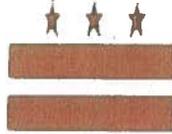


GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



May 15, 2012

John Patrick Brown, Jr., Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W. - 9th Floor
Washington, D.C. 20036

**Re: 1501 Independence Avenue, S.E; 1500-1502 Massachusetts Avenue, S.E.¹
Square 1072, Lot 809 ("Property") (formerly lots 42, 43, 44, 45 and 808)**

Dear Mr. Brown:

In response to your letter to me dated April 12, 2012 (attached), this letter is to confirm my determination that the proposed build out of the ground floor of the Property by 7-Eleven as a retail "grocery store" with no off-street parking is in compliance with the applicable Zoning Regulations and can be completed as a matter-of-right, subject to obtaining all required building and other permits. In making this determination, I have relied on the following:

- 1) The Property is zoned C-2-A.
- 2) In the C-2-A zone, the proposed "grocery store" (including the prepared food shop accessory use) use is permitted as a matter-of-right.
- 3) The existing improvements on the Property were constructed prior to May 12, 1958 without any off-street parking.
- 4) There is an established record of the Property being used continuously for retail, service and offices uses without the provision of any office off-street parking.

I trust this letter is responsive to your request.

Sincerely, Matthew Le Grant

Matthew Le Grant
Zoning Administrator

Enclosures

File: Det Let re 1501 Independence Ave SE to Brown 5-15-12

¹ The records of the D.C. Office of Tax and Revenue list the address for the entire Property as 1500 Massachusetts Avenue, S.E.

John Patrick Brown, Jr.
jpb@gdlaw.com

April 12, 2012

VIA ELECTRONIC MAIL

Mr. Matthew LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., Third Floor
Washington, D.C. 20024

**Re: 1501 Independence Avenue. S.E.
1500-1502 Massachusetts Avenue, S.E.¹
Square 1072, Lot 809 ("Property") (formerly lots 42, 43, 44, 45 and 808)**

Dear Mr. LeGrant:

This firm is counsel for 7-Eleven, Inc. with regard to the proposed use of the Property. Specifically, we are requesting your written determination that the use of the ground floor of the Property as a typical 7-Eleven "convenience store" is permitted as a matter-of-right and that no off-street parking will be required.

The following background for the Property will facilitate your review and determination.

I. Property Zoning:

The Property is zoned C-2-A as shown on the attached Zoning Map, Exhibit A.

The C-2-A zone is a medium-density community business center which permits a wide range of commercial uses, including office, retail and service establishments. As discussed more fully below, the proposed 7-Eleven operation (e.g. grocery store, prepared food shop, etc.) is a permitted use in the C-2-A zone.

¹ The records of the D.C. Office of Tax and Revenue list the address for the entire Property as 1500 Massachusetts Avenue, S.E.



Mr. Matthew LeGrant

April 12, 2012

Page 2

II. Land Use and Zoning Analysis:

A. History of the Property: The Property was originally improved with two separate buildings sharing a common or party wall as shown on the House Location Survey dated September 21, 2011, attached as Exhibit B, and As-Built Floor Plan, attached as Exhibit C. The Property has a lot occupancy of almost one-hundred percent (100%). One building is a two-story structure which currently houses a liquor store on the ground floor using the address 1500 Massachusetts Avenue, S.E. The second floor of the building is used as office space and has a separate entrance and stairs using the address 1502 Massachusetts Avenue, S.E. The second building is a one-story structure which currently houses a dry cleaning establishment using the address 1501 Independence Avenue, S.E. Current photographs of the Property are attached as Exhibit D. Both buildings have basement or cellar space. Based on the information currently available, both buildings were originally constructed simultaneously perhaps as long as ninety (90) years ago, but certainly prior to May 12, 1958, and have provided no off-street parking at any time.

Based on the available records, the Property has a long record of commercial uses, including ground floor retail and service uses and second floor office uses, including:

1. Certificate of Occupancy No. CO1200087 for Office Space on 2nd Floor (October 18, 2011) for the 1502 Massachusetts Avenue, S.E.
2. Certificate of Occupancy No. CO82595 for Dry Cleaning Plant (August 30, 2004) for 1501 Independence Avenue, S.E.
3. Certificate of Occupancy No. B146035 for General Merchandising on the 2nd Floor (July 8, 1986) at 1502 Massachusetts Avenue, S.E.
4. Certificate of Occupancy No. B143123 for Retail Beverage Store on the 1st Floor (August 26, 1985) at 1500 Massachusetts Avenue, S.E.
5. Certificate of Occupancy No. B134974 for Retail Beverage & Prepackaged Food & Cigarettes on the First Floor and Basement (May 23, 1983) at 1500 Massachusetts Avenue, S.E.

See Certificates of Occupancy, attached as Exhibit E. Additionally, DCRA's database lists numerous additional certificates of occupancy for the Property from 1953 forward, but we have not been able to obtain copies of these documents. See Chart of Certificates of Occupancy, attached as Exhibit G.



