1417 Q Street, NW
Washington, DC 20009

January 16, 2004

Mr. Geoffrey Griffis,
Chairman
Board of Zoning Adjustment
441 4th Street NW, Suite 210 South
Washington DC 20001

Dear Sir

BZA No. 17092—Appeal of Zoning Administrator's Decision Allowing the Location of a 24-Hour Dog Boarding Kennel at premises 1412 Q Street, NW

I am a resident of the 1400 block of Q Street NW in the District and am writing to express my full support of the appellants in the Board of Zoning Adjustment's (BZA) case number 17092.

I was also one of a number of people who wrote to the Department of Consumer and Regulatory Affairs, prior to their issuance of the Certificate of Occupancy (C of O) in question, giving my view that the Certificate should not be issued in respect of the dog boarding component of Wagtime's operation. It was clear at the time to anyone with basic common sense that the location of a dog kennel at this property would unavoidably have a significantly damaging impact on the welfare of the neighboring residents and on the local environment: dogs bark, it cannot be avoided. Multiple dogs together bark constantly, and at very loud levels which are well known to frequently exceed noise control limits. They also produce waste, which causes odor even when specially treated, and which can be hazardous to individuals as well as the environment. Thus, unless setbacks and other special site arrangements are made, dog kennels will unavoidably have an adverse impact, which is inconsistent with the principles underlying the zoning regulations as well as other regulations such as DC's *Environmental Policy Act*.

Wagtime's proprietor made it clear from the outset that she intended to use the open yard at 1412 Q Street, which by definition cannot be soundproofed and is *directly adjacent* to a residentially zoned home and thus part of the residential zone for noise control purposes, as an outdoor kennel run. This use should have, by itself, been enough for DCRA to realize that this operation would not be at all similar to a pet shop and therefore to refuse to issue the C of O. The slope of the yard into the alley was always going to give rise to waste run off problems to the environment. DCRA was also made aware that the proprietor had had major noise problems in Wagtime's previous (totally indoor) location and that they had not been addressed (e.g., with sound proofing).

Even if the DCRA felt that it needed a more concrete basis than common sense to refuse the issuance of the C of O, there is ample solid evidence of the damaging impact of dog kennels, and thus their dissimilarity to pet shops, available. To take just one example: in 2001 the Baltimore County Planning Board undertook a thorough review of this issue. Their comprehensive report was, and still is, publicly available including on the County's website (http://resources.co.ba.md.us/Documents/Imported_Documents/p/po_kennel0601.pdf). Amongst other things, the report notes that:

> "*The overriding and most contentious challenge associated with commercial kennels is the noise impact of barking dogs.....the noise quality of a barking dog is very different from background, or "white" noise such as traffic*".

It further notes that:

> "*Other challenges associated with commercial kennels may include increased traffic.....commercial kennels also generate much waste, which in turn generates odor. Both have the potential to become a nuisance as the majority of kennel owners bag solid waste and dispose of it in outdoor trash cans*

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EXHIBIT NO. 42

or bins where the odor can emanate to adjacent properties. Nuisances such as these adversely affect the strength of neighborhoods and quality of place. "

Since 2002, Baltimore County's zoning regulations have specifically and separately defined dog kennels and dog grooming facilities and note that they are not the same (Section 101). The regulations further specify that neither the term "dog kennel" nor "dog grooming facility" includes pet shops, veterinarians' offices or veterinariums.

Further, the County's zoning regulations require setbacks of 200 feet from the nearest property line zone, for all aspects of a dog kennel or dog boarding facility (Section 421). In granting any special exceptions relating to dog kennels, the Zoning Commissioner may impose additional conditions or restrictions, such as increasing buffers, requiring odor, noise, or animal waste disposal mitigation, and setting limits on the number and breeds of dogs, to ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area.

Baltimore County is only one of many places throughout the country which have already addressed the issue of how to balance the growing demand for kennel facilities in urban areas with the rights of residents to quietly enjoy their properties, and the kinds of requirements imposed in Baltimore County—which 1412 Q Street NW does not meet, and was not required by DCRA to meet—are quite typical (See the attached table). In the absence of clear guidance from the District's zoning regulations, DCRA could and should have used common sense in assessing Wagtime's proposed dog boarding use and should have looked to the information on impact and impact abatement measures available from elsewhere when forming that assessment.

