

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

**Application of Wagtime LLC
 1232 9th Street, NW**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by Wagtime LLC, as tenant of the property located at 1232 9th Street, NW (Square 368, Lot 911) (the "Property"), in support of its application pursuant to 11 DCMR §§3103.2 and 3104.1 for a special exception pursuant to §§735, 736 and 739 of the Zoning Regulations to permit animal boarding, pet grooming, and animal shelter uses in the C-2-A District at the Property.

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background

The Property is located at 1232 9th Street, NW and is currently improved with a three-story building (the "Building"). The Applicant currently has a lease with the property owner, Lesron, LLC, to use the existing building on the Property for a pet store, animal boarding, pet grooming and animal shelter facility. The District issued a certificate of occupancy for the operation of the pet store for the first floor of the Building on May 9, 2005. The Applicant seeks special exception approval to permit animal boarding (Sec. 735), pet grooming (Sec. 736) and animal shelter (Sec. 739) uses in the cellar and the first and second floors of the Building. The third floor of the Building is a vacant residential unit fitted out with a full kitchen and bathroom and was previously leased.

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. The first floor and second floor of the Building consist of approximately 3,700 square feet.

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As such, the commercial use of the first and second floors of the Building is within the permitted FAR threshold.

II. Burden of Proof for Special Exception

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 of Zoning Adjustment 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 animal boarding will take place entirely within an enclosed and soundproof building in such a way as to produce no noise or odor objectionable to nearby properties. 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 will 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. Odor will be controlled by means of an air filtration system, such as HEPA filtration, or an equivalently effective odor control system. Additionally, the Applicant will wash all indoor floors with a water/chemical mixture that breaks down urine odor.

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 activities will be located and designed within the Building to create no 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 will 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. Odor will be controlled by means of an air filtration system, such as HEPA filtration, or

an equivalently effective odor control system. Additionally, the Applicant will wash all indoor floors with a water/chemical mixture that breaks down urine odor.

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 of the Building for pet grooming.

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 and designed within 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 Applicant will utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry, and acoustical landscaping in connection with the animal shelter.

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 will 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. Odor will be controlled by means of an air filtration system, such as HEPA filtration, or an equivalently effective odor control system. Additionally, the Applicant will wash 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. The external facilities of the Building are located at least 200 feet from an existing residential use or Residence District.