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December 3, 2012

Via Hand Delivery

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, DC 20001

Re: BZA Case No. 18474 / Wagtime LLC
1232 9th Street, NW (Lot 911, Square 368) / Prehearing Statement

Dear Board Members:

On behalf of Wagtime LLC enclosed please find one original and 20 copies of the prehearing statement for the above-referenced application. Also, for your convenience, we have enclosed one unbound copy of the filing. The application is scheduled to be heard before the Board of Zoning Adjustment on December 18th.

Thank you for your considerate attention to this matter. We remain hopeful of the Board's favorable review of the application.

Very truly yours,

HOLLAND & KNIGHT LLP

By: Leila Batties
Leila M. Jackson Batties

Attachments

cc: Advisory Neighborhood Commission 2F
c/o Mike Bernardo, Chair/SMD ANC 2F06 (via email)
Commissioner Matt Raymond, Chair
ANC 2F Community Development Committee (via email)
Ms. Jennifer Steingasser, District of Columbia Office of Planning
Mr. Joel Lawson, District of Columbia Office of Planning
Mr. Stephen Mordfin, District of Columbia Office of Planning

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18474
EXHIBIT NO. 28

Atlanta | Boston | Chicago | Fort Lauderdale | Jacksonville | Lakeland | Los Angeles | Miami | New York
Northern Virginia | Orlando | Portland | San Francisco | Tallahassee | Tampa | Washington, DC | West Palm Beach

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
WAGTIME LLC**

**BZA APPLICATION NO. 18474
HEARING DATE: DECEMBER 18, 2012**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This Statement is submitted on behalf of Wagtime LLC (the "Applicant"), the lessee of the property located at 1232 9th Street, NW, which is more particularly described as Lot 911 in Square 368 (the "Property"). The Applicant seeks special exception approval, pursuant to §§735, 736 and 739 of the Zoning Regulations, in order to permit animal boarding, pet grooming, and animal shelter uses in the C-2-A District at the Property. Specifically, the Applicant asks that the Board grant approval of the following:

- a. Special exception approval for animal boarding, pursuant to Section 735 of the Zoning Regulations.
- b. Special exception approval for pet grooming, pursuant to 736 of the Zoning Regulations.
- c. Special exception approval for an animal shelter, pursuant to 739 of the Zoning Regulations.

This prehearing statement is submitted in accordance with Section 3113.8 of the Zoning Regulations. The representations included in this prehearing statement including the attached exhibits, supersede those provided in the preliminary statement filed with the Board on September 7, 2012.

II.

JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the requested special exceptions pursuant to Section 3104.1 of the Zoning Regulations.

III.

EXHIBITS IN SUPPORT OF THE APPLICATION

<u>Exhibit A:</u>	Portion of the Zoning Map showing the Property
<u>Exhibit B:</u>	Photographs of Wagtime's operations
<u>Exhibit C:</u>	Floor plan showing interior layout of Wagtime
<u>Exhibit D:</u>	Photographs of surrounding uses and structures
<u>Exhibit E:</u>	Letter of support from Ralph G. Brabham
<u>Exhibit F:</u>	Resume of Steven E. Sher, Holland & Knight, expert witness in the area of land planning and zoning

IV.

BACKGROUND & PROJECT DESCRIPTION

A. Overview of Applicant

Wagtime was established in 2001 by Lisa Schreiber and Ofer Khal and began operations at the subject property in March of 2005. In May of this year, the Board approved a second Wagtime location at 900 M Street, SE, which is scheduled to open this year. Wagtime offers a variety of services including: cage-free dog daycare and boarding, professional pet grooming, home dog walking, feline care, and a pet pick-up and delivery service. In addition, the "pet boutique" retail use sells a variety of organic, nutritional foods and treats, toys, animal carriers, and animal clothing. The Applicant also fosters dogs for local rescue groups and provides assistance and advice for dog adoptions. The Applicant has shown a demonstrated commitment to providing quality services and employing a professionally trained and compassionate staff,

which have helped the Applicant to meet the highest standards in pet care and customer service. All of the dogs are kept in cage-free environments, and are cared for by multiple members of the staff. Photographs of Wagtime's operations are attached as Exhibit B.

