EXHIBIT "C"

BZA
Case No. 17021
Exhibit No. 13

Board of Zoning Adjustment
District of Columbia
CASE NO. 17021
EXHIBIT NO. 13

SEP 1 1992

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15526 of Estelle Goldman, et al, 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. 14196, dated November 28, 1984, in the basement and first floor in an R-5 District at premises 912 New Hampshire Avenue, N.W. (Square 28, Lot 122).

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HEARING DATE: July 17, 1991
DECISION DATE: July 24, 1991

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located on the west side of New Hampshire Avenue, N.W. between 24th and I Streets N.W. The property is known as 912 New Hampshire Avenue, N.W. It is located in an R-5-D District.

2. The subject property is triangular in shape and contains 1,047 square feet in land area. It has a frontage on New Hampshire Avenue that measures 38.9 feet. The subject site shares a 66.4-foot boundary wall with the adjoining property to the south. There is a 13.3-foot long wall at the rear of the property on the north side. However, there is no alley located to the rear of the site.

3. The site is improved with a two-story plus basement brick structure that occupies 913 square feet, or 87 percent, of the lot. The structure is 35 feet deep.

4. The area surrounding the subject site is characterized by townhouses, high-rise apartments and condominiums, offices and institutional uses such as the George Washington University (GWU). Condominium residential buildings are located to the north and west of the site and a single-family dwelling occupies the property to the south. George Washington University has expanded its campus and is the main landholder in the area. 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/GWU Metrorail station. The George Washington University Hospital and the Medical School are also located nearby.

5. By Order No. 13596 dated March 22, 1982, the Board granted special exception approval to change a nonconforming use of the property from a grocery store, first floor, to a grocery store and delicatessen, first floor, and to use the basement for storage. The applicant leased the property to the Southland Corporation to operate a "7-Eleven" store on the first level.

By Order No. 14196 dated November 28, 1984, the Board granted a special exception to continue the use of the first floor as a grocery store and delicatessen. The Board also approved the use of the basement for storage.

6. Some improvements were done since these approvals were granted. In August 1985, the interior was gutted and renovated. In the fall of 1990, the exterior of the store was repainted the same color that it was previously. This color was carefully chosen to be consistent with and aesthetically pleasing to the surrounding buildings. The brick walkway on the property was repaired and grouted and the site was landscaped.

7. The applicant is seeking a special exception to continue the first floor and basement use authorized in Board Order No. 14196. The second floor apartment will be used as temporary housing for employees. The applicant maintains that the proposal meets all of the requirements of Section 2003 of the Zoning Regulations which provide as follows:

2003 CHANGING USES WITHIN STRUCTURES

2003.1 If approved by the Board of Zoning Adjustment as authorized in Section 3105 through 3108, 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 forth in this section.

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') in all directions from the nonconforming use.

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.

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.

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

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, and R-5-D;

(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.

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 may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

8. The applicant stated that the proposed continuing use of the property as a grocery store and delicatessen for 7-Eleven operations is permitted as a matter-of-right in C-1, the most restrictive commercial district.

9. The applicant maintains that the proposed use will not adversely affect the present character or future development of the surrounding area. The applicant stated that the 7-Eleven facility has been operating successfully as a neighborhood facility since 1982. The store serves neighborhood residents with groceries, delicatessen items and literary materials. The 7-Eleven store is beneficial in the area because the services that it provides are not otherwise conveniently available. Southland has made a particular and vigorous effort to ensure that this store is constructed and operated in a professional manner. The applicant believes that achieving a quality environment is not only important for zoning purposes but also for gaining the support and respect of neighborhood residents who are the core of this store's customers.

10. The applicant maintains that the proposed use will 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.

At the hearing, the applicant's traffic consultant testified about the traffic conditions around the subject site. He testified that he was able to compare current traffic and parking conditions to conditions under the previous applications to the Board.

The traffic consultant stated that field studies were undertaken in May 1991. These studies included observations of vehicular and pedestrian traffic at the intersection of New Hampshire Avenue and 24th Street, N.W.; parking conditions related to the operation of the store; loading operations to serve the store; and regulations related to traffic and parking in the general area of the store.

