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800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202 955 3000 | F 202 955 5564
Holland & Knight LLP | www.hklaw.com

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Leila M Jackson Batties
leila.batties@hklaw.com
202 419 2583

February 19, 2013

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 March 5th.

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

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18474

EXHIBIT NO. 43

Very truly yours,

HOLLAND & KNIGHT LLP

By Leila Batties
Leila M Jackson Batties

Attachments

cc: Advisory Neighborhood Commission 2F
c/o Commissioner Matt Raymond, Chair (via U.S. Mail)
Commissioner Greg Melcher, SMD Representative for ANC 2F06 (via U.S. Mail)
Ms Jennifer Steingasser, District of Columbia Office of Planning (via Hand Delivery)
Mr. Joel Lawson, District of Columbia Office of Planning (via Hand Delivery)
Mr Stephen Mordfin, District of Columbia Office of Planning (via Hand Delivery)
Meredith Moldenhauer, Esq., Griffin & Murphy, LLP (via U.S. Mail)

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

**APPLICATION OF
WAGTIME LLC**

**BZA APPLICATION NO. 18474
HEARING DATE: DECEMBER 18, 2012
(DEFERRED)
HEARING DATE: MARCH 5, 2013**

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 Property is within the boundaries of ANC 2F06. The Applicant seeks special exception approval for animal boarding, pet grooming, and animal shelter uses in the C-2-A District at the Property and the approval of certain variances to permit the use of a roof deck in connection with said uses. Specifically, the Applicant asks that the Board grant approval of the following:

1. Special exception approval for animal boarding, pursuant to Section 735 of the Zoning Regulations
2. Special exception approval for pet grooming, pursuant to Section 736 of the Zoning Regulations
3. Special exception approval for an animal shelter, pursuant to Section 739 of the Zoning Regulations
4. Variance from Sections 735.3 and 735.6 of the Zoning Regulations to permit the use of an outdoor roof deck in connection with the animal boarding use
5. Variance from Section 736.5 of the Zoning Regulations to permit the use of an outdoor roof deck in connection with the pet grooming use
6. Variance from Section 739.6 of the Zoning Regulations to permit the use of an outdoor roof deck in connection with the animal shelter use closer than 200 feet from a residential use

This prehearing statement is submitted in accordance with Section 3113.8 of the Zoning Regulations. The information in this prehearing statement, including the attached exhibits, supersedes those provided in the preliminary statements filed with the Board on September 7, 2012, and January 23, 2013, respectively.

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>	Photographs of Wagtime's operations at Property
<u>Exhibit B</u>	Floor plan showing interior layout of building
<u>Exhibit C</u>	Portion of the Zoning Map showing the Property
<u>Exhibit D</u>	Photographs of surrounding uses and structures
<u>Exhibit E</u>	Copy of ANC 2F's letter in support of the application
<u>Exhibit F</u>	Permits for building renovations
<u>Exhibit G</u>	Correspondence and other documents related to the construction of the roof deck
<u>Exhibit H</u>	Plans for the roof deck improvements
<u>Exhibit I</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 2005.¹ Wagtime offers a variety of pet 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 demonstrated a commitment to providing quality services and employing a professionally trained and compassionate staff who have helped the Applicant 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 at the Property are attached as Exhibit A.

B. Overview of Subject Property and Surrounding Area

The Property is improved with a 3-story masonry building that occupies the entire lot. As depicted on the floor plans, attached as Exhibit B, the first floor consists of 2,092 square feet, the second floor consists of 1,000 square feet, the third floor of the building consists of 602 square feet, and the cellar consists of 1,110 square feet. The cellar is used for pet grooming, animal boarding and animal shelter operations. The first floor is used for the pet store, animal boarding and animal shelter operations. The second floor is used for animal boarding and animal shelter

¹ In May of this year, the Board approved a second Wagtime location at 900 M Street, SE

operations. The third floor houses a vacant residential unit. The pet shop and "doggie day care" on the first and second floor share the main entrance to the building from 9th Street. The third floor apartment unit and the pet grooming station in the cellar each have separate entrances on 9th Street. Additionally, on the second floor, at the rear of the building, is a roof deck where dogs are regularly taken for outdoor recreation and relaxation.

According to the Zoning Map attached as Exhibit C, the Property is in the C-2-A District. 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.

Like the Property, the immediately surrounding properties on the north and south sides of 9th Street and in the alley to the rear of the Property are zoned C-2-A. Adjacent to the Property to the north is an art gallery, adjacent to the south is a vacant structure that has been under construction 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 a high-end restaurant. 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 C, the closest residential lots are approximately 82 feet north of the Property, fronting on the south side of N Street, and they are 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.

C. Procedural History

The Applicant filed this Application on September 7, 2012. The Application originally only sought special exception approval, pursuant to Sections 735, 736 and 739 of the Zoning Regulations, in order 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 5, 2012, 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. Since the December 5th ANC meeting, approximately 60 people have filed letters in support of the Application with the BZA.

In December, the Applicant decided to amend the Application to include the request for variances from Sections 735.6 (Animal Boarding)², 736.5 (Pet Grooming)³ and 739.6 (Animal Shelter)⁴ in order to permit dogs on the roof deck. On January 23, 2013, these requests were reviewed by the Community Development Committee for ANC 2F, which voted to recommend approval of these variances to the full ANC. On February 6, 2013, the ANC 2F voted

² Section 735.6 states that external yard or other exterior facilities for the keeping of animals shall not be permitted.

³ Section 736.5 states that external yard or other exterior facilities for the keeping of animals shall not be permitted.

⁴ 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.

unanimously (8-0) to support the requested variances subject to the following conditions, which are acceptable to the Applicant

- 1 The approval of the use of the roof deck shall be for a period of 5 years. At the end of the 5 year period, the Applicant shall return to the ANC and BZA to seek renewed approval for the continued use of the space
- 2 No animals shall be permitted on the roof deck between the hours of 6:00 p.m. and 9:00 a.m.
- 3 No more than five animals shall be permitted on the roof deck at any one time
- 4 A Wagtime employee shall be on the roof deck at all times where there are animals present.
- 5 A Liaison Committee shall be established to address any neighborhood concerns regarding the operation of the site. The names of the committee members shall be provided to the ANC within 60 days of the approval of the application by the BZA. The committee shall include a representative from Wagtime and a neighborhood representative selected by the ANC commissioner in whose district the business is located
- 6 Starting 6 months after the BZA's approval of the application, the Liaison Committee shall begin review of the Applicant's operation at the property and report its findings to the ANC. The review period shall extend for the entire 5 year period of the variances. If at any time during the 5 year period of the variance, the ANC finds that the conditions of the variance are not being met, the ANC shall recommend changes to the variance agreement to the BZA, up to and including the complete revocation of the variance

A copy of ANC 2F's letter of support is attached as Exhibit E of this statement

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, but the Applicant regularly takes the dogs on the roof deck. This Application includes a variance to permit the use of the roof deck in connection with the animal boarding use.

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, but there is a roof deck on the second floor of the building. This Application includes a variance to permit the use of the roof deck in connection with the animal boarding use.

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 residential use or 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

The Property does not have an external yard, but there is a roof deck on the second floor of the building. This Application includes a variance to permit the use of the roof deck in connection with the pet grooming use.