B. Overview of Subject Property and Surrounding Area

The Property is a 3-story masonry building located at 1232 9th Street, NW, within the boundaries of ANC 2F06. As depicted on the floor plans, attached as Exhibit C, the first floor consists of 2,092 square feet and is occupied by the pet store, the foster care and training center, and dog play area. The second floor consists of 1,000 square feet, all of which serves as a dog play area. The third floor of the building consists of 602 square feet and is a vacant residential unit. The pet grooming takes place in the cellar, which consists of 1,110 square feet, and is also used for a dog play area. The pet shop and "doggie day care" on the first and second floor, the third floor apartment unit, and the pet grooming station in the cellar each have separate entrances on 9th Street.

The Property is the C-2-A District, as are the immediately surrounding properties on the north and south sides of 9th Street and in the alley to the rear of the Property. Adjacent to the property to the north is an art gallery; adjacent to the south is a vacant structure that has been under renovation for several years. An architect's office is to the south of the vacant structure. To the rear of the Property, on the other side of the alley is Rogue 24, a high-end restaurant with a tasting menu beginning at \$75 per person. Photographs of the surrounding structures and uses are attached as Exhibit D.

Based on the zoning classifications shown on the zoning map attached as Exhibit A, the nearest residential lots are approximately 82 feet north of the Property, fronting on the south side of N Street and zoned R-4. To the south, approximately 170 feet from the Property, are residential lots, also zoned R-4, fronting on the north side of M Street. The parcels zoned R-4 to the west are more than 200 feet from the Property.

Under the regulations for the C-2-A District, the permitted maximum FAR is 2.5, 1.5 of which may be for commercial uses. The Property has a total land area of approximately 2,475 square feet. Therefore, up to 3,712.5 square feet of the building may be used for commercial uses. According to the floor plans attached as Exhibit B, the first floor and second floor of the building consist of approximately 3,092 square feet. As such, the commercial use of the first and second floors of the building is within the permitted FAR threshold.

On November 28, 2012, the Applicant presented the application to the Community Development Committee for Advisory Neighborhood Commission ("ANC") 2F. At the meeting, the committee voted unanimously (3-0) to recommend the full ANC's support of the application. The full ANC will consider the application at its regularly scheduled meeting on December 5th. Ralph G. Brabham has submitted a letter to the ANC in support of the Applicant's requests. Mr. Brabham is an active resident of the Shaw/Logan Circle community, operates the gallery next door to Wagtime and is also a Wagtime customer. A copy of his letter of support is attached as Exhibit E.

V.
**THE APPLICANT MEETS THE BURDEN
OF PROOF FOR SPECIAL EXCEPTION APPROVAL**

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

A. Special Exception for Animal Boarding

Pursuant to Section 735 of the Zoning Regulations, animal boarding may be permitted as a special exception if approved by the Board under Section 3104.1, subject to the provisions of Sections 735.2 through 735.6. The Applicant complies with the special exception standards as follows:

1. Section 735.2 - The animal boarding use shall not abut a Residence Zone.

The animal boarding use does not abut a Residence Zone. The Property is in the C-2-A District and is surrounded on all sides by properties zoned C-2-A.

2. Section 735.3 - The animal boarding use shall take place entirely within an enclosed and soundproof building in such a way so as to produce no noise or odor objectionable to nearby properties. The windows and doors of the premises shall be kept closed and no animals shall be permitted in an external yard on the premises.

The Applicant shall maintain the existing concrete masonry building, which is virtually sound proof, and shall also utilize industry standard flooring sealants to help eliminate bacteria and minimize odors by preventing waste from penetrating into the concrete floor. The windows and doors of the premises will be kept closed. There are no external yards on the Property.

3. Section 735.4 - The animal boarding use shall place all animal waste in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odors shall be controlled by means of an air filtration system (for example, High Efficiency Particulate Air "HEPA" filtration) or an equivalently effective odor control system.

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 utilizes a qualified waste disposal company to collect and dispose of all animal waste 3 times per week. The Applicant washes all indoor floors with a water/chemical mixture that breaks down urine odor and the liquid mixture captured by a drainage system. The Applicant controls odor with an air filtration system for all air conditioner units in all daycare areas throughout the building. The units and vents are maintained and cleaned by a professional company.