Current Traffic and Parking Regulations. The regulations relative to traffic and parking have been modified only slightly since November, 1981 when data for the first special exception were gathered.

To regulate traffic flow, stop signs have been placed on each approach of all three intersections located in the immediate vicinity of the site as follows:

New Hampshire Avenue and 24th Street	-	4-way Stop
New Hampshire Avenue and I Street	-	4-way Stop
I Street and 24th Street	-	3-way Stop

Parking regulations in the area have also remained stable with the only changes being related to (a) the 3-hour meters north of New Hampshire Avenue on the east side of 24th Street which are now restricted to operate from 9:30 a.m. to 4:00 p.m.; and (b) the time limit on meters on the east side of New Hampshire Avenue north of

24th Street which has been increased from one hour to two hours. The only other observation relative to the parking regulations is that the signage needs to be maintained so that missing and defaced signs are replaced.

Vehicle Traffic Volumes. Counts of vehicles using the intersection of New Hampshire Avenue and 24th Street were undertaken in 1981, 1984 and twice in May 1991. The volume of traffic observed during each of these counts has remained

relatively stable. In all cases the observed volumes indicate that traffic operates at a Level of Service A.

Pedestrian Volumes. Two types of pedestrian observations were undertaken. One was related to the store itself and determined the number of customers by hour and their mode of travel. The other, which had not been done previously, was a count of pedestrians crossing the two public streets.

The traffic consultant noted that based on the observations, the operation that preceded the 7-Eleven, Nichols Food Superette, was much more limited in scope. But the current operation has about the same number of vehicle users in the evening peak period as there were for the former operation of the store. The traffic consultant further noted that the operation as a 7-Eleven has a relatively constant level of customer use during the morning and mid-day hours with only the evening period showing an increase between 1984 and 1991.

The second set of pedestrian observations was related to persons crossing the public streets. The study showed that there are more persons crossing New Hampshire Avenue than there are crossing 24th Street.

Use of Loading Zone. A loading zone has been established along the curb immediately in front of the 7-Eleven store. The traffic consultant stated that even if the store were a conforming use built in accordance with current regulations, the gross floor area is less than that which would require off-street loading.

The use of the loading zone was observed for eleven hours on Monday, April 29, 1991. This day was selected because Mondays and Fridays were said to be higher use days for the loading zone than the days in the middle of the week. In terms of the time which vehicles occupied the loading zone, the following tabulation shows time ranges for occupancy of the loading zone and the percentage of vehicles in each range. The traffic consultant noted that over 75 percent of all vehicles occupy the loading zone for 30 minutes or less.

USAGE OF LOADING ZONE

New Hampshire Avenue, N.W. in Front of #912

Time Interval	Number of Vehicles	Percent of Total
1 - 5 minutes	4	16%
6 - 10 minutes	5	20%
11 - 15 minutes	3	12%
16 - 30 minutes	7	28%
31 - 60 minutes	3	12%
over 60 minutes	3	12%
TOTAL	25	100%

11. Based on the field studies and his personal observations, the traffic consultant reached the following conclusions related to traffic, parking and loading:

Traffic - The volume of traffic using the intersection adjacent to the store has remained stable over the period that the store has been in operation. The operation of the store has not changed the level of street use. Therefore, he concludes, operation of the store has not had a measurable effect on traffic operations.

Parking - The store is a predominantly pedestrian oriented use. Overall only about 10 percent of its customers arrive by automobile. In terms of the number of vehicles which were observed to park for the store, there is no significant difference between the amount of store generated parking under the current operation as a 7-Eleven and the prior use as Nichols Food Superette. The increase in activity generated by 7-Eleven has been by walk-in customers. Therefore, it is concluded that the current use has not had a "deleterious" effect on parking in the neighborhood.