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 of the Zoning Regulations. 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 use will be on the cellar, first and second floors of the building and operated 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 Property is improved with 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 739 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 but there is a roof deck on the second floor of the building. The nearest residential use is approximately 82 feet north of the Property. This Application includes a variance to permit the use of the roof deck closer than 200 feet of a residential use

**VI.
THE APPLICANT MEETS THE BURDEN
OF PROOF FOR VARIANCES**

A. Standard of Review for Area Variances - Animal Shelter Use

Under D.C Code § 6-641 07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

1. the property is affected by exceptional size, shape or topography or other extraordinary or exceptional condition or situation;
- 2 the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
3. 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 ⁵

⁵ 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)

The D C Court of Appeals has determined that, to satisfy the practical difficulty element of the area variance test, an applicant must demonstrate that “compliance with the area restriction would be unnecessarily burdensome” and that the practical difficulty is “unique to the particular property.”⁶ The Court has further stated that “the severity of the variance(s) requested;” “the weight of the burden of strict compliance,” “the effect the proposed variance(s) would have on the overall zone plan;” and the “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration” in determining whether to grant an area variance ⁷

The foregoing standard applies to the variance sought by the Applicant under Sec. 739.6 of the Zoning Regulations for the Animal Shelter use in order to permit the use of the roof deck closer than 200 feet from a residential use. In this case, the closest residential use is approximately 82 feet north of the Property. As discussed below, all three prongs of the area variance test are met in this Application

1. 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 that occupies the entire lot. The Applicant obtained 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 the pet grooming, animal boarding and animal shelter uses. In 2008, the Applicant started substantial renovations to the interior of the building (See permits attached as Exhibit F.) While the

⁶ *Gilmartin v District of Columbia Board of Zoning Adjustment*, 579 A 2d 1164, 1170 (D.C. 1990)

⁷ *Id.* at 1171

renovations were underway, the Applicant requested that the contractor expand the work to include the construction of the roof deck on the second floor of the building. (See correspondence attached as Exhibit G.) The roof deck improvements cost approximately \$35,000,⁸ which included the purchase and installation of tile pavers, instead of a less expensive material such as wood or plastic, and the installation of fencing around the roof deck. A copy of the plans for the roof deck improvements are attached as Exhibit H.

Upon the completion of the renovations in 2009, the Applicant expanded its operation to the cellar and second level of the building. The cellar is used for the pet grooming, animal boarding and animal shelter uses. The second floor of the building is used for animal boarding and the animal shelter uses. Dogs are also brought to the roof deck regularly for outdoor recreation and relaxation

The use of the roof deck is a basic service for the Applicant's business. The Property is located in an area of the city with little, if any, public green or open space to accommodate dogs. Also, as noted previously, the building occupies 100% of the lot. Therefore, without use of the roof deck, there is little opportunity for the dogs to have a healthy amount of time outdoors in the immediate vicinity of the Property. The dogs would be forced to remain indoors with the exception of periodic walks on a leash. In light of these factors, we submit that should the pet grooming, animal boarding and animal shelter uses be deemed appropriate uses for the Property, the use of the roof deck should also be deemed appropriate, subject to conditions that mitigate the impacts of these uses on the surrounding area

⁸ The Change Order from Corbett Construction, dated February 6, 2009, shows a cost of \$39,957. However, that cost includes the fencing and gates for the walkway to the alley in addition to the improvements to the roof deck.

The Applicant has operated with a certificate of occupancy for the use of the first floor of the building only since 2005; and the contractor that handled the building renovations has been unable to confirm that a permit was issued for the construction of the roof deck. Notwithstanding, the District has not issued any notices of violation against the Applicant or Property. All of these factors were discussed with the ANC and taken into consideration in their decision to support the Application. The Applicant seeks the Board's approval in order to bring the use of the Property into compliance with the District's regulations

2 The owner would encounter practical difficulties if the zoning regulations were strictly applied.

The strict application of Section 739.6 of the Zoning Regulations in this case would result in a practical difficulty. As noted above, the Applicant regularly takes dogs to the roof deck for outdoor recreation and relaxation. Without this amenity, the dogs would be forced to remain indoors with the exception of periodic walks on a leash. The roof deck is among the basic services to the Applicant's business; outdoor recreation and relaxation is an important service for the dogs. The use of 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.

The strict application of Section 739.6 would also result in an undue financial hardship to the Applicant. The dogs would have to be taken for walks on a leash constantly throughout the day. Given the number of dogs that the Applicant cares for on a daily basis and the attention required when walking the dogs (including clean up), the Applicant would need to increase the number of staff in order to maintain a dog walking schedule throughout the day. This would require the Applicant to change its business operations and increase the number of staff, resulting

in additional operation costs

Additionally, if the variance for the roof deck is not granted, the Applicant would be unable to recoup the expenses related to the construction of the roof deck. As noted above, the Applicant expended approximately \$35,000 on the improvements to the roof deck, which was built for the sole purpose of providing outdoor space for the dogs. Given the use of the Property and the layout of the building, there is no other viable use for the roof deck

3 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. To further mitigate its impact on the surrounding commercial and residential properties, the Applicant agrees to the following conditions related to the use of the roof deck.

1. The approval of the use of the roof deck shall be for a period of 5 years. At the end of the 5 year period, the Applicant shall return to the ANC and BZA to seek renewed approval for the continued use of the space.
2. No animals shall be permitted on the roof deck between the hours of 6:00 p.m. and 9.00 a.m.
3. No more than five animals shall be permitted on the roof deck at any one time.
4. A Wagtime employee shall be on the roof deck at all times where there are animals present.
5. A Liaison Committee shall be established to address any neighborhood concerns regarding the operation of the site. The names of the committee members shall be provided to the ANC within 60 days of the approval of the application by the BZA. The committee shall include a representative from Wagtime and a neighborhood representative selected by the ANC commissioner in whose district the business is located.

- 6 Starting 6 months after the BZA's approval of the application, the Liaison Committee shall begin review of the Applicant's operation at the property and report its findings to the ANC. The review period shall extend for the entire 5 year period of the variances. If at any time during the 5 year period of the variance, the ANC finds that the conditions of the variance are not being met, the ANC shall recommend changes to the variance agreement to the BZA, up to and including the complete revocation of the variance

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, approximately 45 of whom are District residents; and the restored building façade contributes to the beautification of the neighborhood. 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. 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 a photo attached as Exhibit D, the building at 1230 9th Street is open at the rear.

B. Standard of Review for Use / Hybrid Variances - Pet Grooming and Animal Boarding Uses

Under D C Code §6-641 07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant a use variance where it finds that three conditions exist:

1. the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
2. the strict application of a regulation would result in undue hardship upon the

owner of the property; and

3. 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 Map⁹

The same standard applies in the case of a hybrid variance, which is not a use variance in its purest form, but which could "drastically alter the character of the zoned district."¹⁰ Moreover, under the "the self-created hardship" rule, the undue hardship element must not be the result of actions undertaken by the applicant in knowing violation of zoning regulations.¹¹ There is a presumption that a self-created hardship exists where our applicant had actual or constructive knowledge of the limitations on the use of the property under the zoning ordinances in effect prior to or at the time of purchase.¹² The "self-created hardship" rule concept does not apply to area variance cases¹³

We submit that the variances sought from Sections 735 3 and 735 6 (Animal Boarding) and 736 5 (Pet Grooming) of the Zoning Regulations constitute hybrid variances and, therefore, the foregoing standard applies to these areas of relief. Section 735.6 prohibits the use of external yards or other exterior facilities for the keeping of animals in connection with the animal boarding use. Section 736 5 prohibits the use of external yards or other exterior facilities for the keeping of animals in connection with the pet grooming use. In this case, the Applicant seeks a