4. Section 735.6 - External yards or other exterior facilities for the keeping of animals shall not be permitted.

The Property does not have an external yard. The Applicant will not use any exterior facilities of the building for animal boarding.

B. Special Exception for Pet Grooming

Pursuant to Section 736 of the Zoning Regulations, a pet grooming establishment may be permitted as a special exception if approved by the Board of Zoning Adjustment under Section

3104.1, subject to the provisions of Sections 736.2 through 736.5. The Applicant complies with the special exception standards as follows:

1. Section 736.2 - The pet grooming establishment shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.

The pet grooming takes place in the cellar of the building. The location and design does not create any objectionable condition to the adjacent properties resulting from animal noise, odor, or waste.

2. Section 736.3 - All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system.

The Applicant places all solid animal waste in biodegradable bags and in closed waste disposal containers. The Applicant utilizes a qualified waste disposal company to collect and dispose of all animal waste 3 times per week. The Applicant washes all indoor floors with a water/chemical mixture that breaks down urine odor and the liquid mixture is captured by a drainage system. The Applicant controls odor with an air filtration systems for all air conditioner units in all daycare areas throughout the building. The units and vents are maintained and cleaned by a professional company.

3. Section 736.4 - The pet grooming establishment shall not abut an existing residential use or Residence District.

The Property does not abut a Residence District. The Property is in the C-2-A District and is surrounded on all sides by properties zoned C-2-A.

4. Section 736.5 - External yards or other exterior facilities for the keeping of animals shall not be permitted.

There are no external yards on the Property. The Applicant will not use any exterior facilities for keeping of animals or any other part of the pet grooming operation.

C. Special Exception for Animal Shelter

Pursuant to Section 739 of the Zoning Regulations, an animal shelter may be permitted as a special exception if approved by the Board of Zoning Adjustment under Section 3104.1, subject to the provisions of Sections 739.2 through 739.6. The Applicant complies with the special exception standards as follows:

1. Section 739.2 - The animal shelter shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.

The animal shelter will be located on the cellar, first and second floors of the building in a manner that creates no objectionable condition to the adjacent properties resulting from animal noise, odor, or waste.

2. Section 739.3 - The animal shelter shall utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry, and acoustical landscaping.

The subject property is a concrete masonry building which is virtually soundproof, minimizing any noise generated inside the building.

3. Section 739.4 - All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system.

The Applicant places all animal waste in closed waste disposal containers and utilizes a qualified waste disposal company to collect and dispose of all animal waste three times per

week. Odor is controlled by means of an air filtration system. Additionally, the Applicant washes all indoor floors with a water/chemical mixture that breaks down urine odor.

4. Section 739.5 - The animal boarding use shall not abut an existing residential use or a Residence District.

The Property does not abut an existing residential use or a Residence District. The Property is in the C-2-A District and is surrounded on all sides by lots in the C-2-A District.

5. Section 735.6 - External yards or other external facilities for the keeping of animals shall not be permitted unless the entire yard is located a minimum of two hundred (200) feet from an existing residential use or Residence District.

There are no external yards on the Property; and no external facilities will be utilized for the keeping of animals.

VII.

RESPONSE TO STATEMENT IN OPPOSITION

In his Statement in Opposition, Mr. Nayereh Sahrapour argued that the Applicant failed to address the following four areas of zoning relief: (1) a variance for the parking requirements under § 2101.1; (2) a variance from the permitted proximity of external yards and facilities from residences and the provisions controlling noise, odor and waste; (3) a variance from the FAR requirements; and (4) use of a rental yard.

The Applicant's response to Mr. Sahrapour's allegations is as follows: (1) the Property is a historic structure within the Shaw Historic District and, therefore, it is not required to provide any off-street parking in connection with this application; (2) the application does not contemplate the use of any exterior facilities and therefore no variance of the spacing requirement from residential uses is necessary; (3) as depicted on the plans, the pet grooming,

boarding and shelter uses will occupy the cellar and first and second floors of the building only, therefore no variance of the FAR requirements is required; and (4) the Applicant is not renting any yard in connection with its operation.