Loading - The store is not large enough to require off-street loading space; therefore, the loading area for the store is provided by a loading zone on the public street. The citizens in the area and the consultant have observed that use of the loading zone, either by vehicles serving the 7-Eleven or other loading uses generated by the offices in the adjacent townhouses, can have an adverse effect on sight distance for vehicles and pedestrians

using the intersection of New Hampshire Avenue and 24th Street. In an effort to reduce this impact, the operations personnel at the Southland Corporation have already undertaken steps to reduce the effects of loading generated by the 7-Eleven. These steps are directed at closer regulation of the days and hours of deliveries as well as the duration of stay. Thus, it is concluded that the measures being undertaken by The Southland Corporation will mitigate any adverse impact of the operation of the store from the perspective of loading.

12. Nancy Wade, Market Manager for The Southland Corporation, testified at the hearing on behalf of the application. She indicated that she is responsible for the overall operation, including sales and profits, of 59 stores. This includes the store at the subject site. She stated that she visits each of these stores on a regular basis.

She testified that the convenience store offers a limited amount of food service such as cofee, hot dogs, and grocery type items. As required by the previous Board approval, trash containers are provided on the interior and exterior of the store. There are no electronic or mechanical game machines located on the premises. Tinted glass has been installed in the windows and doors to restrict the visibility of the interior lighting on the exterior of the building. Low-level lighting is provided on the outside of the building as required.

Ms. Wade testified that in August 1989, they closed the store for two months and completely gutted the interior to create more attractive, space efficient displays. The Southland Corporation wanted to offer its latest merchandizing program. She also testified about the repairs, painting and landscaping of the site. She testified that the store does not create any adverse impacts with respect to noise, lighting or design.

Ms. Wade testified that a Management Agreement was entered into between The Southland Corporation, the 7-Eleven Store and Advisory Neighborhood Commission (ANC) 2A. This agreement, drafted by the ANC, addresses the community's concerns with regard to operation of the store. The applicant agrees with all of the terms except the period of approval. The ANC wants a one year period; the applicant requests five years. The Market Manager then discussed the requirements of the agreement.

13. Deliveries/Traffic. Southland has agreed to restrict deliveries by independent vendors to the hours between 9:30 a.m. and 3:30 p.m. Southland agrees to work with the vendors to ensure that only one truck delivers to the store at a given time.

Southland has a distribution center located in Virignia that provides the store with most of the merchandise. A truck delivers goods once or twice a week, depending on need. Southland has agreed to restrict its own truck deliveries to between 8:00 p.m. and 10:00 p.m. and no more than twice a week.

Southland has agreed to post a conspicuous sign in the store, consistent with the requirements of the Vehicles and Traffic Regulations of DCMR Title 18, June 1987. The sign will contain language indicating that the loading zones are to be used for commercial vehicles only, during deliveries and by noncommercial deliveries only for drop-offs. The applicant hopes that this will cut down on the number of cars that use the loading zone for parking.

14. Trash Collection/Maintenance. Southland has agreed to step-up the maintenance of the store by emptying the outdoor trash containers belonging to Southland twice a day and emptying the city-owned containers in front of the store twice a day, or as frequently as possible to make sure that trash is not overflowing.

15. Southland has also agreed to do the following:

- clean the sidewalk in front of the store as often as necessary to remove coffee and food spills;
- clear the sidewalks in front of the store of snow to provide safe passage during the winter months;
- clear trash from the sidewalks in front of adjacent homes or buildings to the extent that the trash results from the 7-Eleven operation; and
- clean the gutter in front of the store as often as necessary to ensure that it is free from trash and debris at all times.

16. Vagrancy. Southland has agreed to post a "no loitering" sign in the store, which will allow the D.C. Police Department, specifically the Vagrancy Task Force, to step-up its efforts to move derelicts away from the store. This task force has made a commitment to intensify its foot patrol and the applicant will encourage the Police Department to honor its commitment. Until recently, the store manager had been giving free coffee and hot

dogs to the homeless. This obviously encouraged their presence. Store operator will no longer extend any hospitality to these vagrants to discourage their presence in the area.

17. Meeting with the Advisory Neighborhood Commission. Southland has agreed to meet quarterly with the ANC to monitor the store's progress and monitor implementation of the Management Agreement. Southland has also agreed to work with the ANC to develop long-term solutions to the delivery problems. Southland proposed to meet with the ANC over the four subsequent years as frequently as necessary.