Mr. Matthew LeGrant

April 12, 2012

Page 3

B. Proposed Use of the Property: 7-Eleven proposes to occupy substantially all of the ground floor of the Property (approximately 2,611 square feet) as a retail “convenience store.” See Equipment Layout, attached as Exhibit G. The owner of the Property will maintain control over the basement or cellar space for common area, including building systems, and the second story of the 1500-1502 Massachusetts Avenue, S.E. building. 7-Eleven will not have any indoor seating or use any of the lower level space for its retail operations or storage. No expansion of the existing improvements is proposed by 7-Eleven and/or the Property owner.

C. Permitted Use: The Zoning Regulations do not recognize or define the “convenience store” use generally associated with a 7-Eleven facility. Instead, 7-Eleven stores have been characterized as a grocery store with an additional reference to the food service/take out operations. Historically², the food service has been identified as a delicatessen. However, in 2008, the delicatessen category was eliminated in favor of a series of defined food service classifications, including restaurant, prepared food shop, fast-food restaurant, and food delivery service. The proposed 7-Eleven food service falls within the definition of prepared food shop.³ More recently, the Board of Zoning Adjustment has clarified that the retail grocery store use of a typical 7-Eleven operation, includes the customary food service function. See BZA Order No. 18319 of Estelle Goldman on Behalf of 7-Eleven, Inc. (March 6, 2012). See Exhibit H.

D. Compliance with Area Requirements: The existing improvements on the Property, including the specific ground floor space for the 7-Eleven facility, appear to comply with the applicable area requirements in the C-2-A Zone. Even if there existed a non-conformity in the existing structure, the build out of the existing interior space without any addition or expansion of the building for a conforming use would not trigger zoning non-compliance.

E. Required Parking: The Property was improved prior to 1958 without any off-street parking. Based on the available records, the Property has been used continuously for commercial purposes, including retail, service and office uses without any off-street parking. As a result, 7-Eleven’s propose use of 2,611 square feet of the existing Property would not create a requirement to provide off-street parking where that requirement has never existed previously. Specifically, the Property is likely entitled to a parking “credit” for all required parking. Under Section 2100.10(a), if the number of parking spaces now required is greater than the number of

² 7-Eleven at 912 New Hampshire Avenue, N.W. has been classified as a “retail grocery/delicatessen” dating back almost 30 years. See BZA Orders 13596 (1982), 14196 (1984), 15526 (1992), 16261 (1997), 17021 (2003), and 18319 (2012).

³ **Prepared food shop** – a place of business that offers seating or carry out service, or both, and which is principally devoted to the sale of prepared food, non-alcoholic beverages, or cold refreshments. This term includes an establishment known as a sandwich shop, coffee shop, or an ice cream parlor. **Prepared food** - Food that is assembled, but not heated by means other than microwave or toaster, on the premises of a prepared food shop.



GREENSTEIN DELORME & LUCHS, P.C.

www.gdlaw.com

Mr. Matthew LeGrant

April 12, 2012

Page 4

parking spaces provided when the buildings were built and/or use established prior to May 1958, the Property would be credited for the amount of parking now required above the level originally provided. In this case where no parking was originally provided, the parking credit should eliminate any need to provide off-street parking. In support of this parking analysis, it appears that the Property has been used continuously by multiple commercial tenants without any parking dating back to at least 1983 as shown by the attached Certificates of Occupancy.

Based on this analysis, we believe that these proposed build out of the ground floor for use as 7-Eleven "grocery store" with no off-street parking is in compliance with the applicable Zoning restrictions. If you agree with this analysis, I would greatly appreciate receiving a letter confirming your determination. For your convenience, I have also enclosed a draft confirmation letter for your review. If you need any additional information, or have any questions, please let me know. Additionally, if you think it would be helpful, I am available to meet with you to review this information.

Thank you for your assistance in this matter.

Very truly yours,

GREENSTEIN, DELORME & LUCHS, P.C.

John Patrick Brown, Jr.

JPB/prm

Enclosures

cc: Ms. Nancy A. Wade, 7-Eleven, Inc.
Mr. Joshua J. Bazis, Lend Lease

EXHIBIT A



District of Columbia Office of Zoning
EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP
 April 10, 2012



Zoning Layers

- Zone Districts
- CEAs
- Pending PUDs
- Historic Districts
- Campus Plans
- PUDs
- Overlay Districts
- TDRs
- Air Rights Zone

