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March 16, 2004

BZA PUBLIC RECORD
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VIA COURIER

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment of the District of Columbia
441 4th Street, NW
Washington, DC 20001

Re: BZA Appeal No. 17092
Opposition to Certificate of Occupancy Appeal (Wagtime)

Dear Mr. Griffis:

Pursuant to subsection 3112.15 of the District of Columbia Zoning Regulations, this letter is submitted on behalf of our client, Lisa Schreiber of Wagtime, L.L.C. As the owner-operator of the business in question, Ms. Schreiber opposes the appeal filed by Stephanie Mencimer for obvious reasons.

A. Additional expert testimony

Appellants had ample opportunity to call witnesses and to present their case during the hearing which took place on January 20, 2004. Both experts and lay witnesses testified to various issues pertinent to the case, including zoning and planning regulations [p. 135], activities of veterinary hospitals [p. 146], pet shop and kennel management [p. 151], kennel operations [p. 160], and noise levels for common and commercial activities [p. 319]. These matters have been sufficiently addressed and need no further exploration.

Despite having more than adequate opportunities to present evidence, appellants now seek to introduce new witnesses. As per letter from its counsel dated March 10, 2004, Mid-City Development Company has informed the Board of its intent to present Mr. Armando Lourenco, P.E., as an expert witness at the continuation hearing scheduled for March 30, 2004. The exact expertise of this new witness was not specified. We oppose this appearance as an unfair and unnecessary delay in proceedings that have already taken several hours of the Board's time.

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EXHIBIT NO. 71

Frankly, the scarce resources of DCRA staff well as this Board's should not be taken up with such tactics.

B. Testimony of the Intervening Party should be limited to the time agreed upon

During the above-mentioned hearing conducted on January 20, 2004, Mr. Scott Pannick appeared on behalf of Metropolis Development Company as an intervening party. Despite having insufficient time to hear Mr. Pannick's testimony, Appellants told before the Board that his intervention would be extremely brief and would require no more than five minutes.

Mr. Pannick should be allowed to speak for these five minutes, nothing more. To allow additional time to testify would constitute an unfair allocation of time to the Appellants to rehash issues that have already been discussed. It would merely be an untimely and unnecessary reiteration of testimony already entered for the record in the previous hearing. In consideration of parties who have not yet had the opportunity to be heard, the Board should proceed with the continuation hearing in the manner agreed upon: beginning with the Zoning Administrator's case, Ms. Mencimer's case, *five minutes* for Mr. Pannick, the ANC's case and finally closings and rebuttals.

C. Wagtime Agrees with the Decision of the DCRA

The DCRA, through the Office of the Corporation Counsel, has filed its Memorandum of Points and Authorities in support of the decision of the Zoning Administrator and the issuance of the Certificate of Occupancy for Wagtime. Simply put, the DCRA correctly determined that the use proposed and in operation in question here falls squarely within the by-right provisions of the Zoning Regulations. We agree with the decision of the DCRA and the legal analysis provided in the Corporation Counsel's filing dated March 15, 2004. In a separate document to be filed today, we will provide additional support and defense of this decision.

Respectfully submitted,

Edward L. Donohue

Edward L. Donohue

cc: All parties
Bennett Rushkoff