D.C. BOARD OF ZONING
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March 29, 2004

VIA FACSIMILE

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

Re: BZA Appeal Number 17092: Opposition to Motion to Dismiss

Dear Chairman Griffis,

This letter is submitted on behalf of the appellants, Stephanie Mencimer, et al., in BZA Appeal Number 17092. The appellants oppose WagTime's motion to dismiss this appeal contained in their letter to you dated March 29.

WagTime argues that the Appellants' request to amend Appeal No. 17092 is improper and that the amended appeal should be dismissed. WagTime is misinformed and its motion to dismiss the appeal is frivolous. The appellants' request to amend the appeal is essential, timely, properly filed and all relevant parties were appropriately noticed. Moreover, the request to amend the appeal is entirely in accordance with the procedure followed by the Board in other cases where a subsequently issued permit that is intimately related to the decision under appeal should be conjoined, as a matter of course, with the original permit under appeal. Like the C of O, the zoning question at issue in this appeal remains entirely unchanged. Far from being moot, a timely resolution of Appeal No. 17092 continues to be highly germane and of consequence to all the relevant parties.

1. **The Appellants' Request to Amend the Appeal by Adding Permit No. CO 69395 was Essential, Timely, Properly Filed and All Relevant Parties have Already Been Fully Noticed Regarding the Matter under Appeal.**

In their letter to the Board dated March 24, 2004, the appellants filed a request to amend Appeal No. 17092 by adding Certificate of Occupancy (C of O) No. 69395 to their existing appeal of C of O No. 57903. This request is essential to the effective working of the Board because C of O No. 57903 expired on January 31, 2004, *after* the Board had already commenced hearing this appeal. The Board is already well into the process of hearing the arguments in this appeal (which was originally filed on September 22, 2003) and had agreed to continue so doing on March 30, 2004. In the absence of the proper request of the appellants to amend this appeal to include the renewed, identical C of O numbered 69395, the decision of the Board that it would hear and rule on the matter at issue in this appeal in a timely fashion may have been effectively circumvented by the Zoning Administrator as a result of a technicality.

The appellants' request to amend Appeal No. 17092 is also timely. The renewed C of O No. 69395 was issued on January 28, 2004, and the appellants were informed of the issuance of the C of O on Friday, January 30, 2004 by Faye Ogunneye of the Zoning Administrator's office in a telephone call from Ms. Ogunneye to Andrea Doughty, one of the appellants' authorized representatives. Section 3112.2a of 11 DCMR provides that an appeal shall be filed within sixty (60) days from the date the person appealing had knowledge of the decision. The appellants' request to amend the appeal by adding C of O 69395 was filed on March 24, 2004, well within the 60-day period for appealing the issuance of that C of O.

BZA
Case No. 17092
Exhibit No. 78
Board of Zoning Adjustment
District of Columbia
CASE NO.17092
EXHIBIT NO.78

The appellants' request to amend Appeal No. 17092 was properly filed with the Office of Zoning on Form 125:BZA Appeal (which is the appropriate form in accordance with 11 DCMR section 3112.5), signed by an authorized representative of the appellants, and accompanied by a copy of the administrative decision being appealed, the renewed C of O No. 69395. The BZA already has on file in Appeal No. 17092 a copy of letters from the appellants authorizing Andrea Doughty to act on the Appellants' behalf (in accordance with 11 DCMR section 3112.4) in respect of this appeal. The Board also has on file all other pertinent information regarding the matter being appealed.

All parties have been appropriately noticed by the Director of the Office of Zoning of Appeal No. 17092 in accordance with 11 DCMR section 3112.14 and have had the opportunity to be fully informed regarding the fact that the dog boarding use at 1412 Q Street, NW, is under appeal. Moreover, the Board, in accordance with 11 DCMR section 3112.9 has the authority to advance the hearing of any appeal.

2. The Appeal filed by the Appellants remains Germane and Of Consequence

Pursuant to 11 DCMR section 3100.2, Appeal No. 17092 is an appeal of the Zoning Administrator's decision to grant a Certificate of Occupancy authorizing a dog boarding kennel use in a C-3-A zoning district. The renewed C of O is identical to the appealed C of O in every respect including its authorization of the dog boarding issue in question in the appeal. A change in permit number is simply not a material question at issue in front of the Board. Likewise, if the C of O had been reissued with a new permit number merely in order to correct a typographical error or, for example, the error in the zoning district listed on both the original and the reissued Cs of O, these would not be matters of substance that materially alter the underlying administrative decision being appealed. The zoning issue under appeal remains the same in all respects.

Far from being moot, the question at issue in Appeal No. 17092 remains germane and of consequence to all parties. WagTime's attempt to dismiss this appeal is nothing more than an attempt to delay the inevitable, at considerable cost to all those involved. WagTime seeks to waste the time of this Board in attempting by sleight-of-hand to force a re-hearing of identical issues and evidence to those that the Board has already had under its expert scrutiny for some time now. The appellants submit that WagTime's motion to dismiss the appeal, while it underlines WagTime's lack of substantive zoning arguments in this case, should be rejected by the Board.

Respectfully submitted,

Andrea J. Doughty *On behalf of the Appellants*

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cc: Ms. Jerrily Kress, Director, Office of Zoning (By fax to: 202-727-6072)
Mr. Bennett Rushkoff, on behalf of DCRA (By fax to: 202-727-6546)
Mr. Edward Donohue, on behalf of WagTime, LLC (By fax to: 202-452-0067)
Ms. Andrea Ferster, on behalf of Mid-City (By fax to: 202-331-9680)