⁹ *Monaco v D C Board of Zoning Adjustment*, 407 A 2d 1091, 1096 (D C 1979) (emphasis added)

¹⁰ *Taylor*, 308 A 2d at 233 (variance to build twenty-seven row houses in district zoned for detached single family houses was a hybrid variance)

¹¹ *Oakland Condominium*, 22 A 3d at 755, *National Black Child Development Institute, Inc v D C Board of Zoning Adjustment*, 483 A.2d 687, 790 (D C 1984) (citing *Clerics of St Viator, Inc v D C. Board of Zoning Adjustment*, 320 A 2d 291, 294 (D C 1974) (drop in number of young men entering the priesthood, making maintenance of large seminary a hardship, not "self-imposed")

¹² *Oakland Condominium*, 22 A 3d at 755 n 4 (citing Patricia E Salkin, *American Law of Zoning*, § 13.18, at 13-57-59 (5th ed 2010))

¹³ *Ass'n for Preservation of 1700 Block of N Street, N W v D C Bd. of Zoning Adjustment*, 384 A 2d 674, 678 (D.C 1978), *A L W, Inc v Dist of Columbia Bd of Zoning Adjustment*, 338 A 2d 428, 431 (D C. 1975)

variance to permit the use of the roof deck, subject to certain conditions, in connection with the animal boarding and pet grooming uses. As discussed below, the Applicant meets the test for approval of a hybrid variance.

1. 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 that occupies the entire lot. The Applicant obtained 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 the pet grooming, animal boarding and animal shelter uses. In 2008, the Applicant started substantial renovations to the interior of the building. (See permits attached as Exhibit F.) While the renovations were underway, the Applicant requested that the contractor expand the work to include the construction of the roof deck. (See correspondence attached as Exhibit G.) The roof deck improvements cost approximately \$35,000,¹⁴ which included the purchase and installation of tile pavers, instead of a less expensive material such as wood or plastic, and the installation of fencing around the roof deck. A copy of the plans for the roof deck improvements are attached as Exhibit H.

Upon the completion of the renovations in 2009, the Applicant expanded its operation to the cellar and second level of the building. The cellar is used for the pet grooming, animal boarding and animal shelter uses. The second floor of the building is used for animal boarding and the animal shelter uses. Dogs are also brought to the roof deck regularly for outdoor

¹⁴ The Change Order from Corbett Construction, dated February 6, 2009, shows a cost of \$39,957. However, that cost includes the fencing and gates for the walkway to the alley in addition to the improvements to the roof deck.

recreation and relaxation

The use of the roof deck is a basic service for the Applicant's business. The Property is located in an area of the city with little, if any, public green or open space to accommodate dogs. Also, as noted previously, the building occupies 100% of the lot. Therefore, without use of the roof deck, there is little opportunity for the dogs to have a healthy amount of time outdoors in the immediate vicinity of the Property. The dogs would be forced to remain indoors with the exception of periodic walks on a leash. In light of these factors, we submit that should the pet grooming, animal boarding and animal shelter uses be deemed appropriate uses for the Property, the use of the roof deck should also be deemed appropriate, subject to conditions that mitigate the impacts of these uses on the surrounding area.

The Applicant has operated with a certificate of occupancy for the use of the first floor of the building only since 2005; and the contractor that handled the building renovations has been unable to confirm that a permit was issued for the construction of the roof deck. Notwithstanding, the District has not issued any notices of violation against the Applicant or the Property. All of these factors were discussed with the ANC and taken into consideration in their decision to support the Application. The Applicant seeks the Board's approval in order to bring the use of the Property into compliance with the District's regulations.

2 The owner would encounter undue hardship if the Zoning Regulations were strictly applied

The Applicant will suffer an undue financial hardship if the variance for the roof deck is not granted. The dogs would have to be taken for walks on a leash constantly throughout the day. Given the number of dogs that the Applicant cares for on a daily basis and the attention required when walking the dogs (including clean up), the Applicant would need to increase the

number of staff in order to maintain a dog walking schedule throughout the day. This would require the Applicant to change its business operations and increase the number of staff, resulting in additional operation costs.

Additionally, if the variance for the roof deck is not granted, the Applicant would be unable to recoup the expenses related to the construction of the roof deck. As noted above, the Applicant expended approximately \$35,000 on the improvements to the roof deck, which was built for the sole purpose of providing outdoor space for the dogs. Given the use of the Property and the layout of the building, there is no other viable use for the roof deck.

Under the "self-created hardship" rule, the undue hardships element must not be the result of the actions undertaken by an applicant knowingly violating the Zoning Regulations.¹⁵ There is a presumption that a self-created hardship exists where an applicant had actual or constructive knowledge of the limitations on the use of the property under the zoning ordinances in effect prior to or at the time of purchase.¹⁶ Based on the facts below, the hardship suffered by the Applicant is not the result of the Applicant knowingly violating the applicable zoning and permitting requirements.

As noted above, the Applicant obtained a certificate of occupancy for the pet store use on the first floor of the building in May of 2005. At the time, there were no Zoning Regulations in place for pet grooming, animal boarding and animal shelter uses. When the Applicant moved into the building, it believed, based on their discussions with the District, that once the new

¹⁵ *Oakland Condominium*, 22 A 3d at 755, *National Black Child Development Institute, Inc. v. D C Board of Zoning Adjustment*, 483 A 2d 687, 790 (D C 1984) (citing *Clerics of St. Viator, Inc. v. D C Board of Zoning Adjustment*, 320 A 2d 291, 294 (D C 1974) (drop in number of young men entering the priesthood, making maintenance of large seminary a hardship, not "self-imposed").

¹⁶ *Oakland Condominium*, 22 A 3d at 755 n. 4 (citing Patricia E. Salkin, *American Law of Zoning*, § 13:18, at 13-57-59 (5th ed. 2010)).

Zoning Regulations for these uses were adopted, the previously authorized pet store use would encompass the pet grooming, animal boarding and animal shelter uses, and those uses would be grandfathered at the Property. This is why the Applicant expended a considerable amount of money renovating both the interior and exterior of the building. As it relates to the construction of the roof deck, nothing in the correspondence between the contractor and the Applicant indicates that the Applicant knew that the roof deck was constructed without the proper permits. Like nearly all property or business owners that are not in development or construction, the Applicant relied on the contractor to handle of the permitting issues related to the building renovations. The contractor was reputable and permits were pulled for the other building renovations.

3. 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. To further mitigate its impact on the surrounding commercial and residential properties, the Applicant agrees to the following conditions related to the use of the roof deck:

- 1 The approval of the use of the roof deck shall be for a period of 5 years. At the end of the 5 year period, the Applicant shall return to the ANC and BZA to seek renewed approval for the continued use of the space.
- 2 No animals shall be permitted on the roof deck between the hours of 6:00 p m and 9:00 a m
- 3 No more than five animals shall be permitted on the roof deck at any one time.
4. A Wagtime employee shall be on the roof deck at all times where there are

animals present

5. A Liaison Committee shall be established to address any neighborhood concerns regarding the operation of the site. The names of the committee members shall be provided to the ANC within 60 days of the approval of the application by the BZA. The committee shall include a representative from Wagtime and a neighborhood representative selected by the ANC commissioner in whose district the business is located.
6. Starting 6 months after the BZA's approval of the application, the Liaison Committee shall begin review of the Applicant's operation at the property and report its findings to the ANC. The review period shall extend for the entire 5 year period of the variances. If at any time during the 5 year period of the variance, the ANC finds that the conditions of the variance are not being met, the ANC shall recommend changes to the variance agreement to the BZA, up to and including the complete revocation of the variance.

