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January 23, 2013

Via Hand Delivery

Mr. Richard Nero
District of Columbia
Office of Zoning
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) / Amended Application

Dear Mr. Nero

On behalf of Wagtime LLC, enclosed please find one original and 20 copies of the preliminary statement in support of the amended application under separate cover. The Application is scheduled to be heard before the Board of Zoning Adjustment on March 5. We will file our prehearing statement within 14 days of the hearing date.

Thank you for your considerate attention to this matter. Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

HOLLAND & KNIGHT LLP

By *Leila Batties/lsn*
Leila M. Jackson Batties

Enclosures

cc Advisory Neighborhood Commission 2F (via email)
Commissioner Matt Raymond, Chair

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18474

EXHIBIT NO. 40

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

Ms Jennifer Steingasser, District of Columbia Office of Planning (via email)
Mr Joel Lawson, District of Columbia Office of Planning (via email)
Mr Stephen Mordfin, District of Columbia Office of Planning (via email)
Meredith Moldenhauer, Esq , Griffin & Murphy, LLP (via email)

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

**BZA Application No. 18474 / Application of Wagtime LLC
1232 9th Street, NW**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by Wagtime LLC (the "Applicant"), as tenant of the property located at 1232 9th Street, NW (Square 368, Lot 911) (the "Property"), in support of its amendment to the above-referenced application (the "Application") to include a variance from Sections 735 3, 736 5 and 739 6 of the Zoning Regulations in order to permit the use of the external facilities at the Property in connection with animal boarding, pet grooming, and animal shelter uses

The Application is scheduled to be heard before the Board on March 5, 2013 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 Applicant originally filed the Application on September 7, 2012 The Application originally only sought special exception approval, pursuant to Sections 735, 736 and 739 of the Zoning Regulations to permit animal boarding, pet grooming and animal shelter uses on the Property On November 28, 2012, the Applicant presented the Application to the Community Development Committee for Advisory Neighborhood Commission ("ANC") 2F, which voted unanimously to recommend the full ANC's support of the Application At its regularly

scheduled meeting on December 5th, ANC 2F adopted a resolution to support the Application. At the ANC meeting, several persons spoke in support of Wagtime's current operations at the Property, and approximately 60 letters have been filed with the BZA in support of the Application. Recently, the Applicant decided to amend the Application to include variances from Sections 735.3 (Animal Boarding), 736.5 (Pet Grooming) and 739.6 (Animal Shelter)¹ of the Zoning Regulations, which prohibit the use of external yards or other exterior facilities for the keeping of animals on the Property. Specifically, the Applicant seeks approval to permit dogs on the roof deck on the second floor of the building. The Community Development committee for ANC 2F will consider the proposed variances at its January 23rd meeting.

The Property is located in the Blagden Alley-Naylor Court Historic District and is zoned C-2-A, and it is surrounded on all sides by parcels zoned C-2-A. Based on the zoning classifications shown on the zoning map attached as Exhibit A, the nearest residential lots are approximately 82 feet to the 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 to the north side of M Street. The parcels zoned R-4 to the west are more than 200 feet from the Property. The Property does not abut any residence districts.

II. Burden of Proof for Variances

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant a variance where it finds that three conditions exist:

- a. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition,

¹ Section 739.6 prohibits external yards or other external facilities for the keeping of animals unless the entire yard is located a minimum of 200 feet from an existing residential use or Residence District.

- b The owner would encounter practical difficulties if the zoning regulations were strictly applied or exceptional and undue hardship, and
- c The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

See French v District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D C. 1995) (quoting *Roumel v District of Columbia Board of Zoning Adjustment*, 417 A 2d 405, 408 (D C 1980)), see also, *Capitol Hill Restoration Society, Inc v District of Columbia Board of Zoning Adjustment*, 534 A 2d 939 (D C 1987) Moreover, the unique or exceptional situation or condition may arise from a confluence of facts which affect a single property *Gilmartin v DC Board of Zoning Adjustment*, 579 A 2nd 1164, 1168 (D C 1990) As discussed below, all three prongs of the variance test are met in this application

A. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition

The exceptional situation or condition affecting the Property results from a confluence of factors.

The Property is improved with a three-story building and is zoned C-2-A All of the properties immediately surrounding the Property are also zoned C-2-A The Applicant currently has a lease with the owner of the Property to use the premises for a pet store, animal boarding, pet grooming and animal shelter facility The District issued a certificate of occupancy for the operation of a pet store on the first floor of the building on May 9, 2005, prior to the enactment of the Zoning Regulations related to these uses Since 2005, the Applicant has obtained permits for renovations to the building (see attached Exhibit B) The renovations to the Property included the construction of a roof deck on the second floor of the building where dogs are regularly taken for outdoor recreation and relaxation. This is an important amenity to the

Applicant's operations, given that the building occupies the entire lot, which is within an area of the city where there is very little public green or open space that can accommodate dogs

B The owner would encounter practical difficulties if the zoning regulations were strictly applied or exceptional and undue hardship.

