

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18346 of Wagtime LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for special exception pursuant to subsection 802.21, and a variance from subsection 801.7(a) (iii) and (a)(iv)(D), to permit an animal boarding and animal shelter use in the C-M-1 District at premises 900 M Street, S.E. (Square 952, Lot 34).

HEARING DATE: May 8, 2012
DECISION DATE: May 8, 2012

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 6B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report dated April 13, 2012 in support of the application. The ANC report indicated that at a regularly scheduled and duly noticed meeting on April 10, 2012, with a quorum present, the ANC voted 9-0-0 to support the Applicant’s request. (Exhibit 25.) The Office of Planning (“OP”) submitted a report in support dated April 24, 2012 (Exhibit 28) and testified at the hearing in support of the application. The District Department of Transportation submitted a letter of no objection subject to the mitigation strategies submitted by the applicant and dated April 24, 2012. (Exhibit 26.) The Capitol Hill Restoration Society submitted a letter of support dated May 7, 2012 for the application. (Exhibit 30.)

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of

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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18346
EXHIBIT NO. 35

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proving the elements that are necessary to establish the case, pursuant to § 3103.2, for an area variance from § 801.7(a) (iii), Animal Boarding shall not abut an existing residential use and § 801.7 (a)(iv)(D), External yards required to be 200 feet from a residential use. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a variances from §§ 801.7(a) (iii) and 801.7 (a)(iv)(D), the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 802.21. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 802.21, 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 requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, pursuant to Exhibit 10 – Floor Plans, be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The approval shall be for a period of five (5) years.
2. The applicant shall maintain the existing concrete masonry building to absorb sound and shall utilize industry standard flooring sealants to help eliminate bacteria and minimize odors by preventing waste from penetrating into the concrete floor.
3. All windows and doors within the building shall be kept closed.
4. The applicant shall place all solid animal waste from both indoor and outdoor areas in biodegradable bags and in closed waste disposal containers. The applicant shall utilize a

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qualified waste disposal company to collect and dispose of all animal waste at least three times per week.

5. The applicant shall wash all indoor floors with a water/ chemical mixture that breaks down urine odor and shall ensure that the liquid mixture is captured by a drainage system.
6. The applicant shall control odor by installing HEPA filtration systems for all air conditioner units in all day care areas throughout the building. The units and vents shall be maintained and cleaned by a professional company.
7. With respect to the outdoor training area located in the parking lot adjacent to M Street, S.E:
 - a. No animals shall be permitted to enter between the hours of 5:00 p.m. and 9:00 a.m.;
 - b. It shall be enclosed with fencing having a minimum height of eight feet and constructed of solid or opaque materials with noise absorbing characteristics;
 - c. No more than three animals shall be permitted at any one time;
 - d. Access shall be from within the building only;
 - e. The enclosed area shall measure approximately 19 feet in width by approximately 26 feet in length;
 - f. It shall be washed daily with a water/chemical mixture that breaks down urine odor, and the liquid mixture used to clean the outdoor training shall be captured to prevent its flow outside of the enclosed area.
8. The applicant shall create within sixty days of the issuance of a BZA order to approve the application an on-going Liaison Committee to address any neighborhood concerns regarding the operation of the use. The Committee shall be composed of a representative from the applicant and a neighborhood representative selected by the Single Member District (SMD) Commissioner for the ANC in which the property is located. The applicant and the SMD Commissioner may change their designated representatives upon written notice to the other. Operation of the facility shall be reviewed by the Committee no less than six months and one year from the effective date of the Certificate of Occupancy issued as a result of the BZA order approving the application.
9. The Applicant will encourage all customers to park in the lot adjacent to M Street S.E. or use its "Valet Barking" service when dropping off animals at the 9th Street entrance. The Applicant will discourage customers from parking along neighborhood streets,

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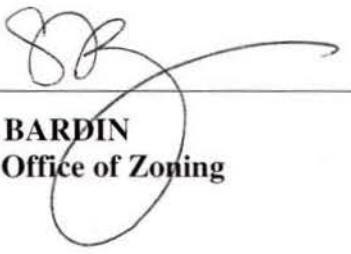
particularly Potomac Avenue S.E. and 10th Street S.E., through verbal and written messages.

VOTE: **4-0-1** (Lloyd J. Jordan, Rashida Y.V. MacMurray, Jeffrey L. Hinkle, Peter G. May to APPROVE; Nicole C. Sorg not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 15 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 TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, 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

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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.