Unfortunately, DCRA did not do either of these things so that now we residents have had to endure six months of hard evidence of the impact. I understand that a good deal of proof of this has been provided to the BZA by the appellants, including that the barking from Wagtime frequently—and unavoidably, given the use of the open rear yard as a dog run—exceeds legally allowable noise levels (which both DCRA and the Metropolitan Police Department have so far not been prepared to enforce in this case despite repeated requests from residents).

The damaging impact of Wagtime has been most severe on the directly adjacent neighbors. However, I would like make it clear that it is not restricted only to them. I live on the other side of the street from Wagtime, and about three properties along (i.e., with the width of Q Street and Wagtime's building between my house and Wagtime's rear yard). Yet, even with my doors and windows closed I am frequently annoyed by the dogs barking in that rear yard including very early in the morning and on weekends. I also have to put up with the traffic problems that are caused by cars blocking either Q Street or the alley behind my house while dog owners drop off or pick up their dogs. Luckily, because I live on the other side of the street, I have not had to transit through the rear alley behind Wagtime with the constant bad odor and dog waste run-off.

I understand that there is a need for this kind of business in the District. Not only does dog boarding assist dog owners, it provides needed stimulation and exercise to the dogs themselves. However, such facilities need to be sited ***completely within*** appropriate commercially zoned areas and with premises that take ***adequate precautions to minimize environmental impact*** in a manner consistent with DC's zoning and other regulations. This would include such requirements for sound proofing, setbacks, no open dog runs near residential areas, adequate sanitation facilities, and so on, which 1412 Q Street NW with its open rear yard cannot meet.

Consequently, I fully support the appellants in their case that DCRA were wrong in deciding to issue a C of O to Wagtime in respect of a dog boarding kennel at 1412 Q Street NW. This decision should be reversed by the Board of Zoning Adjustment and Wagtime should be required to immediately cease the kennel aspect of its operation..

Yours sincerely



Mark O'Brien

Summary of Zoning Regulations for Dog Kennel and/or Boarding Facilities in Various Jurisdictions

The following table summarizes some key aspects of the zoning regulations in various jurisdictions in the United States that aim to control the impact of dog kennels/boarding/day care facilities on the neighboring properties as well as the general environment. As can be seen these regulations commonly restrict proximity to neighboring properties (setbacks), noise, odor and traffic/parking.

The regulations for each jurisdiction included in the table can be found at:

Jurisdiction	Zoning Regulations
Baltimore County, MD	*Baltimore County Zoning Regulations, Section 421, Animal Boarding Place, Kennel, Pet Shop, Veterinarian's Office, Veterinarium.*
Howard County, MD	*Howard County Zoning Regulations, Section 131 Conditional Uses, N.1.30, Kennels and Pet Grooming Establishments.*
Caln Township, Chester County, PA	*Caln Township, Chester County, Pennsylnania, Ordinance No. 2003*, allowing Kennels by Conditional Use in the I-2 Industrial District and Establishing Associated Conditional Use Regulations.
Canaan Township, Wayne Co., PA	*Canaan Township Zoning Ordinance, Article V – Supplementary Regulations Applicable to Specific Uses, Section 125-23: Kennels.*
Bernalillo County, NM	*Bernalillo County Code, Chapter 6 - Animals*
Leavenworth, KS	*The Zoning Ordinance of the City of Leavenworth, Kansas Section 21.902 Special Use Permits B. 2 Kennels – Breeding and Boarding*
San Diego County, CA	San Diego County *Zoning Ordinance, Part 3 – Animal Regulations*
City of Vancouver, WA *(proposed)*	*City of Washington Vancouver Development Code, Title 20.850 – Dog Day Care*

ATTACHMENT

Summary of Zoning Regulations for Dog Kennel and/or Boarding Facilities in Various Jurisdictions