VIII.
WITNESSES

1. Lisa Schreiber, Wagtime LLC
1232 9th Street, NW
Washington, DC 20001

3. Steven E. Sher
Director of Land Use and Zoning Services
Holland & Knight, LLP
800 17th Street, NW
Washington, DC 20006

IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for the requested special exception approval for the roof structures and variance from the parking requirements. Accordingly, the Applicant respectfully requests that the Board approve the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: *Leila M. Jackson Batties*
Leila M. Jackson Batties
800 17th Street, N.W.
Suite 1100
Washington, DC 20006
(202) 955-3000

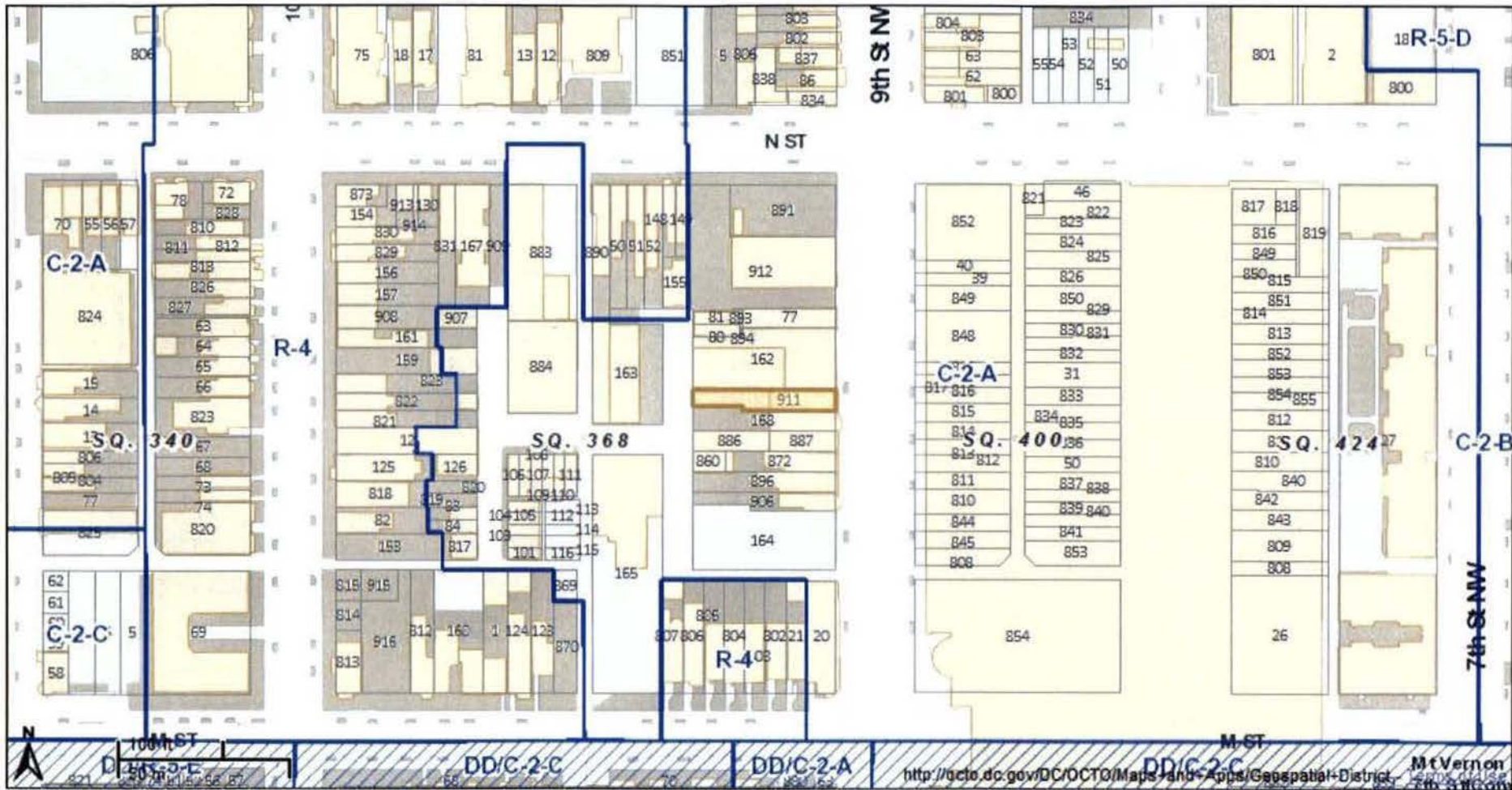
Exhibit A



District of Columbia Office of Zoning

EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP

November 27, 2012



Zoning Layers

Zone Districts	Overlays Districts	TDRs	Air Rights Zone
Pending Zones	Pending Overlay Districts	Pending PUDs	Baist Index
Historic Districts	Campus Plans	Active PUDs	CEA

To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.