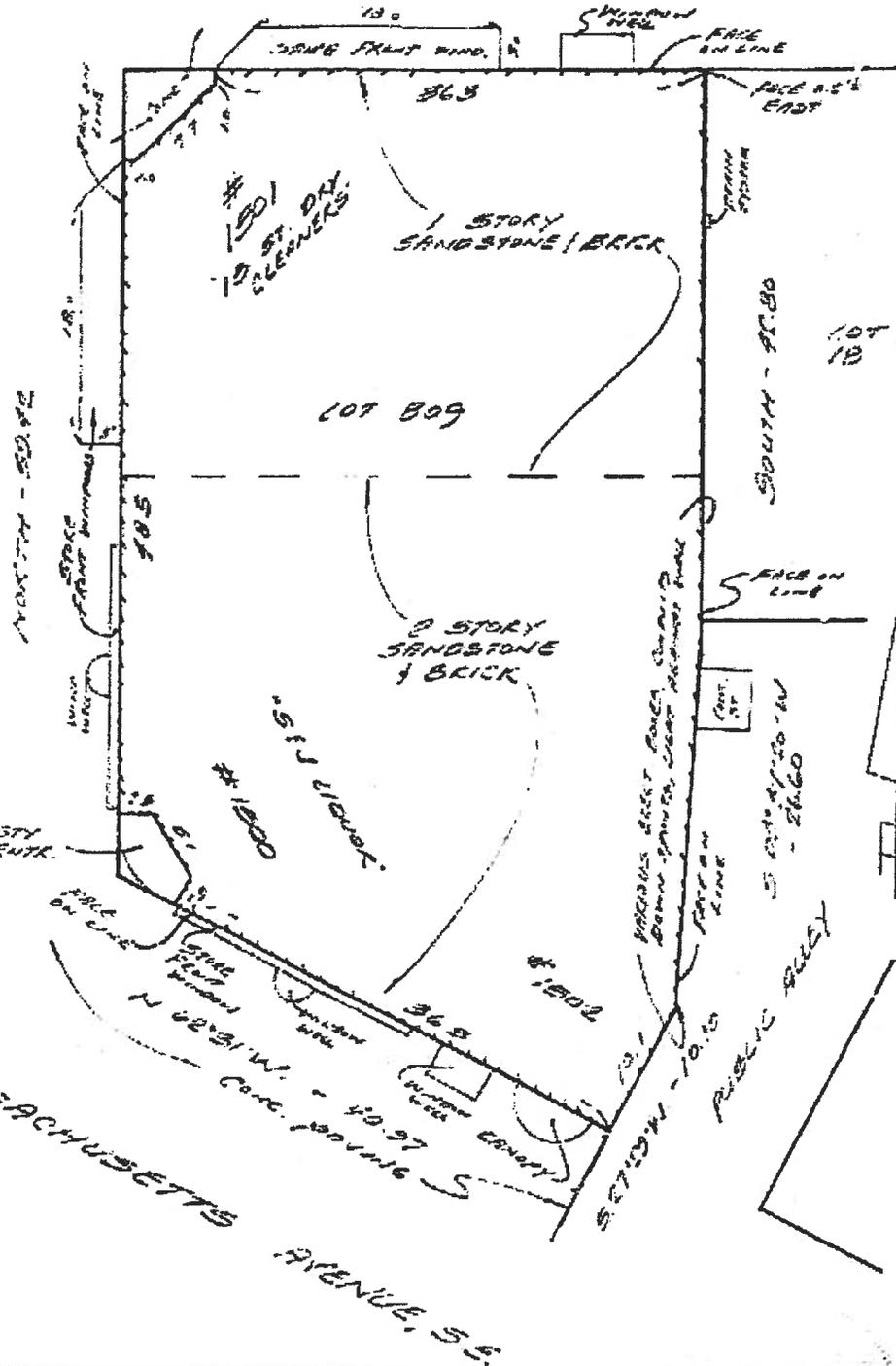
To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.

EXHIBIT B

INDEPENDENCE AVENUE, S.E.

EAST - 42.70

15th STREET, S.E.