If the application is approved, the applicant has agreed to request that the Board incorporate into its order, the terms of the agreement with the community. The applicant is also willing to be bound by previous Board orders approving the use by Southland.

18. Mr. Nassari, the store manager at the subject store, testified that he is responsible for the daily maintenance and operations at the store. He is also responsible for hiring and the supervision of eight employees.

The store manager testified that he will implement the terms of the agreement between The Southland Corporation and the community. First, with respect to deliveries, he will notify all of the independent vendors that they will be required to deliver, one at a time between the hours of 9:30 a.m. and 3:30 p.m. He has discussed this new policy with the various vendors, all of whom have agreed to a specific time slot. They are aware that they will not be able to arrive late and deliver at the same time as another driver. However, they will be allowed to return during the open periods listed on the schedule, provided that no other vendors are delivering at the time.

19. The store manager testified that he will be working with the Southland drivers to ensure that they deliver between 8:00 p.m. and 10:00 p.m. only and no more than twice per week.

The store manager testified that he will post a sign in the store indicating that the loading zones are to be used for commercial vehicles only while they are loading and unloading, and by noncommercial vehicles only for the drop-off and pick-up of passengers, in accordance with the requirements of 18 DCMR 2402.6. He will make every effort to ensure that everyone honors this policy. Further, he will seek the assistance of the D.C. Police Department in enforcing it.

20. The store manager will make sure that the outside of the store is well maintained. He will empty the garbage cans in front of the store as many times a day as is necessary to prevent trash overflow. He will pick-up any 7-Eleven trash which drifts onto the

properties of adjacent building owners. Also, he will scrub down the sidewalk in front of the store to wipe up any spills from coffee, sodas, slurpees or any other food products. During the winter, store operators will continue to shovel snow from the sidewalk in front of the store as they have always done.

21. To cut down on vagrancy, the store manager testified that he will discontinue the practice of giving free food and beverages to the homeless. He will work closely with the Vagrancy Task Force of the D.C. Police Department to move the derelicts along as they congregate in front of the store.

Finally, the store manager testified that he wants to make sure that this is the best operated and cleanest 7-Eleven Store in the area. He made a commitment to have each provision of the agreement carried out.

22. The applicant addressed the remaining provisions of Section 2003 in its written statement to the Board. The applicant stated that the continuing nonconforming use as a grocery store and delicatessen, has not been changed back to a conforming use or a more restrictive use.

23. The applicant stated that the proposed use is a neighborhood facility. The projected financial strength of this store is directly linked to the large number of people who live in a two-block radius. These neighborhood residents form the core customer support group for this store location. In fact, this store's busiest period is on Sunday when customer traffic is almost exclusively from people who live in the immediate area. On other days, the mix of customer traffic is predominantly neighborhood residents but also includes pedestrians who work or attend school in the area. Nonpedestrian customer traffic constitutes less than 15 percent of this store's customers and consists mostly of cab drivers working in the area and construction workers involved with nearby projects.

24. The applicant addressed Subsection 2003.7 which states that the Board may require the provision of or direct changes, modifications, or amendments to [the application] to protect the value, utilization, or enjoyment of property in the neighborhood.

The applicant stated that there were conditions imposed in connection with the approval of the two previous applications by Southland, respecting the placement of signage, location of trash containers, exterior lighting, and the prohibition on mechanical amusement machines. Southland has complied with, and will continue to comply with, the conditions of the Board's previous approval and would be supportive of the Board incorporating the terms of its agreement with the ANC into the conditions of this approval.

25. The Office of Planning (OP) by memorandum dated July 10, 1989 and through testimony at the hearing, recommended conditional approval of the application. OP noted the location of the site, the history of approvals and the proposed use. The Office of Planning provided a number of comments with regard to the application. Based on the information provided by the applicant, OP is of the opinion that the continued use of the subject property in its current capacity as a 7-Eleven store would not adversely affect the surrounding neighborhood in terms of noise, illumination, vibration, odors, design or siting effects. The proposed use is a neighborhood facility with the majority of its customers residing within the immediate area. The applicant and The Southland Corporation have made every effort to comply with the conditions imposed on the use of the property in previous Board orders. In many instances, these efforts have gone well beyond the conditions that were specified (i.e., new brick walkways in public space, renovations, and general property maintenance). Overall, the applicant has been exceptionally diligent in observing the conditions set forth by the Board with respect to the zoning relief requested. Loading and delivery activities, however, continue to cause traffic and parking problems directly in front of the store. The Office of Planning encourages the applicant and The Southland Corporation to continue to work closely with the neighborhood to solve these problems in a manner that is amenable to all those interested.