Exhibit B











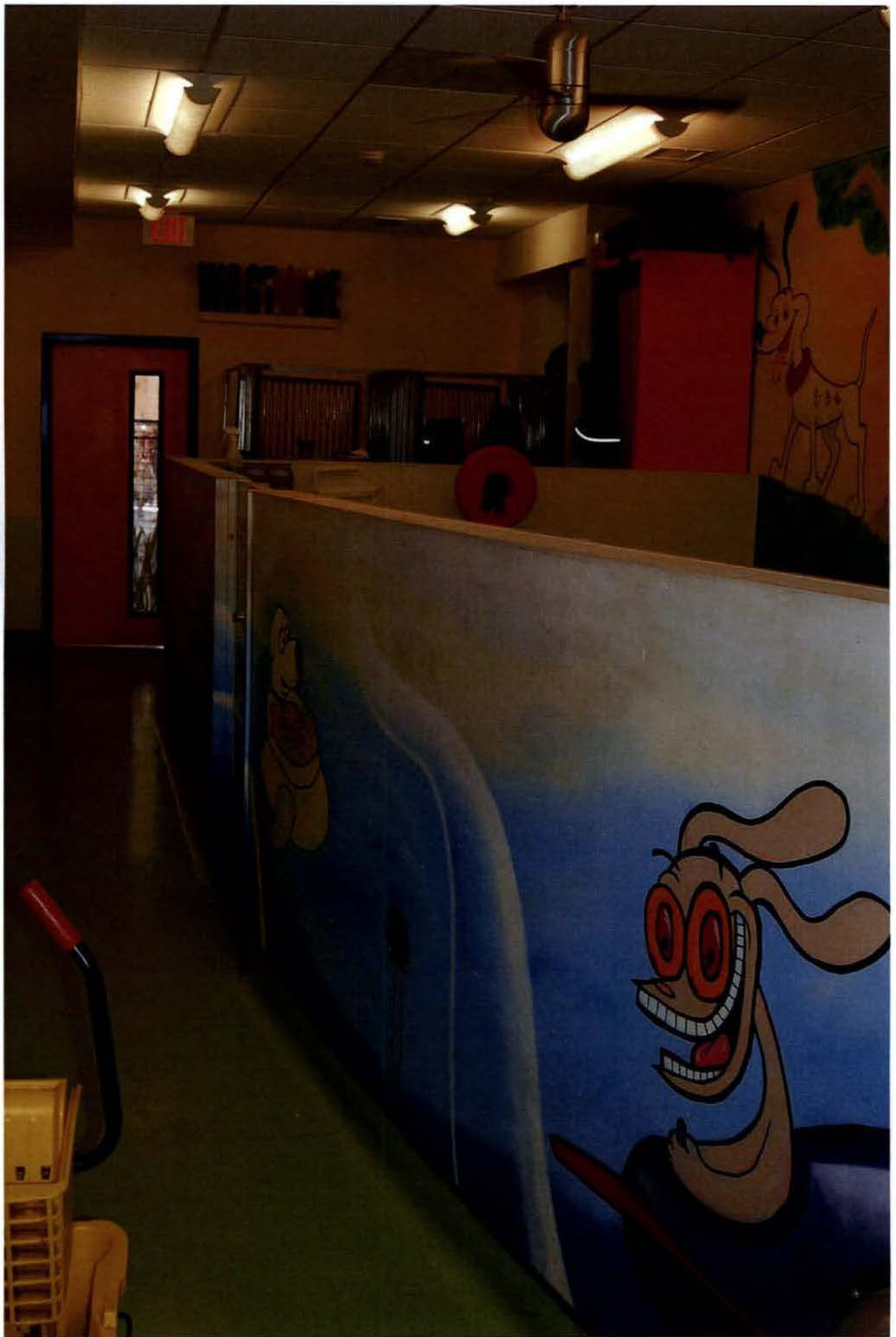












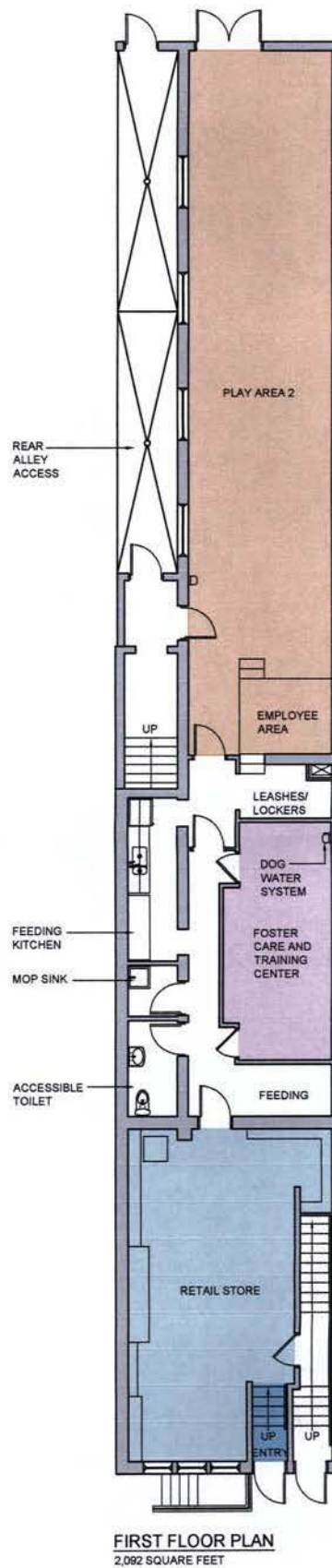