The strict application of Sections 735.3, 736.5, and 739.6 of the Zoning Regulations in this case would result in a practical difficulty and undue hardship to the Applicant. As noted above, the Applicant regularly takes dogs to the second floor roof deck. Without this amenity, the dogs would be forced to remain indoors for the majority of the day, with the exception of periodic walks on a leash. The roof deck is among the amenities that the Applicant markets to its clients; outdoor recreation and relaxation is an important service for the dogs. The roof deck is especially important given that the Property is located in an area of the city with a very limited amount of public green or open space to accommodate dogs. Further, prohibiting the use of the roof deck would result in an undue hardship on the Applicant considering that it was constructed for the specific purpose of providing outdoor space for the dogs and cannot be used for any other purpose related to the use of the Property. Approximately 60 letters in support of the Application have been filed with the Board, many of which are from property owners and residents of Blagden Alley. While the owner of the adjacent site at 1230 9th Street, NW, has filed an objection to the Application, it should be noted that the adjacent site is vacant and has been under construction for several years. In fact, as shown in the photo attached as Exhibit C, the building at 1230 9th Street is open at the rear. Also, the rear of the lot is unimproved, and rats are frequently seen scurrying among the debris on this portion of the lot.

C The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the zone plan by approving requested variances. As noted above, the site is located in the C-2-A District and is surrounded on all sides by properties zoned C-2-A. Also, with respect to the roof deck, the Applicant voluntarily agrees to the following conditions

- 1 No animals shall be permitted on the roof deck between 6 00 p.m and 9 00 a.m.
- 2 No more than five (5) animals shall be permitted on the roof deck at any one time
- 3 Within sixty (60) days of the issuance of a BZA Order approving the Application, an on-going Liaison Committee to address any neighborhood concerns regarding the operation of the site. 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 Certification of Occupancy issued as a result of the BZA order approving the application.

Wagtime has benefitted the immediate neighborhood and the city, generally. When the Applicant moved to the Property in 2005, there were very few businesses along this section of 9th Street and the buildings, by and large, were not well maintained. Today, the Applicant estimates that customers walk in and out of its doors approximately 1500 times per week, Wagtime employs approximately 55 people; and the restored building façade contributes to the beautification of the neighborhood. Additionally, the Applicant provides a much needed service for the residents who live or work in proximity to the Property, and also supports local rescue agencies and shelters to foster dogs for adoption.