The Office of Planning is of the opinion that the applicant has met the burden of proof for the requested special exception under Section 2003 of 11 DCMR. In OP's opinion, the applicant has been successful in creating and operating a facility that is convenient to the neighborhood. Overall, the requested zoning relief in this case is in harmony with the general purpose and intent of the Zoning Regulations. Accordingly, the Office of Planning recommends approval of this application subject to the following conditions:

(1) Approval shall be for an appropriate period of time as determined by the Board.

(2) The hours of operation shall continue to be from 7:00 a.m. to 11:00 p.m., Monday through Sunday.

(3) The applicant shall continue to work with the surrounding neighborhood in solving the store-related loading and delivery problems.

(4) All remaining conditions set forth in BZA Order No. 14196 shall continue to be met by the applicant.

26. The Office of Planning submitted a supplemental memorandum to the Board dated July 15, 1992. According to OP, the community has indicated serious concerns related to the continued operation of the subject property as a 7-Eleven convenience store. Concerns were expressed with regard to loading, traffic, sanitation and loitering. The applicant continues to work with the community in seeking to resolve these issues. If this application is approved, the Office of Planning suggests that the Board consider some means for on-going monitoring of the store's operation to ensure the applicant's compliance with the conditions for approval and to mandate the applicant's continued cooperation with the community.

27. The Office of Planning referred the application to the following District of Columbia departments: Department of Public Works, Fire Department, Police Department and Department of Consumer and Regulatory Affairs.

28. By letter dated June 3, 1992, the Police Department stated that the property is located in the Second District and is patrolled by Scout Car 80. The Police Department stated that it does not appear that the applicant's proposal will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Therefore, the Police Department does not oppose the subject application.

29. The Department of Public Works (DPW) submitted a memorandum dated July 16, 1991 addressing the subject application. The Department of Public Works stated that the 7-Eleven grocery store is located on the northwest corner of 24th Street and New Hampshire Avenue, N.W. The width of 24th Street and New Hampshire Avenue at this intersection are 32 feet and 40 feet, respectively. I Street is located approximately 70 feet south of the intersection. These three streets consist of a junction area with a small triangular island located in the middle. All intersections are controlled by STOP signs. Field trip observations found that automobile traffic from all approaches is relatively light. However, the operational conditions are complicated by the presence of a high volume of pedestrians and by the heavy parking and loading activities in this area. The 45-foot loading space in front of the 7-Eleven is usually occupied by delivery trucks between 7:00 a.m. and 6:30 p.m. Truck deliveries frequently block the crosswalk area during loading and impede pedestrian flow. Also, some patrons of the store illegally park their vehicles in the southwest-bound lane next to the trucks, thereby blocking the through traffic. These activities and the sharp, 30-degree angle of the 24th Street and New Hampshire Avenue intersection encourage many pedestrians to illegally cross the intersection.

It has been suggested that a traffic signal would improve traffic safety and operational efficiency at this location. The Department notes that there are three (3) intersections with very limited distance between them, none of which meets the Traffic Signal Warrants. Due to these minimal distances, all three intersections would have to be signalized at the same time to avoid sudden stops of through traffic for pedestrians. The estimated cost of such signal installations would be approximately $300,000.00. The Department notes that there is no funding available at this time for installing these traffic signals. The Department believes, that an alternative solution can be worked out in terms of truck delivery scheduling. Therefore, the Department encourages the applicant and the community to agree to a mutually acceptable delivery schedule. DPW will consider amending its traffic regulations pertaining to this loading zone accordingly. Further, DPW will step up its enforcement activity for illegal parking in front of the store. The Metropolitan Police Department should be encouraged to enhance pedestrian traffic enforcement at this location as well. Accordingly, the Department of Public Works does not object to the subject application.

