EXHIBIT "B"

Case No. 17021
Exhibit No. 12

Board of Zoning Adjustment
District of Columbia
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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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