EXHIBIT "A"

RECEIVED
D.C. OFFICE OF ZONING
2003 APR 15 PM 3:50

BZA
Case No. 17021
Exhibit No. 11

Board of Zoning Adjustment
District of Columbia
CASE NO. 17021
EXHIBIT NO. 11

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

RECEIVED
D.C. OFFICE OF ZONING
2003 APR 15 PM 3:50

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 Southland 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.