30. Advisory Neighborhood Commission (ANC) 2A by report dated July 12, 1991, expressed the position that it would not object to the application if the Management Agreement is signed prior to the public hearing and if the period of approval does not exceed one year. Attached to the ANC report was a resolution that addressed the following issues and concerns:

(a) Hazardous conditions are created when long trucks or several trucks attempt to deliver goods at the same time to the subject site. These trucks are generally parked illegally, because they protrude into 24th Street, N.W. are in a no loading or no parking zone, are double parked, block driveway entrances to adjacent buildings and the crossings for pedestrians (including the handicapped), and seriously obstruct visibility of both motorists and pedestrians. These hazardous conditions exist whether or not the loading zone in front of the 7-Eleven is vacant, being used legally by the truck deliveries to other premises, or being used illegally by parked vehicles;

(b) Unsanitary conditions exist in front of the store. Also, there is a spillover of trash to sidewalks in front of adjacent and nearby buildings to the north and south of the premises.

(c) Derelicts and panhandlers congregate in front of and around the 7-Eleven store, sometimes harassing pedestrians passing by or entering the store;

(d) The Southland Corporation, after negotiations with ANC 2A, has agreed to enter into a Management Agreement, under which Southland Corporation and its 7-Eleven franchisee will undertake certain specific measures aimed at improving the deleterious effects relating to truck deliveries, sanitation, and derelicts and panhandlers, which measures, if carried out and enforced, could lead to some mitigation of these deleterious effects; and

(e) The measures specified in the Management Agreement are expected to improve conditions only to some extent, but not completely. This is because the most effective precaution to reduce hazards to pedestrians and motor vehicles created by the use of the loading area directly in front of the above-cited premises would be the installation of traffic lights at the intersections of New Hampshire Avenue and 24th Street as well as New Hampshire Avenue and I Street. The installation of traffic lights cannot currently be undertaken by the District government due to lack of resources and The Southland Corporation will not finance the project.

Based on the foregoing issues and concerns ANC 2A resolved not to object to the continuation of the use for a period of one (1) year only. The nonobjection is based on the following contingencies:

(a) The applicant shall modify the special exception request to a one year period of approval.

(b) The Southland Corporation and 7-Eleven store manager shall agree to meet with ANC 2A on a quarterly basis (once every three months) at a regularly scheduled public meeting of ANC 2A to report on the status of implementing the conditions set forth in the agreement and to hear and respond to the concerns of the ANC and the community regarding their perspectives on its implementation.

(c) The Southland Corporation and 7-Eleven franchises shall agree to work closely with ANC 2A, the neighborhood community, and the appropriate agencies of the District government to help solve problems relating to traffic and delivery of merchandise by trucks, sanitation and health, derelicts and panhandlers. They shall also agree to report on the progress of their community involvement relating to these issues at the quarterly meetings with the ANC.

(d) The new Board order shall require compliance with relevant provisions of the prior Board Order Nos. 13596 and 14196 and with the appropriate provisions of the Management Agreement.

(e) The Management Agreement shall be executed prior to the public hearing on July 17, 1991.

31. At the public hearing, the Chairman for ANC 2A testified about the terms agreed upon and the promises made by The Southland Corporation and 7-Eleven. The ANC pointed out, however that The Southland Corporation was unwilling to reduce the approval period to one year.

The chairman testified that the ANC is requesting only one year because the 7-Eleven store has not had a positive record with the ANC. The ANC had sent a letter dated July 17, 1989, to the Southland Corporation notifying the market manager of the ANC's concern about traffic bottlenecks that develop in front of 7-Eleven when delivery trucks have blocked passage. The ANC described the congested condition in detail. The ANC chairman stated that the Southland Corporation failed to act to resolve this problem. Therefore, ANC 2A believes that the approval period should be shortened to one year so that there can be formal review by the ANC and the Board after that period of time has expired.

The ANC stated that the problems regarding traffic, truck deliveries, trash, derelicts and panhandlers adversely affect the present character of the surrounding area. These conditions have a deleterious external effect in this residential neighborhood.