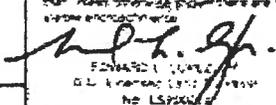
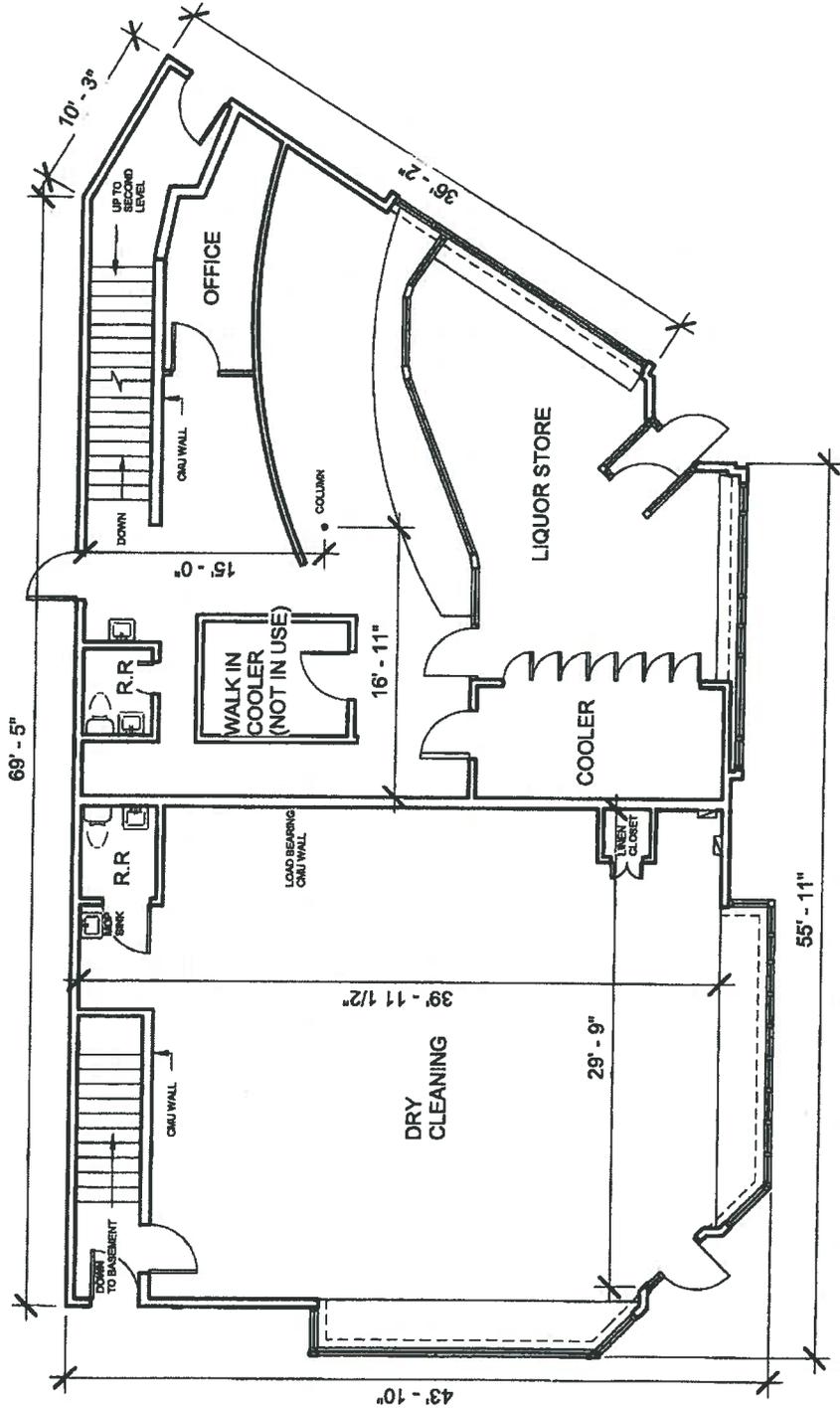
10000 C. Ave. N.W. 2000 Schiavini, MD 20008		Capitol Surveys, Inc.		Phone 301-472-2525 Fax 301-472-2525	
NOTE: This drawing is provided to assist in property lines. It should be used for construction or design purposes. All information shown herein is taken from the land records of the county or city in which the property is located and has been performed. This survey prepared for the purposes only. © As of current date	HOUSE LOCATION LOT - 809 SQUARE - SOUTH 1872		I hereby certify that the position of the building is as shown on the above described property. I have examined the records and find them to be correct and true. There are no other encroachments.  EDWARD J. GOFF D.C. Land Surveyor License No. 157500		
	SHOWN AS 17' 0" x 38' 0" W DISTRICT OF COLUMBIA				
DATE: <u>Sept 26, 2011</u>	CASE: <u>Remy Casanova</u>	FILE: <u>94591</u>			

EXHIBIT C



AS-BUILT FLOOR PLAN
+/- 2,876 SF



STORE # 1029832
1501 INDEPENDENCE AVE
WASHINGTON, DC



EXHIBIT D

Site No.
1029832

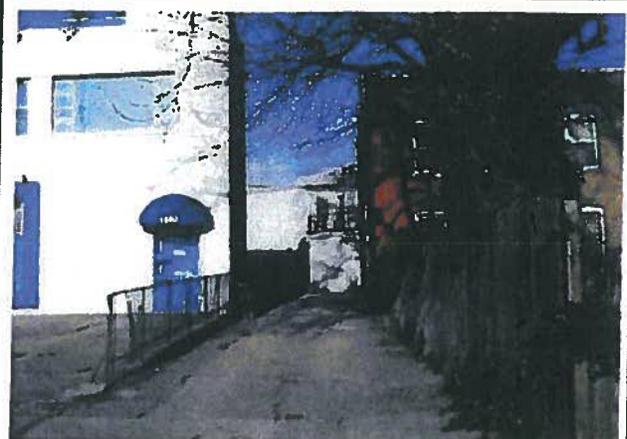
1501 Independence Ave SE /
Massachusetts Ave SE
Washington, DC