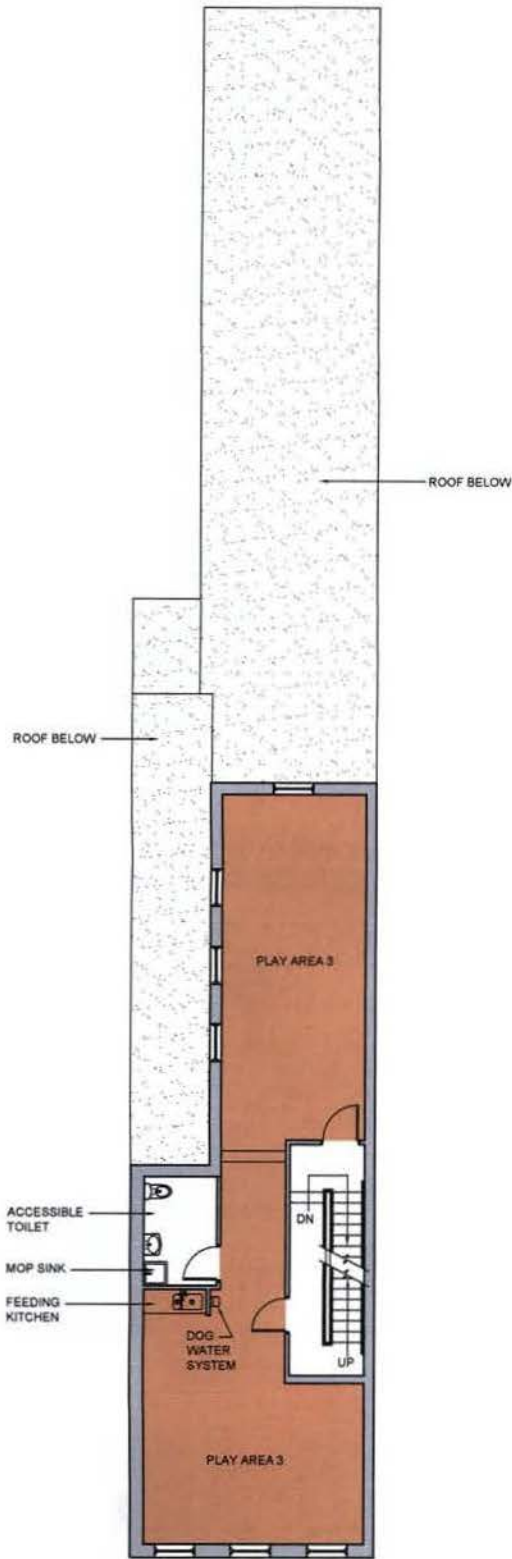
Exhibit C



9TH STREET FACADE
SCALE: 3/8" = 1'-0"