The ANC believes that the proposed actions agreed on in the Management Agreement, <u>may</u> go a long way to address these effects, but it is not certain. A one year period will test the adequacy of this agreement.

The chairman testified that since the applicant is not willing to agree to a one year time limit, the ANC opposes the application and recomends that the Board deny it.

32. One neighbor testified in support of the application. She testified that she is an ANC Commissioner for the Ward Two Foggy Bottom District. She represents senior citizens. She is on the Executive Committee of the Foggy Bottom Association. She is also the beautification chairman for Foggy Bottom. This supporting neighbor testified that she has lived in the Jefferson House located next door to the 7-Eleven store for 29 years.

She stated that when operations first began, there were some complaints about rodents and the store being unkempt, among other things. She contacted Ms. Wade, the market manager, about these

concerns which the store manager was finding difficult to rectify. Ms. Wade quickly responded. The store was closed for two months. During that time, the store was fumigated, renovated, rearranged, painted and landscaped. New trash containers were placed outside and a new manager was hired.

The neighbor testified that she passes the store four or five times daily and that she is thrilled with its appearance. It is spotless and she has never heard of any fighting or other disruptive activities coming from this store.

She testified that many people use the store. Students from George Washington University stop in for snacks and senior citizens who shop there get a ten percent discount on their purchases. She testified that while the store was closed many people complained because it was inconvenient for them to go elsewhere to get what they needed. The fact that the store is always busy is an indication of how much it is needed. She requested that the Board approve the application because the store is very important for Foggy Bottom residents.

33. Three neighbors testified in opposition to the application. One neighbor, residing at 925 25th Street, N.W. testified that she has been a resident of Foggy Bottom for 40 years. She has observed traffic and parking conditions in the area and found them to be chaotic. When the loading zone is used by delivery trucks, it is difficult to have a clear sight of traffic. When the loading zone is already occupied, as it frequently is, trucks must double park, greatly worsening the situation.

The opposing neighbor testified that the intersection is a major hazard particularly for the many elderly people in the area. She stated that while the store might be a convenience for the residents of the Jefferson House, there are other issues, such as traffic, which are far more important. Therefore, she opposes the application.

34. Also testifying in opposition to the application was the ANC Commissioner for the district in which the 7-Eleven is located. She tesitified that her main concern is that the Management Agreement does not ensure that the disruption caused by the truck deliveries will be alleviated. This is because the wording of Section B, paragraph 11 of the agreement says that The Southland Corporation <u>will work</u> with other suppliers to the store to ensure that their truck deliveries are scheduled for one truck at a time between 9:30 a.m. and 6:30 p.m. It does not say that Southland <u>will ensure</u>. The clause lacks performance criteria such that the applicant can work to ensure it and not actually ensure it and still be within the letter of the Management Agreement.

She testified that agreeing to meet with the ANC is more of a burden on the ANC because it already meets twice a month. She would prefer an automatic review period because implementing an agreement is unchartered territory for the ANC.

She described an incident that occured where one truck was parked in the loading zone but the driver in the truck was not there to do business with 7-Eleven. He said he was taking his lunch. A Pepsi Cola truck, about 40 feet long, came down New Hampshire Avenue and attempted to enter the loading zone. However, he was unable to because the other truck was there. The Pepsi truck protruded halfway into 24th Street obstructing traffic. Even after the Pepsi truck driver blew his horn several times, the other truck remained in the loading zone. He did not move until the man from 7-Eleven asked him to. The witness testified that the horn-blowing caused quite a disruption. Also, the area is dangerous when pedestrians cannot see the cars coming down 24th Street because of trucks blocking the view.

She stated further that the people who use the 7-Eleven are not area residents. There are other stores nearby, such as a Safeway Store that are just as convenient and sell the same types of food. She stated that the majority of the area residents are concerned about the deleterious effects caused by the use. For all of the above reasons she urged the Board to limit any approval to one year.