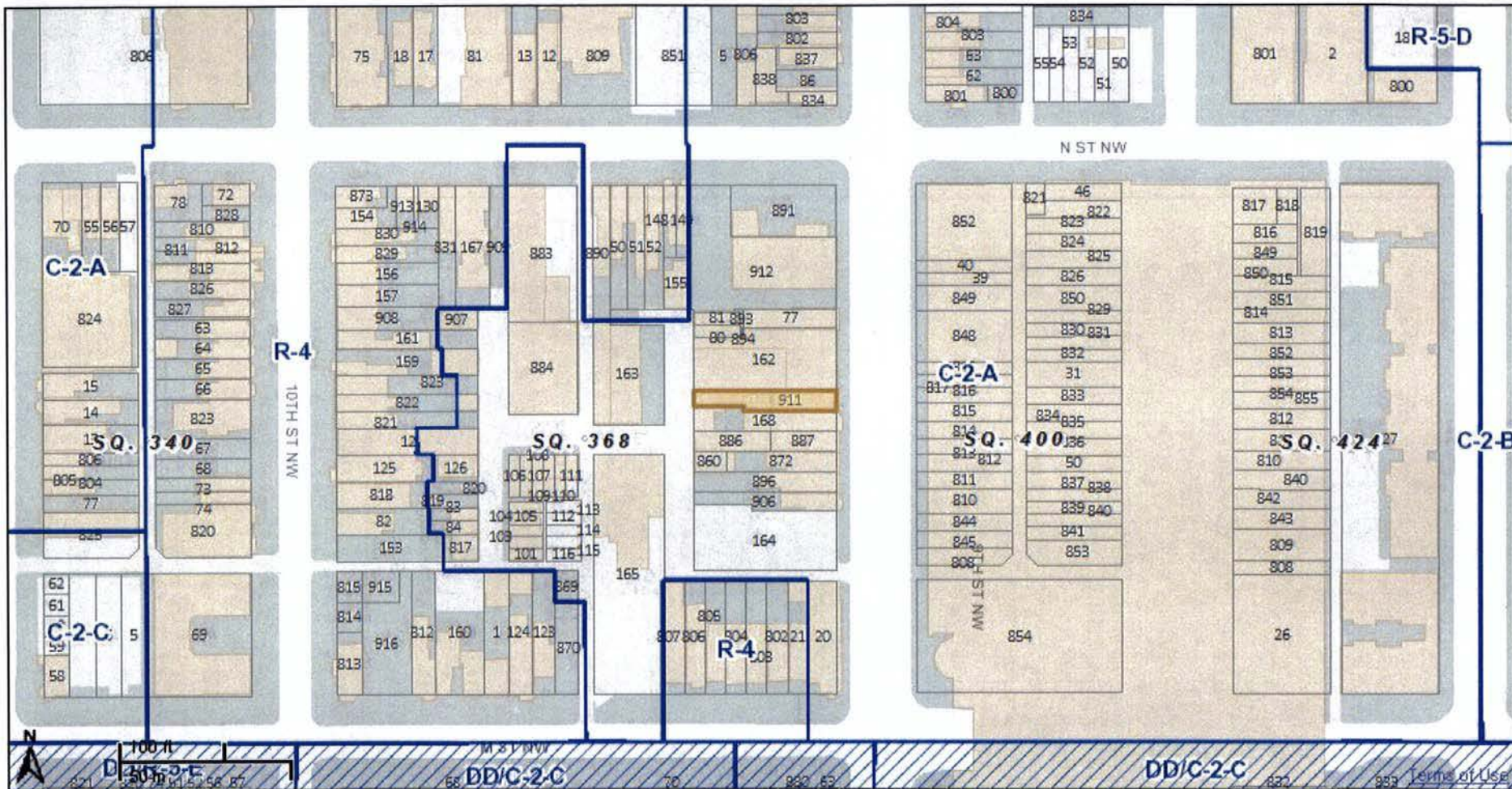
Exhibit A



District of Columbia Office of Zoning

EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP

September 6, 2012



Zoning Layers

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

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

Exhibit B



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Search

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Property Information Verification System

Property Information

Address: 1232 9TH ST NW
 Zip Code: [Zip Lookup](#)
 SSL: 0368 0911
 Cluster: Cluster 7
 Ward: Ward 2
 ANC: ANC 2F
 SMD: SMD 2F06
 Census Tract: 004902
 Zone: C-2-A

* Check the [Zoning map](#) for recent changes.
 * Check the [Zoning orders](#) for recent changes.

Find Property By: [Exact Address](#) | [SSL](#)

st no* st name* st suffix quad
 2448* 18TH* Street NW
 st num suffix
 1/2

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ATTENTION: Please see below for conditions on this property.

» PIVS found the conditions on this property. See below for details. Conditions reflect areas of special jurisdiction or sensitivity. The required permit reviews do not allow for online postcard or supplemental permit applications.

Restrictions & Holds

Issued Permits

[Maps](#)[Photo](#)[Owners](#)[CAMA](#)[Residential Cases](#)[Commercial](#)[Inspections](#)[Occupancy](#)[BBL](#)

Issued Permits : No. of Records = 11

Address	Unit	SSL	Id	Type	Date Issued	Completion Status	Completion Date	Detailed Description
1232 9TH ST NW			B115796	Construction/Alteration and Repair	2008/05/30	Permit Issued	2008/05/30	Exterior facade repairs to include trim & cornice repairs, window & storefront replacement & sign.
1232 9TH ST NW			B117693	Construction/Alteration and Repair	2008/09/09	Permit Issued	2008/09/09	INTERIOR ALTERATION FOR EXISTING TENANT WITH ROOF REPAIRS AND REPLACEMENT OF WINDOW AT SIDE AND REAR TO INCLUDE DEMOLITION CONSTRUCTION PLUMBING MECHANICAL AND ELECTRICAL
1232 9TH ST NW		0368 0885	E0800125	Supplemental/Electrical	2008/08/25	Permit Issued	2008/08/25	1-400AMP SERVICE, 3-100AMP SUBPANEL, 1 COMPLETE FIRE ALARM SYSTEM (38 DEVICES.)
1232 9TH ST NW			E96323	Supplemental/Electrical	2005/04/27	Permit Issued		
1232 9TH ST NW			M171929	Supplemental/Mechanical	2008/08/13	Permit Issued		
1232 9TH ST NW			MS114992	Construction/Miscellaneous	2008/01/23	Permit Issued	2008/01/23	DEMOLITION PLANS ATTACHED.
1232 9TH ST NW			MS70024	Construction/Miscellaneous	2004/09/27	CONVERTED RECORD		
1232 9TH ST NW			MS72809	Construction/Miscellaneous	2004/12/02	CONVERTED RECORD		Interior repairs and finish work
1232 9TH ST NW			MS76826	Construction/Miscellaneous	2005/03/29	CONVERTED RECORD		ALTERATION AND REPAIR TO EXISTING 1ST FL. TO ACCOMMODATE A RETAIL PET STORE
1232 9TH ST NW			P171397	Supplemental/Plumbing and Gas	2008/08/05	Permit Issued		
1232 9TH ST NW			P96388	Supplemental/Plumbing and Gas	2005/04/27	Permit Issued		

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Exhibit C