SCALE: 3/32" = 1'-0"



SECOND FLOOR PLAN
1,000 SQUARE FEET



THIRD FLOOR PLAN
602 SQUARE FEET

SCALE: 3/32" = 1'-0"

Exhibit D



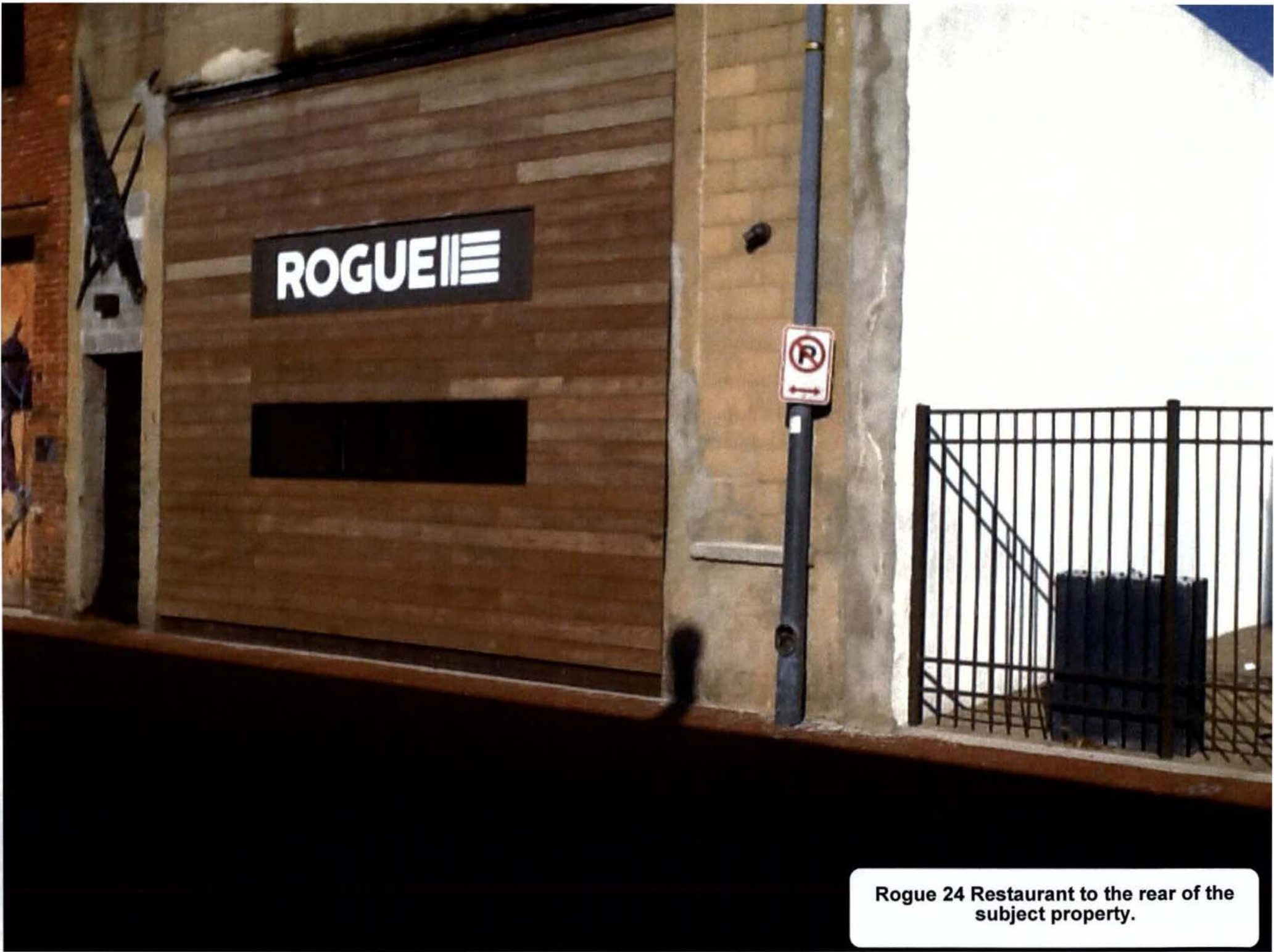




Structures along 9th Street immediately north of the subject property.



