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BOARD OF ZONING ADJUSTMENT
DISTRICT OF COLUMBIA

March 29, 2004

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
Motion to Dismiss

Dear Mr. Griffis:

Attached herewith please find a Motion to Dismiss submitted on behalf of Lisa Schreiber, Wagtime, L.L.C. We would like to request that this Motion be heard as a preliminary matter and addressed at the beginning of the hearing.

Thank you for your attention in this matter.

Respectfully submitted,

Edward L. Donohue

Edward L. Donohue

cc: Ms. Andrea J. Doughty, on behalf of Appellants
Bennett Rushkoff, on behalf of DCRA
Ms. Andrea C. Ferster, on behalf of Mid-City

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BZA
Case No. 17092
Exhibit No. 77

Board of Zoning Adjustment
District of Columbia
CASE NO. 17092
EXHIBIT NO. 77

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:

Zoning Administration Issuance of Certificate of Occupancy No. 7903 dated July 23, 2003 ussued to Wagtime, LLC	:	BZA Appeal Case No. 17092

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

MOTION OF WAGTIME, LLC TO DISMISS

Wagtime, LLC, ("Wagtime" or "appellee"), through undersigned counsel, hereby moves to dismiss Board of Zoning Adjustment Appeal No. 17092.

I. The Appeal Filed by Appellants Is Moot

Appeal No. 17092 is an appeal of the Certificate of Occupancy (C of O) No. CO57903 issued July 23, 2003. This C of O expired on January 31, 2004; therefore the appeal is moot. Pursuant to DCMR §3100.7, the Board shall not consider moot questions. A new C of O for the operation of Wagtime was issued on January 28, 2004 (No. CO69395). This C of O has not been properly appealed.

II. Attempt to "Amend" the Appeal Is Improper

Appellants having realized their error, now attempt to amend their appeal to include an appeal of the new C of O issued on January 28, 2004. This attempt is improper and their "amended appeal" should be dismissed. Chapter 31 of the DCMR provides regulations for the filing of appeals; the appellants have not complied with those regulations and are attempting to circumvent the procedure by submitting this proposed "amended" appeal. DCMR §3112.2 requires the filing of a timely appeal; this appeal of C of O No. CO69395 has not been timely. DCMR §3112.5 requires that the appeal be made on the appropriate form; appellant has not complied with this provision. DCMR § 3112.7 requires that a copy of the appeal be sent to the local ANC; notice has not been sent to the ANC. DCMR §3112.14 requires notice of the appeal 40 days in advance of the hearing by: publication of notice in the DC Register; mailing notice to the parties; mailing notice to the applicable ANC; and posting of the hearing on the calendar of cases to be heard. The provisions of §3112.14 have not been met.

III. Conclusion

The appellants have filed an appeal upon of an expired C of O. Appellee does not operate under the authority of the expired C of O. The issue is moot and should be dismissed. There is a proper form for the appeal of a certificate of occupancy. The appellants have not followed the required regulations and instead attempt to amend an appeal that is moot. The Board should deny the motion to amend and the case should be dismissed.

Respectfully Submitted

Edward L. Donohue

Edward L. Donohue

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2004, I served the foregoing document described as Motion of Wagtime, LLC to Dismiss to be mailed, first-class postage prepaid, to the following:

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