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, approximately 45 of whom are District residents; and the restored building façade contributes to the beautification of the neighborhood. 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. 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 a photo attached as Exhibit D, the building at 1230 9th Street is open at the rear.

VII.
RESPONSE TO STATEMENT IN OPPOSITION

In his Statement in Opposition, dated November 26, 2012, 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) Originally, the Application did not contemplate the use of the roof deck; therefore, no variance of the spacing requirement from residential use was necessary. The Application, as amended, does request variances to permit the use of the roof deck. (3) As depicted on the floor 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. (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 approvals to permit the animal boarding, pet grooming and animal shelter uses and variances to permit the use of the roof deck. Accordingly, the Applicant respectfully requests that the Board approve this Application

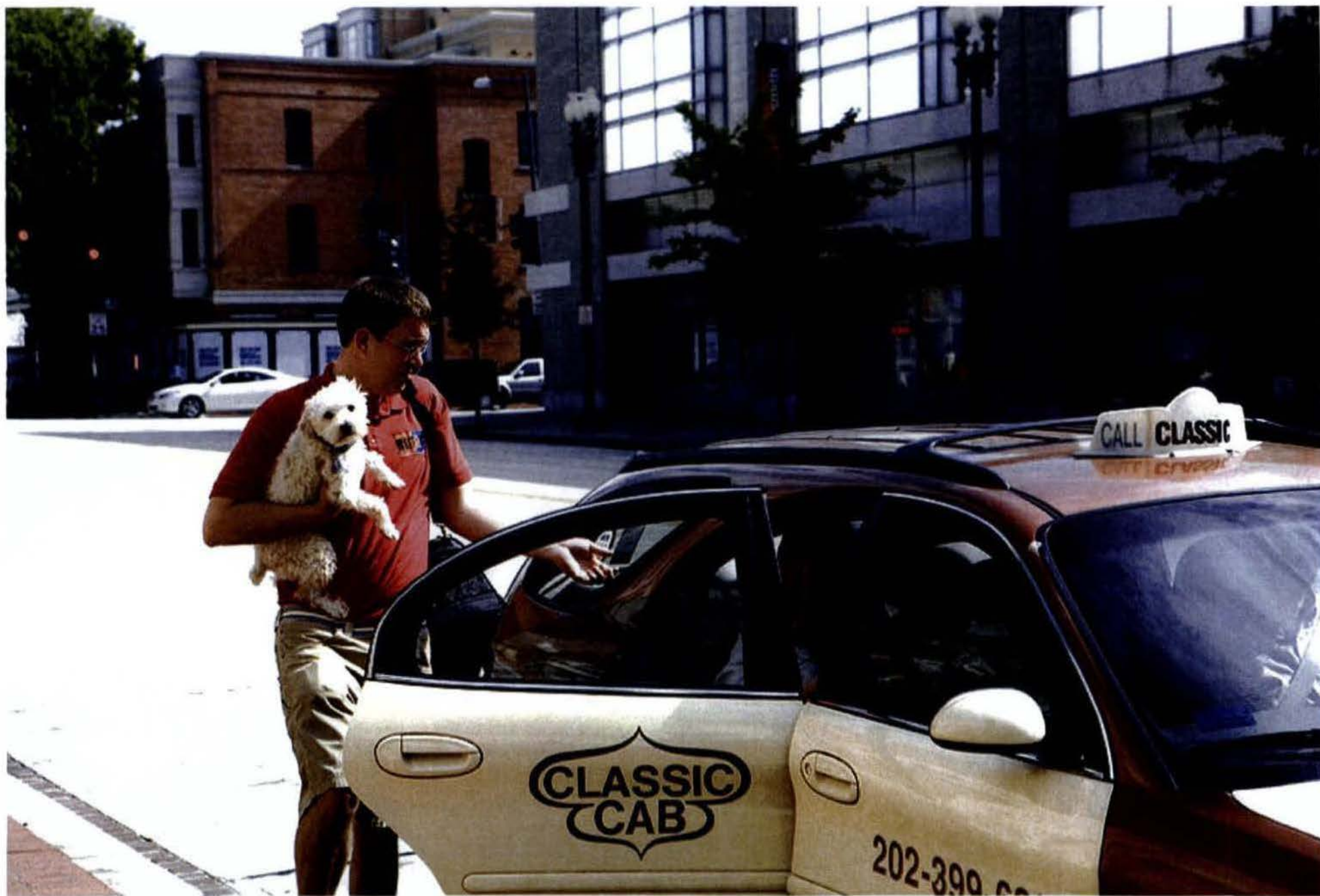
Respectfully submitted,

HOLLAND & KNIGHT, LLP

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

Exhibit A