35. The final witness to testify in opposition to the application resides at 949 25th Street, N.W. He has lived in the area for 26 years. He is mainly concerned with the logistics of implementing the delivery schedule. He noted that the period left open for deliveries at the end of the day is only one-half hour long. He stated that deliveries that normally take an hour and happen to miss their scheduled time cannot be reduced to a 30 minute time slot. He stated that there are three conditions that are likely to cause problems in trying to comply with the schedule. First, the loading zone can be legally used by others besides 7-Eleven suppliers. While others are using it, 7-Eleven cannot. Secondly, this loading area is often used illegally because the demand for parking is great. Finally, the store's inability to shorten the delivery period will cause problems.

In this witness' view, the question remains whether the deleterious effect of operating the parking area can be overcome. This is one reason for requesting a trial period that is shorter than five years. He stated that all parties agree that there are traffic problems. He stated that the Board is obligated to deny the application if deleterious external defects exist, regardless of their degree.

This opposing neighbor is of the opinion that the present operation adversely affects the Foggy Bottom Historic District. He stated that for the Board to approve the application, the applicant must give strong assurances that new policies will be implemented. The applicant must be able to prove that these policies would work. The assurances must take the form of a management agreement, binding the applicant to carry out these policies. Further, any improvement should be strictly limited and rigidly monitored until there is clear evidence that the agreement can be effectively implemented. Finally, he stated that any approval significantly exceeding 12 months would not be appropriate.

36. Responding to the opposing neighbor's concern about the delivery schedule, the applicant testified that the majority of the deliveries will take only about 20 minutes. Only one company, Embassy Milk, takes an hour to deliver. Therefore, meeting the schedule or rescheduling to the 30 minute open period should not create a problem.

FINDINGS OF FACT:

1. The Board finds that the delivery schedule established by the applicant is reasonable and should be able to accommodate all deliveries.

2. The Board finds that a period of one year will not give the applicant an adequate trial period before it would be necessary to reapply to this Board for further relief.

3. The Board finds that the Management Agreement was executed prior to the public hearing of July 17, 1991.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record the Board concludes that the applicant is seeking a special exception to continue to operate a grocery store/delicatessen with basement storage in an R-5-B District.

The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property. The applicant must also meet the requirements of 11 DCMR 2003 regulating changing uses within structures.

The Board concludes that the applicant has met the standards for granting the relief requested. The Board concludes that the applicant proposes to continue to lease the first floor of the premises for use as a 7-Eleven convenience store. The Board

concludes that the lessee, The Southland Corporation and the 7-Eleven franchise have entered into a Management Agreement with ANC 2A, the terms of which will help alleviate problems associated with noise, traffic, parking, loading and odor. The Board is of the opinion that the store manager or his assistant will be available to monitor the use of the loading zone and to implement the delivery schedule. The Board concludes that the upgrades done at the site will eliminate the deleterious effects caused by illumination, design or siting.

The Board believes that the plan for handling derelicts will alleviate problems with loitering in and around the store.

The Board concludes that the placement of trash containers inside and outside will help keep the grounds clean; and the frequent removal of trash from the containers and from the ground will eliminate odor.

The Board concludes that the applicant will not be installing video machines, therefore, there shall be no adverse effects associated with noise and vibrations.

The Board concludes that the application does not involve a nonconforming use that was changed to a conforming or more restrictive use. Therefore, Subsection 2003.4 is inapplicable.

The Board is of the opinion that the provision of the Management Agreement that requires the applicant to meet with the ANC on a quarterly basis will provide an excellent opportunity for these parties to address and resolve any problems associated with the 7-Eleven operation.

Finally, the Board concludes that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board has accorded ANC 2A the "great weight" to which it is entitled. In light of the foregoing, the Board concludes that the application is hereby GRANTED, SUBJECT to the following CONDITIONS:

1. 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.

VOTE: 4-0 (William L. Ensign, Paula L. Jewell and Carrie L. Thornhill to grant; Sheri M. Pruitt to grant by proxy; Charles R. Norris not voting, not having heard the case).

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

ATTESTED BY: Madeliene H. Robinson
MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: SEP 2 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY 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 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 CONSUMER AND REGULATORY AFFAIRS.

15526Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15526

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 2 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Advisory Neighborhood Commission 2-A
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Washington, D.C. 20006

MADELIENE H. ROBINSON
Acting Director

DATE: SEP 2 [illegible]

15526Att/bhs