HFA Project No.
12-11-01181

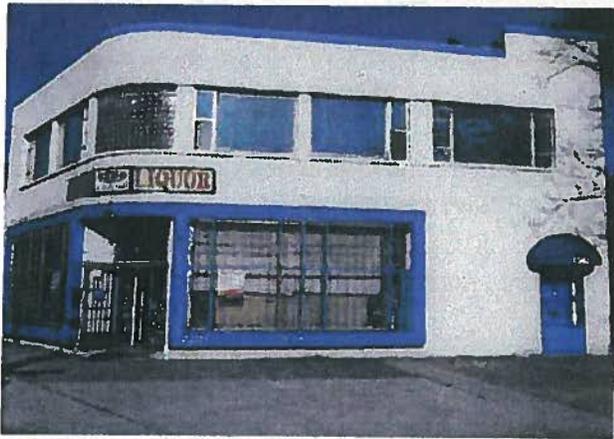
EXTERIOR PHOTOGRAPHS



7



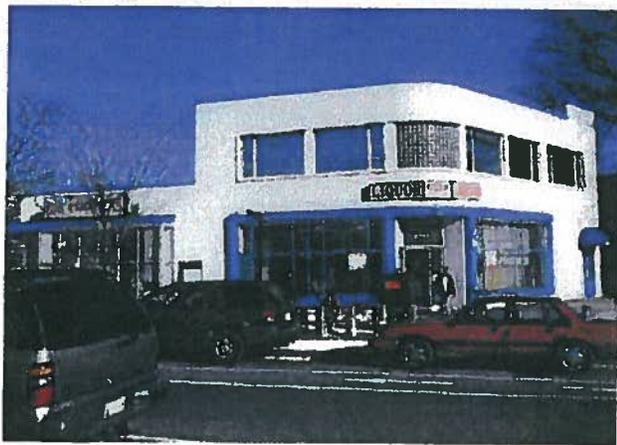
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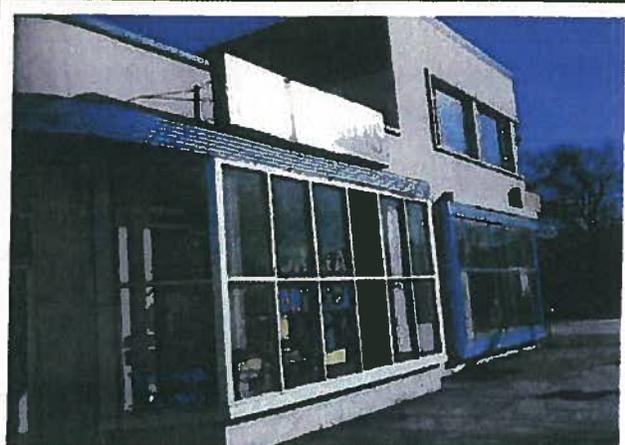
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11



12

EXHIBIT E

Government of the District of Columbia
 Department of Consumer and Regulatory Affairs

1100 4th Street SW
 Washington DC 20024
 (202) 442-4380

dcra.dc.gov



CERTIFICATE OF OCCUPANCY

PERMIT NO. CO1200087

Issued Date: 10/18/2011

Address: 1502 MASSACHUSETTS AVE SE	Zone: C-2-A	Ward: 6	Square: 1872	Block: 	Lot: 0989
--	----------------	------------	-----------------	------------	--------------

Description of Occupancy:
OFFICE SPACE ON 2ND FLOOR
 STRL TO DETERMINE IF BP REQUIRED FOR CONVERSION - RETAIL to OFFICE.

Permission is Hereby Granted To:	Trading As:	Floor(s) Occupied SECOND FLOOR	Occupant Load: 60 No. of Seats:
----------------------------------	-------------	--	---

Property Owner: 1580 Brass Ave Lic	Address: 7821 CUSTER RD BETHESDA, MD 20814	BZA/FUB Number:	Occupied Sq. Footage: 1898 PERMIT FEE: \$83.00
--	--	-----------------	--

Building Permit Number (if applicable):	Type of Application: Use Change	Approved Building Code Use: Retail or Wholesale Store - M	Approved Zoning Code Use: Office
---	---	--	---

Conditions/Restrictions:

THIS CERTIFICATE MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS MAIN ENTRANCE, EXCEPT PLACES OF RELIGIOUS ASSEMBLY. Use complies with DCMR Title 11 (Zoning) and Title 12 (Construction).

As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to ensure compliance with all the applicable regulations of the District of Columbia.

Director (Code Official): Nicholas A. Majumdar <i>Nicholas Majumdar</i>	Permit Clerk: Kim Queen <i>K. Queen</i>	Expiration Date:
--	--	------------------

TO REPORT WHITE FLAGGING ABUSE BY A PUBLIC GOVERNMENT OFFICIAL, CALL THE OMB INSPECTOR GENERAL AT 1-800-520-1033





Department of Consumer and Regulatory Affairs
 Building and Land Regulation Administration
 341 North Capitol Street N.E. room 2100
 Washington D.C. 20002
 Tel: (202) 442-4470 Fax: (202) 442-4862

Government of
 the District of
 Columbia
 BLDG SA

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 82595

THIS PERMIT IS VALID ONLY FOR THE PREMISES
 OF THE PROJECT ADDRESS

DATE : 8/30/2004

ADDRESS: 1501 INDEPENDENCE AVE SE	FLOOR(S): BASEMENT 1ST FLR, BASEMENT	PROCLD : 1072 <small>(square ft)</small>	-0000-	0045 <small>(sq ft)</small>
		WARD : 6	ZONE : R4	

PERMISSION IS HEREBY GRANTED TO

SOLE PROPRIETOR : **HYANG SOK LEE**

TRADING AS:

15TH ST. DRY CLEANERS

APPROVED USES :

OTHER - SEE DESCRIPTION

PREVIOUS USES :

OTHER - SEE DESCRIPTION

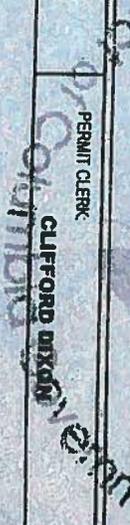
TYPE :	BZANO :	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
CHANGE OF OWNERSHIP		2,000		NONE
DESCRIPTION OF USE				FEE :
DRY CLEANING PLANT				\$75.00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID UNLESS OTHERWISE STATED. VALID ONLY FOR THE PREMISES AT THE ABOVE ADDRESS OR PART THEREOF, AND FOR THE PURPOSE(S) INDICATED ABOVE, AND IS NOT TRANSFERABLE TO another address or premises under ANY conditions. ANY CHANGE IN THE TYPE OF BUSINESS, OWNERSHIP OF BUSINESS, OR PART OF PREMISES USED THEREON, WILL RENDER THIS CERTIFICATE VOID AND A NEW CERTIFICATE MUST BE OBTAINED.