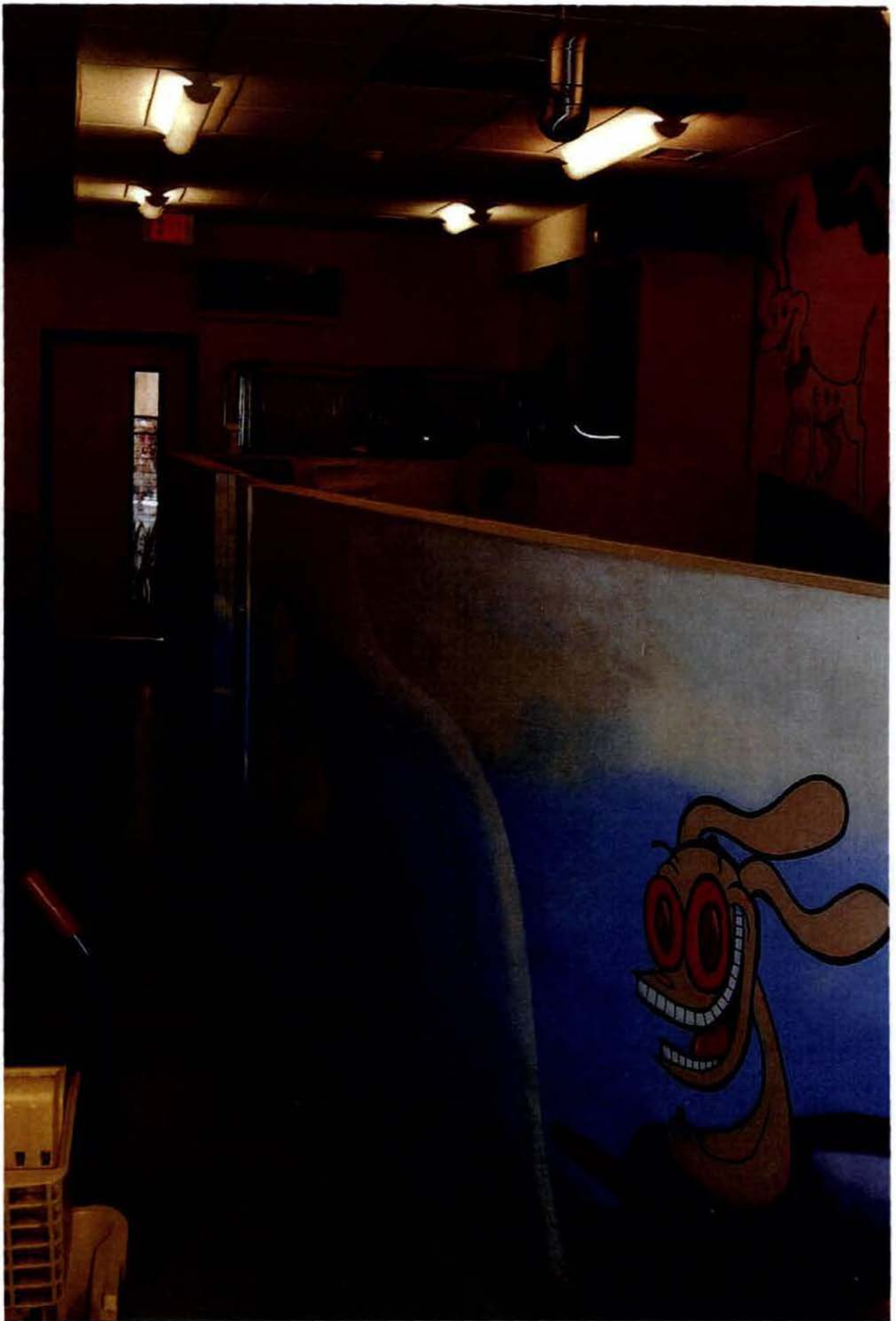




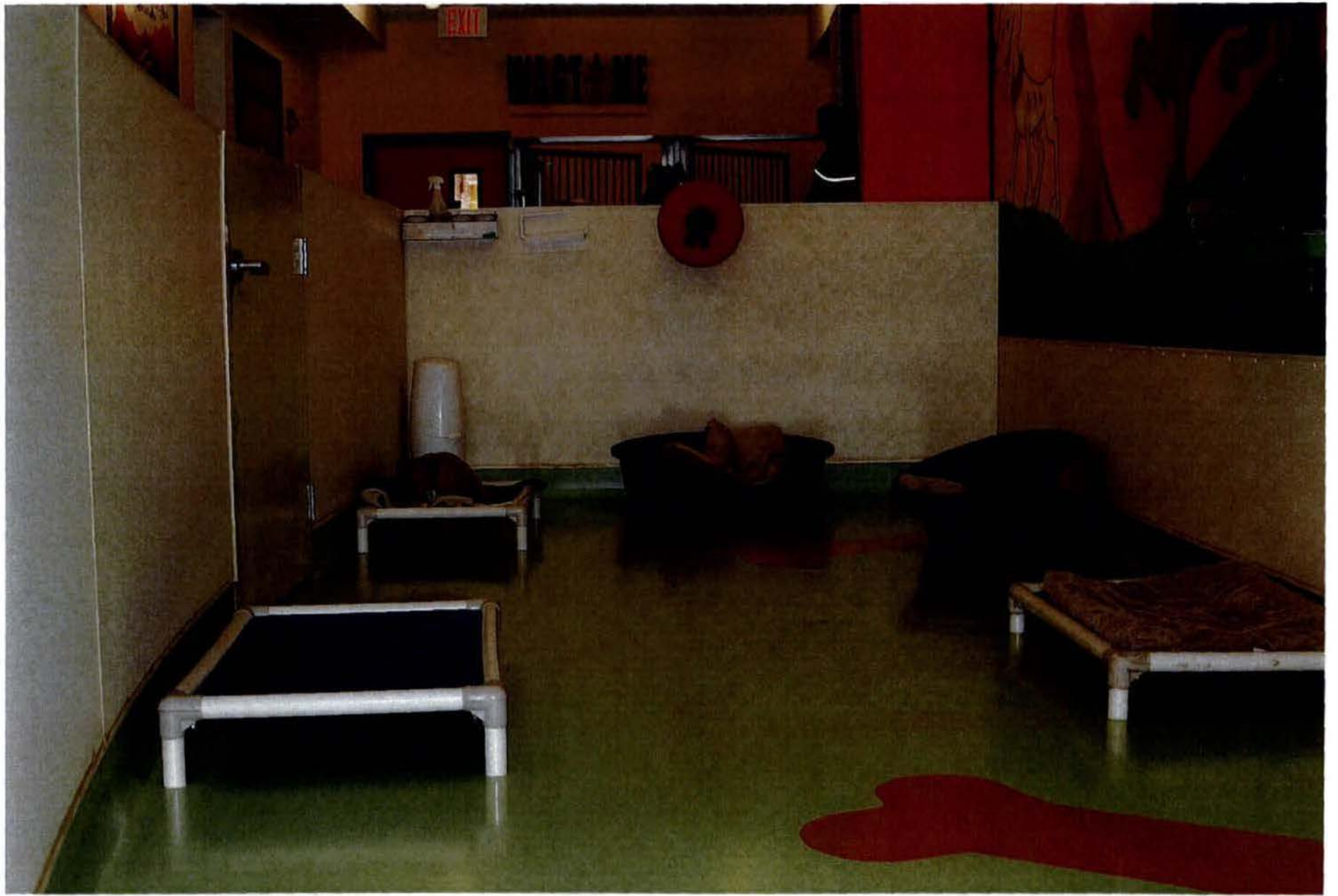




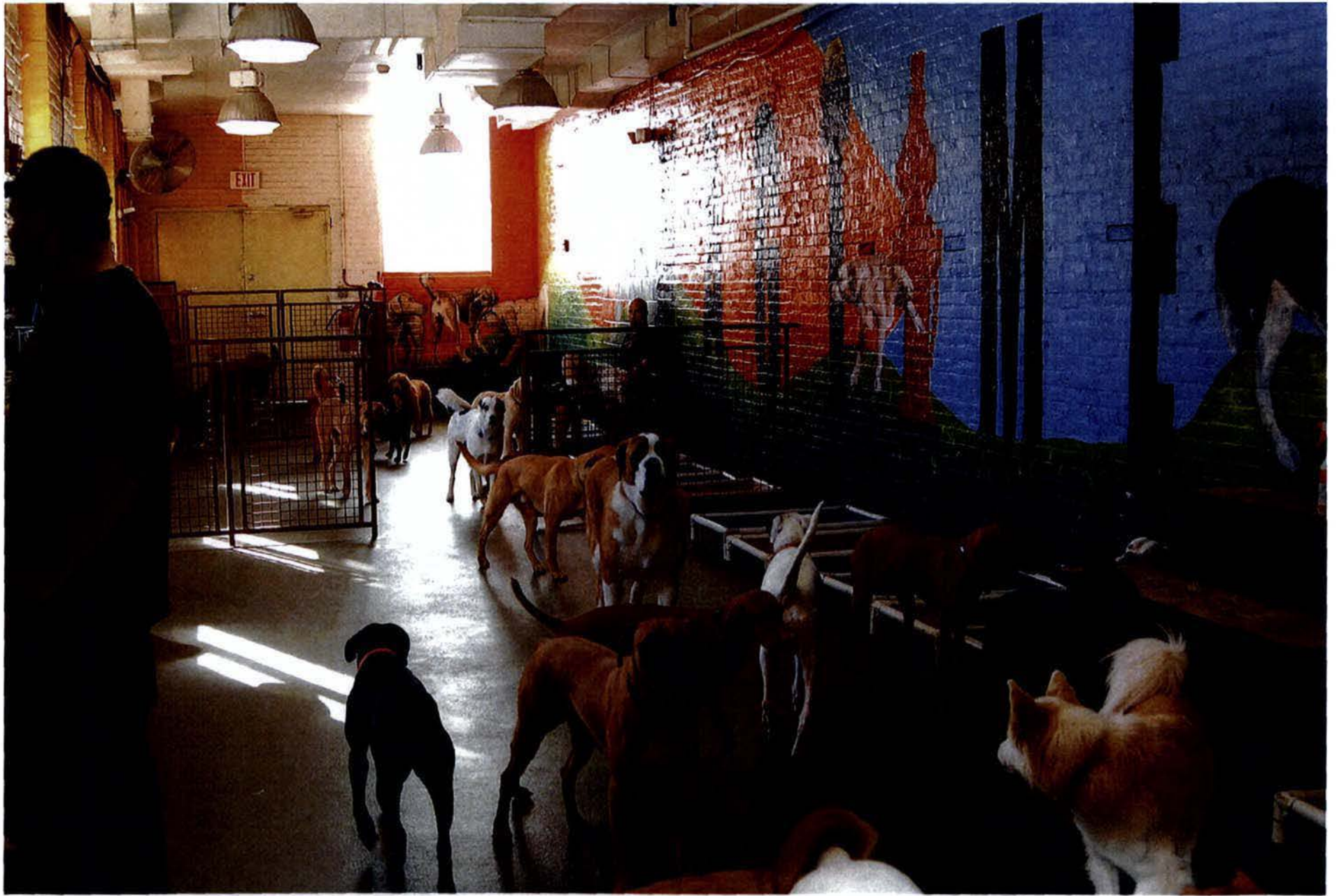
















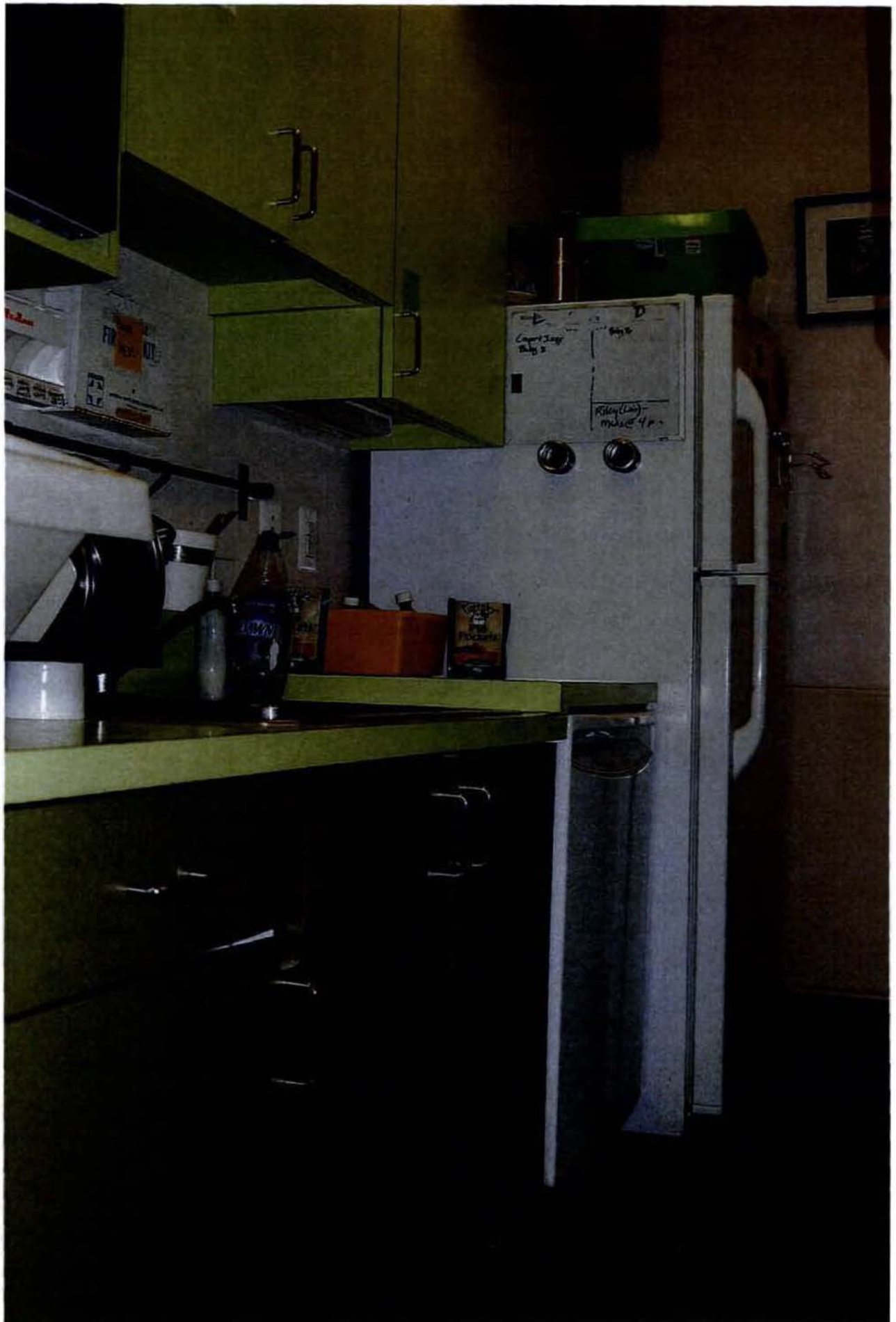


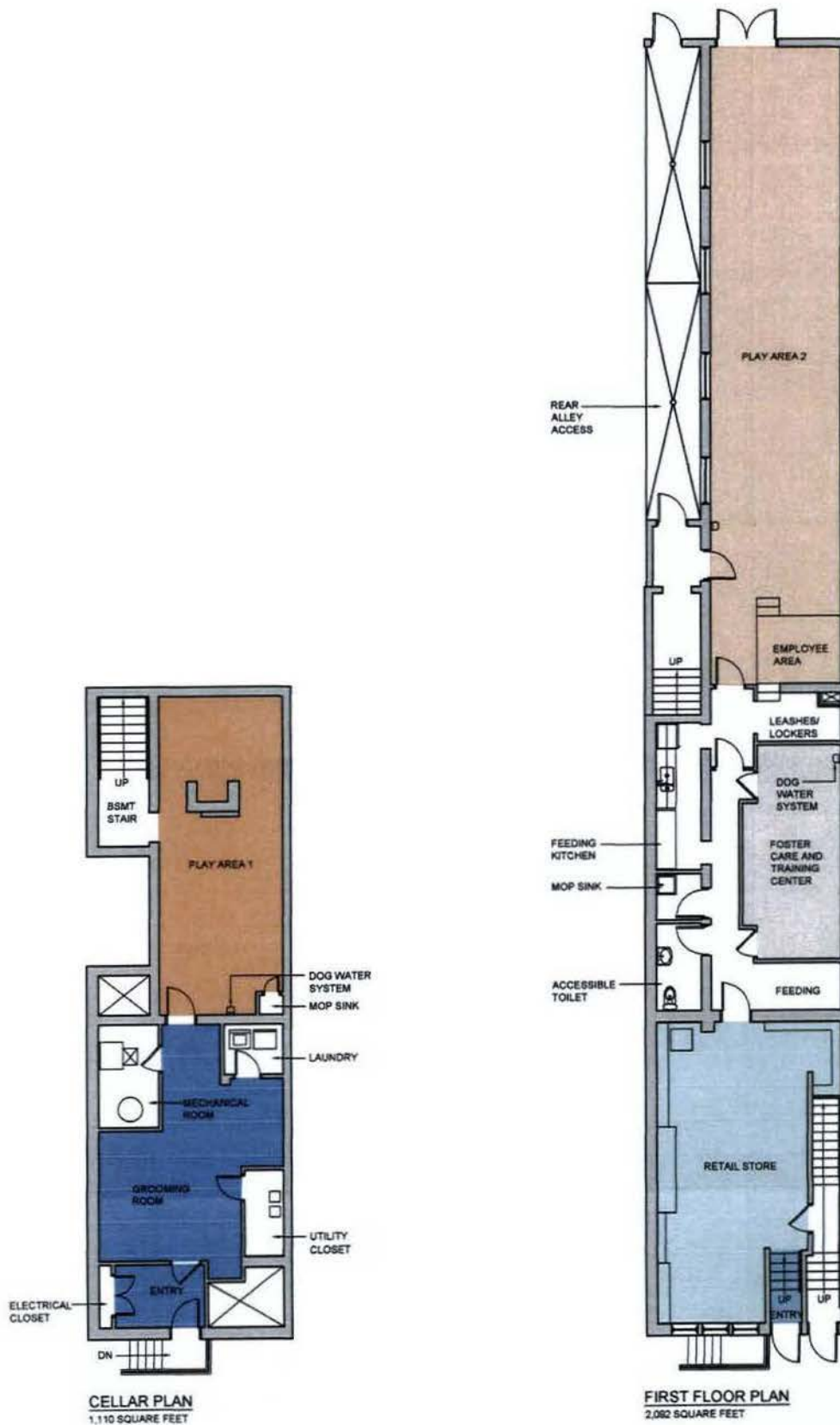
Exhibit B



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

WAGTIME DOG DAYCARE AND SHELTER
1232 9TH STREET NW WASHINGTON DC

FOUNDRY

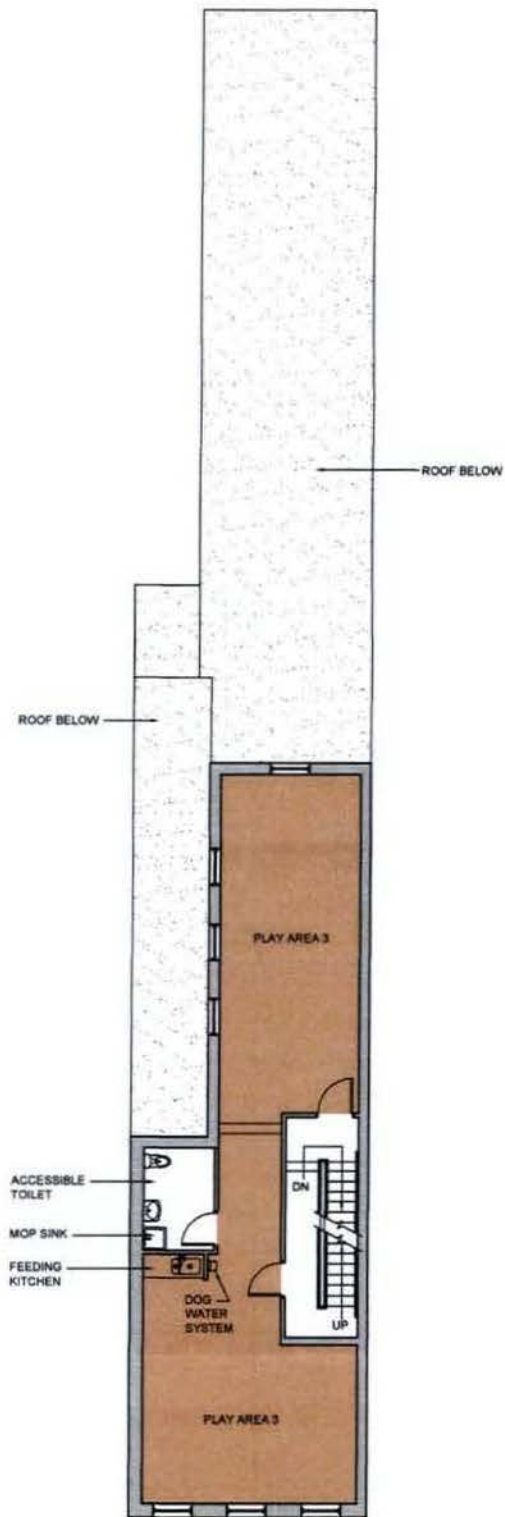


SCALE: 3/32" = 1'-0"