Place	Space	Setbacks	Noise, fencing	Other
Baltimore Co., MD	Not specified	All aspects of a kennel, including exercise areas, septic systems, etc must be situated at least 200 feet from nearest property line.	See next column.	If exceptions are granted for any reason, the Zoning Commissioner may impose additional conditions or restrictions, such as increasing buffers, requiring odor, noise, or animal waste disposal mitigation, and setting limits on the number and breeds of dogs, to ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area.
Howard Co., MD	Three acres for up to 10 dogs. Five acres for 11 dogs or more.	For up to 10 dogs, 100 feet from lot lines for kennels, runs and structures. For 11 or more dogs, 200 feet from lot lines for kennels, runs and structures and 100 feet from street line. These may be reduced so long as it does not adversely affect neighborhood as regards, noise, odors, visual impact or otherwise.	All parking areas and outside pens and runs, and as appropriate, all buildings shall be screened by landscaping or other suitable means from adjoining properties and public street rights-of-ways.	Odors must not be detectable at lot lines. Other details in Dept. of Planning and Zoning brochure on Conditional Uses.
Caln Township, Chester Co. PA	Not specified.	No animal shelter may be within 200 feet of any adjoining property. No runs within 100 feet of any adjoining property.	No dogs outside between 9:00pm and 7:00 am. Business must be enclosed by a fence at least 8 feet high. Fence must be at least 20 feet from property line.	A plan for waste disposal must be submitted in order to be approved. Sewage disposal and water supply must be adequate and meet applicable regulations. Regular waste disposal. Sewer system must be approved. Operator of business shall not allow any animals to create objectionable noise, odors or other disturbances.

Canaan Township, Wayne Co., PA	3 Acres or 10,000 square feet per dog, whichever is greater.	Structure housing dogs must be at least 300 feet from property line.	No dogs outside between 8:00pm and 8:00am. Noise barrier at least 6 feet high or dense vegetative planting shall fully encircle kennel areas not enclosed in a building.	Adequate off street parking, including one space per employee and one space for each four dogs.
Bernalillo Co., NM	75 Square feet for each dog under 30 pounds, 100 square feet for dogs between 30 and 60 pounds, 125 square feet for larger dogs. Adequate facilities for exercising must be provided.		No excessive noise. No night time noise allowed at all.	There must be a waste removal system in place. Interior floors must be smooth and easily cleanable and impervious to water. Facility must be structurally sound and constructed of nontoxic material.
Leavenworth, KS	Two acres	Kennel buildings and runs at least 75 feet from lot line.	Adequate screening to prevent dogs getting excited. Materials for fences specified. Loud, frequent or habitual barking, howling or yelping a nuisance and subject to specified penalties.	
San Diego Co., CA	Not specified.	No kennel within 50 feet of any interior lot line, or 25 feet of any rear lot line except where lot line is contiguous to an alley. Where operation abuts a residential use, setbacks must be maintained in accordance with residential zoning requirements.	Kennel must follow specified parts of County's Noise Abatement and Control regulations. Must be enclosed in a non-transparent fence, at least 6 feet high.	Animal odors shall not be detectable beyond lot lines. Daily removal of waste. Use of disinfectants mandatory to prevent spread of disease, odors and flies.

City of Vancouver, WA. *(proposed in revised Devlopment Code currently in preparation)*				
Kennels (overnight boarding allowed)	Same rules for kennels apply as to horse stables, animal sales yards, riding academies, feed yards etc.	Kennels shall be located not less than 50 feet from any property line.	See next column.	Applicants shall show that odor, dust, noise, and drainage shall not constitute a nuisance, hazard, or health problem to adjoining property or uses.
Day care (no overnight boarding allowed, operating hours limited to 7am to 7pm)	When property commercially zoned, property must be a minimum of 10,000 square feet for first 10 dogs, and 50 square feet for each additional dog. Maximum of 30 dogs on premises. For other zoning, a minimum of 1 acre for the first 10 dogs and 100 square feet for each additional dog. Total number of dogs allowed no more than 20.	Outdoor areas that dogs use must be a minimum of 50 feet from any property line. The specific case where the property is zoned commercial but where it abuts a residential district is identified and these setback requirements emphasized.	See next column.	Operator must provide a plan of operation that demonstrates the control of odor, dust, noise, waste management, drainage, security and that the facility will not constitute a nuisance or health problem to adjoining property or uses.