Photo of 1230 9th Street, adjacent property to the south.



Rogue 24 Restaurant to the rear of the subject property.

Exhibit E

RALPH G. BRABHAM

1543 9th Street, NW
Washington, D C 20001

November 27, 2012

Advisory Neighborhood Commission 2f
5 Thomas Circle, NW
Washington, DC 20005

Re: Support for Wagtime

Dear Commissioners

I am a resident of, business owner in and volunteer for the Shaw/Logan Circle community I write in support of Wagtime's application for a special exception and/or variance pending before the Board of Zoning Adjustment

Wagtime (1232 9th Street, NW) is an excellent business and source of pride for the neighborhood, and it should receive the full support of ANC2f. Wagtime's beautifully restored and maintained building enhances the streetscape Its facility and services are top notch we have been extremely satisfied customers for years, and our two dogs have benefitted from their wonderful store, grooming and boarding offerings (and we adopted our youngest dog from an adoption event Wagtime sponsored). Wagtime is an exceptional community partner its owners have volunteered for Shaw Main Streets, Inc , and they have donated countless items to fundraisers and other community events

Please support Wagtime's application requesting a special exception and variances in order to permit the use of the subject property for pet grooming, animal boarding and animal shelter uses in the C-2-A District

Thank you for your consideration

Sincerely,



Ralph G. Brabham

Exhibit F



Steven E. Sher, Director of Zoning and Land Use Services, has more than 30 years' experience as the leading consultant in the Zoning Regulations and development processes in the District of Columbia. For more than 18 years, he has advised developers and property owners on the interpretation and application of development regulations and approval processes in the city. He has appeared as an expert witness in zoning and planning before the District of Columbia Zoning Commission, Board of Zoning Adjustment, Historic Preservation Review Board and the Mayor's Agent for the historic preservation act, before the Zoning Hearing Examiner and the Planning Board in Montgomery County, Maryland, and in local and federal courts. Recent major cases in which he has played a leading role include the MCI Center, the new Washington Convention Center, the residential/retail/hotel complex at 2200 M Street for the Ritz Carlton, and the planned redevelopment of the old Hecht's block at 7th and F Streets, the Station Place office development adjacent to Union Station, to be the new headquarters for the SEC, the International Monetary Fund's Headquarters II office building at 1900 Pennsylvania Avenue, the new headquarters for the U.S. Department of Transportation at the Southeast Federal Center and the redevelopment of the Capper/Carrollburg public housing projects in Southeast using a HOPE VI grant.

For more than 14 years, Mr. Sher was employed in the various zoning and planning offices of the District of Columbia. As one of the chief technical staff persons for the Zoning Commission, he played a significant role in drafting major portions of the present Zoning Regulations, including the waterfront and mixed use (CR) districts, the regulations concerning community based residential facilities, the planned unit development regulations and the regulations governing parking and loading.

For eight years, Mr. Sher served as the Executive Director of the Zoning Secretariat. As such, he was the chief executive/operating/administrative officer for the Zoning Commission and the Board of Zoning Adjustment of the District of Columbia. Mr. Sher supervised the handling of over 1,600 cases before the Board of Zoning Adjustment and numerous rezoning, planned unit development and text amendment cases before the Zoning Commission. Matters which he assisted the Zoning Commission in resolving included the rezoning of the Dupont Circle area, the Hotel-Residential Incentive District, implementation of the Foreign Missions Act and major development cases such as McLean Gardens, Techworld, Lafayette Center and the Sumner-Magruder schools redevelopment. Mr. Sher represented the Zoning Commission and the BZA before Congress, the Council of the District of Columbia, the Mayor and other public agencies.

Mr. Sher is a member of Lambda Alpha, the honorary land economics society, and the American Planning Association. He also served on the Mayor's Commission on Downtown Housing, various task forces of the Greater Washington Board of Trade and the D.C. Building Industry Association and the Metropolitan Washington Council of Government Metropolitan Development Community Advisory Committee. He has also served as guest lecturer at various universities on planning and zoning issues.

Mr. Sher received a Bachelor of Arts in Urban Studies from Brooklyn College of the City University of New York and a Master of Regional Planning from Cornell University.