David A. Clark
 DIRECTOR

PERMIT CLERK

CLIFFORD DIXON



CERTIFICATE OF OCCUPANCY

No. **B146035**

Washington, D.C., July 8, 19 86

Permission is hereby granted to Steve Kim
to use the 2nd floor(s) of the building located on lot 808 Square 1072
for the following

known as premises 1502 Mass. Ave. S.E.
purpose(s): General Merchandising-- cards, jewelry, T-shirts, gifts, etc.

(Not sexually oriented.)

ZONE

C-2-A

FEE \$ **27.00**

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPARTMENT OF LICENSIS, INVESTIGATIONS AND INSPECTIONS GOVT. OF DIST. OF COL.

By Robert Balenger Chief, Permit Branch
Permit Clerk

007477

Form LII-P-801
(Rev. 2/82)

CERTIFICATE OF OCCUPANCY

No. B143123

Washington, D.C., 8/26/85, 19

Permission is hereby granted to Waston Delicatessen, Inc.
to use the 1st. floor(s) of the building located on Lot 42 Square 1072S
known as premises 1500 Massachusetts Ave. S.E for the following
purpose(s): Retail Beverage Store

Not Sexually Oriented.

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated,
ONLY for the premises, or part thereof, and for the purpose(s), indicated
above, and IS NOT TRANSFERABLE to another person or premises under ANY
conditions. ANY CHANGE in the type of business, ownership of business, or
part of premises used therefor, will render this Certificate VOID and a NEW
Certificate must be obtained.

ZONE C/2/A

FEE \$ 27.00

DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS GOV'T. OF DIST. OF COL.

By

[Signature]
Chief, Permit Branch
Permit Clerk

OFFICE COPY-

Form LII-P-601
(Rev. 2/82)

CERTIFICATE OF OCCUPANCY

No. **B134974**

Washington, D.C., May 23, 1983, 19

Permission is hereby granted to EDMUND R. GUIDO

to use the FIRST & BASEMENT floor(s) of the building located on Lot 43808-42 Square 1072

known as premises 1500 Mass. Ave. S.E. for the following

purpose(s): RETAIL BEVERAGE & PREPACKAGED FOOD & CIGARETTES

NOT SEXUALLY ORIENTED.

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

ZONE

FEE \$ **27.00**

C2A

Chief, Permit Branch

By Beverly Clark
Permit Clerk

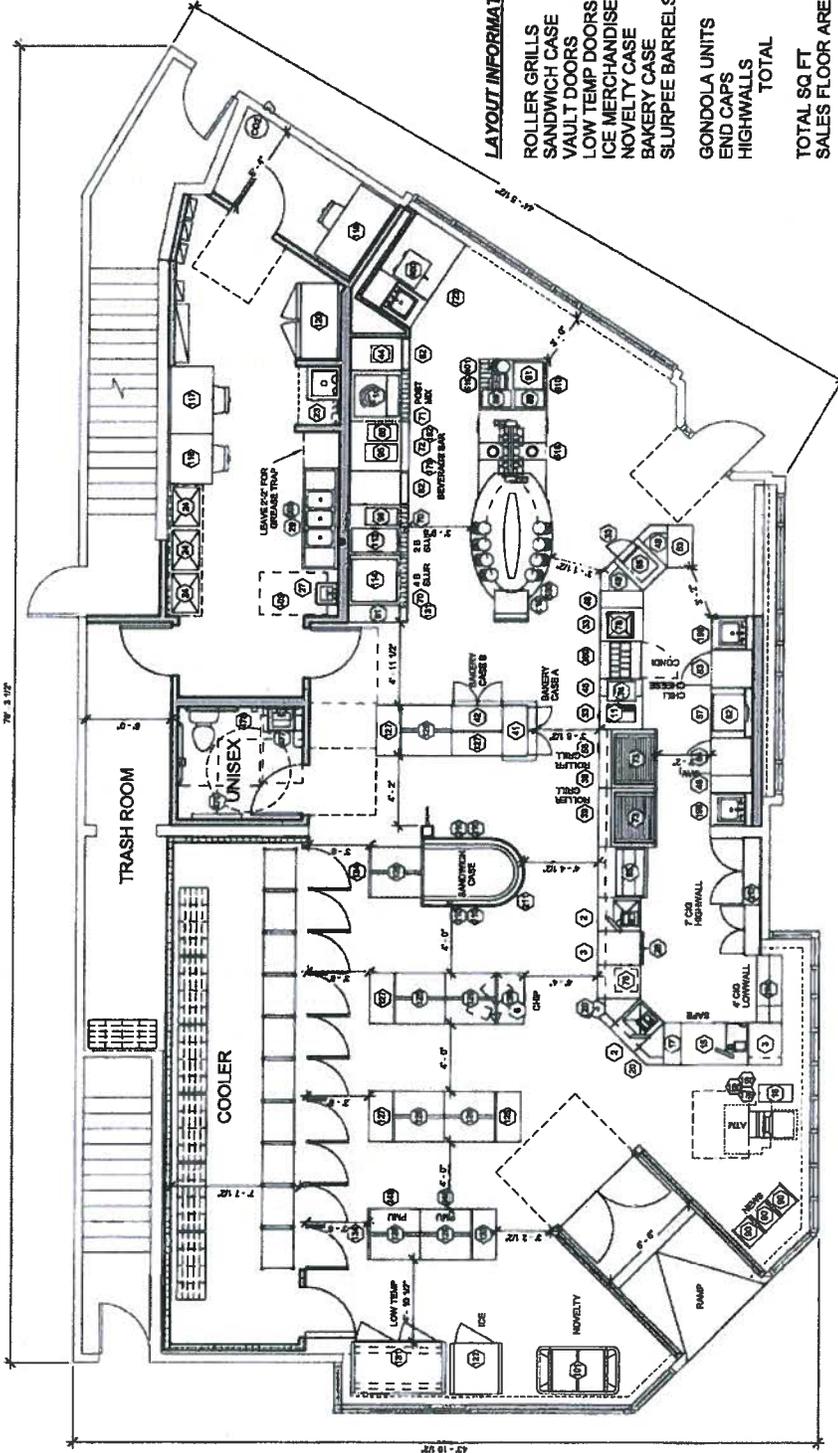
DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS GOVT. OF DIST. OF COL.
OFFICE COPY

