that "7-Eleven and its franchisee have demonstrated their willingness and ability to fully comply with these conditions (id), the record in this case belies these claims. This is evident from its failure to obtain a renewal of the special exception on a timely basis and the unrefuted testimony of Mr. Ben Klotz showing that truck deliveries are consistently made outside of the restricted hours set forth in prior conditions and the Management Agreement.

II. The Special Exception Authorization Should Be No Longer Than Three Years

In Order No. 16261, the Board's most recent authorization of a special exception, the Board granted the application, subject to the condition that approval shall be for a period of three years. Applicant has not provided any sound basis for extending the period beyond three years. While it claims that it should be done based on its "track record," the "track record" does not support its request for the reasons discussed above. Indeed, an extension would, in affect, reward Applicant for its improper conduct in operating without the required special exception. This certainly would not be sound regulatory policy. On the contrary, a case could be made for shortening the period of approval as consequence of Applicant's misconduct in this regard.

Moreover, as pointed out in ANC-2A's submission, and the testimony of the office of Planning's witness, the three year limitation provides a reasonable safeguard to deal with changed conditions and provides some incentive for the 7-Eleven to operate within the conditions that are not disruptive to the community.

III. Recommendations

It is important that the Board's order in this case recognizes, as it has in the past, that the 7-Eleven store is located in the Foggy Bottom Overlay District, which coincides with the Foggy Bottom Historic District. The Historic District is included in the National Register of Historic Places.[1] The District's zoning regulations specify, that "[t]he Foggy Bottom Historic District is a unique resource to the District of Columbia that must be preserved and enhanced." (See Section 1521.1). Accordingly, the past orders of the Board authorizing a special exception have recognized the significance of the Management Agreement between ANC-2A and Applicant as a protective measure and have also attached "strict conditions" to the authorization to protect the neighborhood from adverse consequences. It is, therefore, urged that , if the Board approves the special exception, it attach the following "strict conditions":

1. The authorization shall be for a period of three years from the date of the final order;

2. The hours of operation shall not exceed 7:00 a.m. to 11:00 p.m., seven days a week;

3. Applicant shall comply with the conditions of prior Order Nos. 13596, 14196, 15526 and 16261 to the extent not inconsistent with the foregoing conditions (Exhs. A, B, C, and D to Applicant's Statement). It shall also comply with the terms of the Management Agreement unless superceded (Exh. E to Applicant's Statement). Applicant has stated its willingness to comply with the above conditions and terms of the Management Agreement. (Statement, p.8).

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[1] See Office of Planning Statement, page 4, ANC-2A statement, page 2.

Wherefore, it is requested that the Board adopt the above conditions, if it grants Applicant's request for a special exception.

Respectfully submitted,



Harold L. Talisman

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