EXHIBIT F

EXHIBIT F

1500 Mass. Ave., S.E.	1502 Mass. Ave., S.E.	1501 Independence Ave., S.E.
B134974 (5/23/83) Retail Beverage & Pre Packaged Food & Cigarettes	B146035 (7/8/1986) General Merchandising on 2nd Floor	<u>A19953</u> (1953) The Sportsmens Club of Greater Washington, Inc.
B143123 (8/26/85) Retail Beverage Store	<u>1900532</u> (1990) Retail (?)	<u>B9346</u> (1957) The Cardinal Club
	<u>B166443</u> (1993) Nail Salon	<u>B26347</u> (1960) Blue Deens Club
	<u>B170826</u> (1995) Mass Appeal, Inc.	<u>B27873</u> (1961) Merry Gents Social Club
	<u>B1890348</u> (1998) Bead Shop (?)	<u>B37111</u> (1962) Herbert L. Parker
	<u>B00181782</u> (1998) Lanita S. Winifred & James Garnes	<u>B39094</u> (1963) The Commandos Club
	<u>B148066</u> (1999) Retail Store	<u>B62187</u> (1967) Associated Enterprises International, Inc.
	<u>B147998</u> (1999) Nail Salon	<u>76236</u> (2004) Steve Kim
	C01200087 (10/18/2011) Office Space on 2nd Floor	C082595 (8/30/2004) Dry Cleaning Plant on Basement, 1st Floor

EXHIBIT G



LAYOUT INFORMATION

ROLLER GRILLS	2	CID	
SANDWICH CASE	10		
VAULT DOORS	2		
LOW TEMP DOORS	1	DR	
ICE MERCHANDISER	1		
NOVELTY CASE	2		
BAKERY CASE			
SLURPEE BARRELS	6		
GONDOLA UNITS	17		
END CAPS	6		
HIGHWALLS	0		
TOTAL	23		

TOTAL SQ FT = 2,611
 SALES FLOOR AREA = 1,594



DESIGNED CONCEPTS AS SHOWN IN THESE PRELIMINARY DRAWINGS ARE BASED ON INFORMATION AND/OR INFORMATION PROVIDED BY THE CLIENT. HFA ARCHITECTS ENGINEERS INTERIORS ASSUMES NO LIABILITY FOR THE ACCURACY AND COMPLETENESS OF THIS INFORMATION.

1029832 WASHINGTON, DC - EQUIPMENT LAYOUT 2

01-19-2012

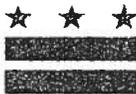
HFA #11-01181

LAYOUT APPROVED 1-19-2012



EXHIBIT H

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18319 of Estelle Goldman on behalf of 7-Eleven, Inc., pursuant to 11 DCMR § 3104.1, for a special exception to allow the continued operation of a retail grocery store with basement storage as a nonconforming use under § 2003.1, pursuant to the conditions established in BZA Order No. 17632, including a five-year term and with a one-year trial period for 24-hour operations in the FB/R-3 District at premises 912 New Hampshire Avenue, N.W. (Square 28, Lot 122).¹

HEARING DATE: February 28, 2012
DECISION DATE: February 28, 2012 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment (“Board” or “BZA”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission (“ANC”) 2A, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 2A, which is automatically a party to this application. ANC 2A submitted a letter, dated July 23, 2011, in support of the application. The ANC indicated that at a duly noticed and regularly scheduled public meeting on July 20, 2011, with a quorum of five out of six Commissioners present, the ANC voted unanimously (5:0) to support the application on the condition that the extension of hours is granted for a one-year trial period

¹ The description of the use as a “retail grocery/delicatessen store” in the caption was changed to “retail grocery store” for consistency with recent Board decisions. As the Board approved the requested relief pursuant to the conditions in BZA Order No. 17632, the conditions were left mostly unchanged other than Condition 2, which was altered to “the hours of operation shall be a 24-hour operation on a one-year trial basis.” Also, the Board kept Condition 1, whereby the Order is approved for a five year term. In their deliberations, the Board addressed allowing the Applicant, at the end of the one-year trial period for 24-hour operations, to apply to the Board for a modification of this Order to extend the trial period.

BZA APPLICATION NO. 18319
PAGE NO. 2

to assess the impact of the change to a 24-hour operation and that the franchisee remain the same.² (Exhibit 10.)

The Office of Planning (“OP”) submitted a report recommending approval of the application to continue to operate a retail grocery/delicatessen, subject to the conditions previously approved by the Board in Order No. 17632 in 2007³; however, OP recommended deletion of the term of five years. OP stated that it does not recommend approval of the request for a one-year trial period for a 24-hour operation of the grocery/delicatessen. (Exhibit 33.) The District’s Department of Transportation (“DDOT”) submitted a report stating it had no objection to the application. (Exhibit 32.)

A party status request in opposition to the application was filed by Suzette Klein, 900 24th Street, N.W. (Exhibit 30.) Ms. Klein was not present at the hearing and therefore was not granted party status. There no parties, nor any witnesses or letters of support or opposition.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under § 3104.1 from the strict application of the regulations pertaining to continued operation of a retail grocery store under § 2003.1. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 2003.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case. It is therefore **ORDERED** that the application is hereby **GRANTED WITH THE FOLLOWING CONDITIONS**:

1. Approval shall be for a period of five (5) years, beginning on the date upon which the order became final.

² While the ANC report was given great weight, the Board did not consider its request to condition the approval on the current franchisee remaining the same, as this would be an improper restriction on the user, rather than the use.

³ OP’s report provided the zoning history for the use of the first floor of the subject property as a nonconforming grocery store in a residential zone. The history shows that this use has been approved in 1981 (BZA Order No. 13596), 1984 (BZA Order No. 14196), 1991 (BZA Order No. 15526), 1997 (BZA Order No. 16261), 2003 (BZA Order No. 17021), and 2007 (BZA Order No. 17632).

BZA APPLICATION NO. 18319

PAGE NO. 3

2. The hours of operation shall be a 24-hour operation daily on a one-year trial basis, beginning on the date upon which the order became final. At the conclusion of the one-year trial period, the Applicant shall have the option to return to the Board for a modification of this Order with respect to this condition.
3. Deliveries from the 7-Eleven distribution center shall be between 8:00 p.m. and 10:00 p.m. only.
4. All other deliveries shall be on a scheduled basis between 9:30 a.m. and 3:30 p.m. so that only one delivery vehicle is at the site at any given time.
5. All deliveries shall be made using the commercial loading zone on New Hampshire Avenue immediately adjacent to the site.
6. Applicant will empty the trash containers belonging to 7-Eleven and the District government in front of the store at least twice daily or more frequently as required.
7. Applicant will clean the sidewalk and gutter in front of the store to ensure they are clean at all times.
8. Applicant will clear trash from the sidewalks in front of the adjacent and nearby buildings to the north and south of the store on a regular basis.
9. Applicant will clear snow and ice from the sidewalk in front of the store to ensure safe passage.
10. Applicant will maintain the exterior appearance of the premises in keeping with the residential character of the Foggy Bottom Historic District and Foggy Bottom Overlay District. Any exterior lighting shall be minimized and directed downward and away from all adjoining residential property. Applicant will take all reasonable measures to minimize the light visible from the inside of the store, and will maintain tinted windows and doors.
11. No signs or posters will be posted in the windows, and no public telephones, teller machines, or other similar devices will be added to the exterior of the building. No electronic or mechanical amusement machines will be located on the premises.
12. Applicant will ensure that the shrubs along the railing for persons with disabilities⁴ are of a height that covers the railing completely when seen from the sidewalk and that perennial and seasonal landscaping is provided so as to beautify the premises.

⁴ The wording of this condition has been changed to reflect current usage, by substituting the word "handicapped" with "persons with disabilities." Nonetheless, the meaning and intent of the condition remain unchanged.

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VOTE: 5-0-0 (Meridith H. Moldenhauer, Marcie I. Cohen, Nicole C. Sorg,
Lloyd L. Jordan, and Jeffrey L. Hinkle to Approve.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 06 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 18319

As Director of the Office of Zoning, I hereby certify and attest that on **MAR 06 2012** a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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Greenstein DeLorme & Luchs, P.C.
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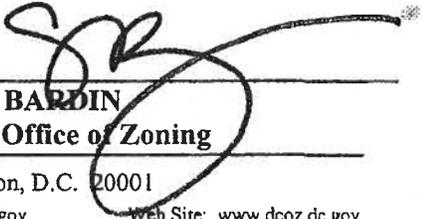
Chairperson
Advisory Neighborhood Commission 2A
c/o West End Library
1101 24th Street, N.W.
Washington, D.C. 20037

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ATTESTED BY:



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