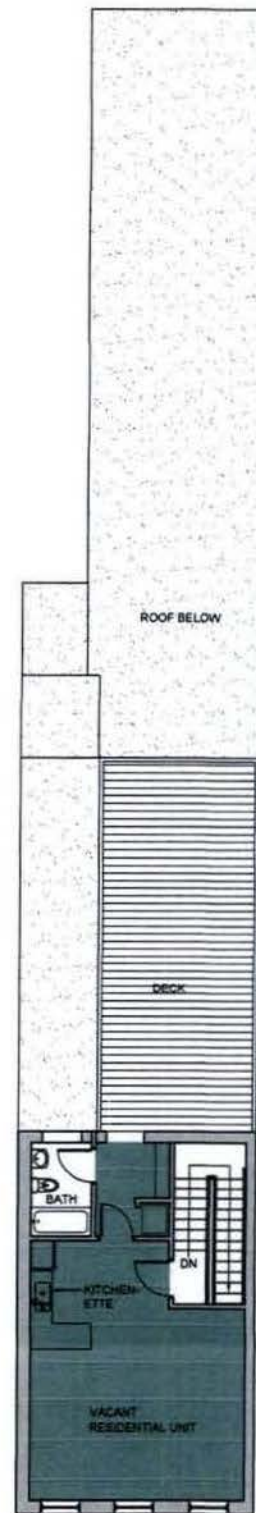
WAGTIME DOG DAYCARE AND SHELTER

1232 9TH STREET NW WASHINGTON DC

FOUNDRY



SECOND FLOOR PLAN
1,000 SQUARE FEET



THIRD FLOOR PLAN
602 SQUARE FEET

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

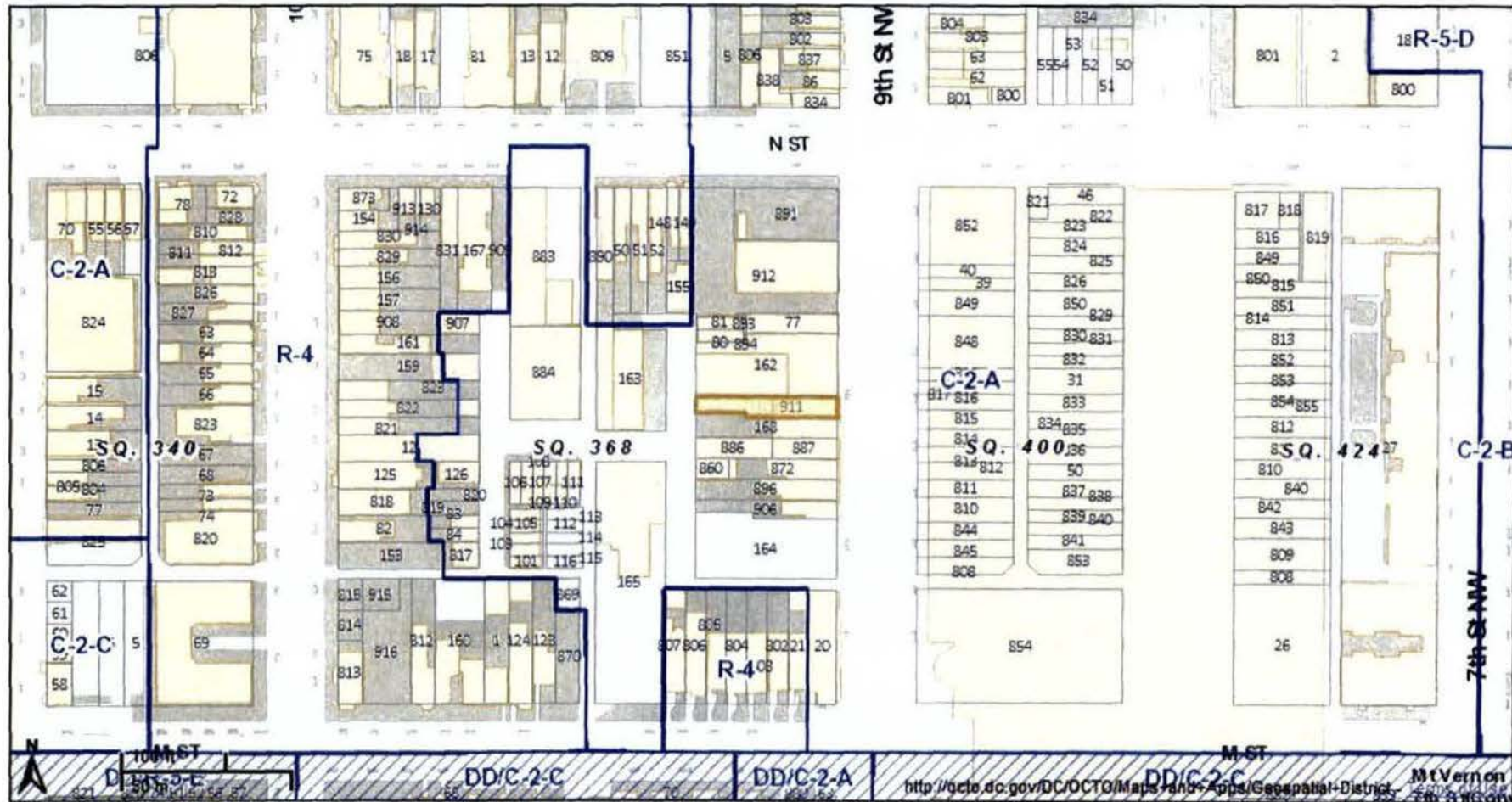
Exhibit C



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

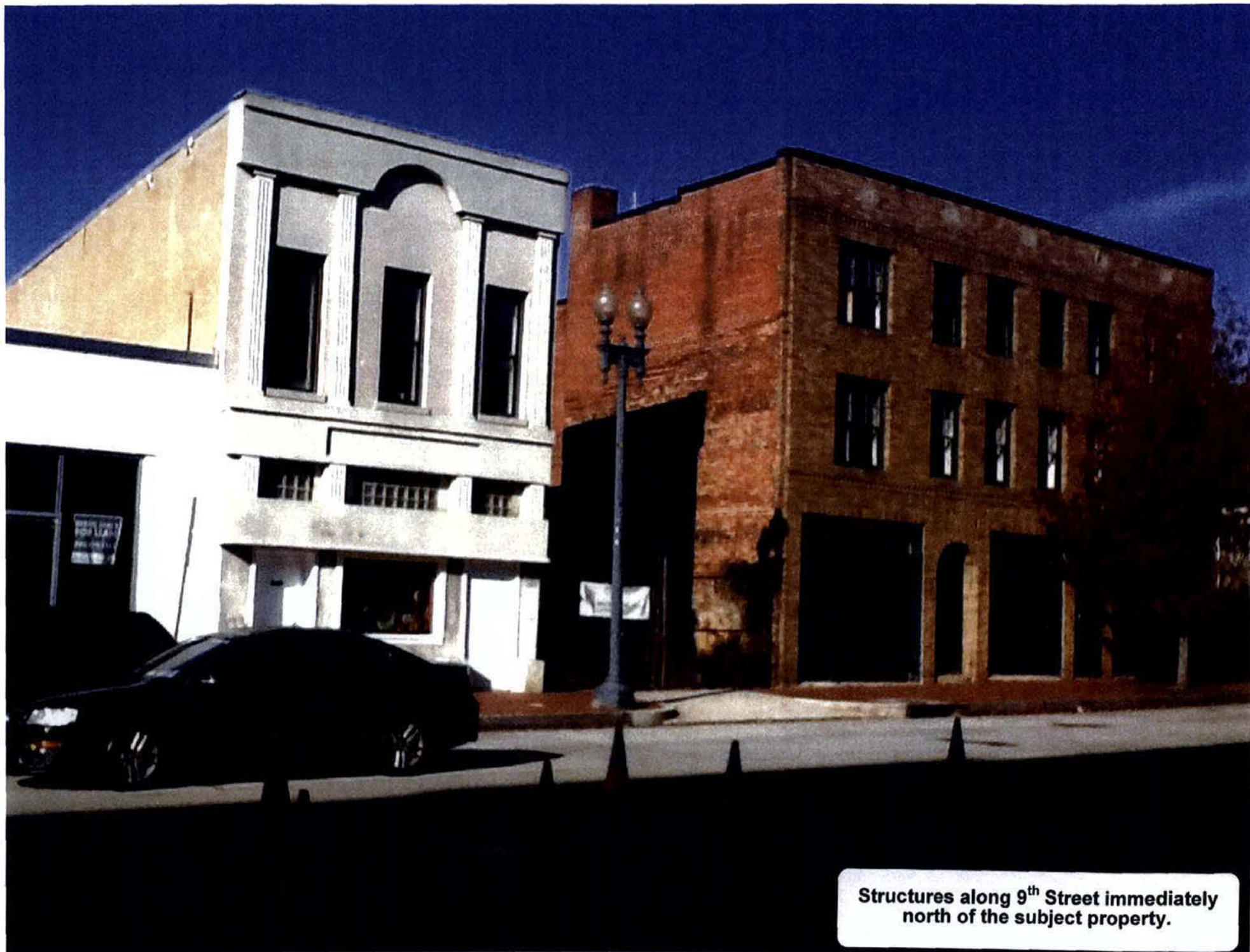
To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.

Exhibit D





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



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



ADVISORY NEIGHBORHOOD COMMISSION 2F
Government of the District of Columbia
5 Thomas Circle, NW, Washington, D.C. 20005
Telephone: (202) 667-0052 Fax: (202) 667-0053 www.anc2f.org

Commissioners

2F01 Peter Lallas
2F02 Walt Cain
2F03 Chris Linn
2F04 John Fanning
2F05 Jim Lamare, *Secretary*
2F06 Greg Melcher
2F07 Matt Raymond, *Chairman*
2F08 Matt Connolly, *Vice Chairman/Treasurer*
Jennifer Dusek, *Executive Director*

February 14, 2013

(Via email only to bzasubmissions@dc.gov)

Board of Zoning Adjustment
441 4th Street, NW
Room 2108
Washington, DC 20001

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

Dear Members of the Board:

On February 6, 2013, at its regularly scheduled and duly noticed public meeting, at which a quorum was present and acting throughout, Advisory Neighborhood Commission 2F (the ANC) voted unanimously (8-0) to support Board of Zoning Adjustment (BZA) case number 18474 for the Property (Property) located at 1232 9th St. NW.

The application comprises a variance from Sections 735.3, 736.5, and 739.6 of the Zoning Regulations in order to permit the use of the one roof deck at the Property in connection with animal boarding, pet grooming, and animal shelter uses.

The deck for which the Applicant seeks a variance was constructed in 2008 when the Applicant purchased the property at 1232 9th St. and converted it for use as an animal grooming and boarding business. During the course of the renovations the Applicant applied for permits to alter the inside of the building, as well as permits to repair exterior windows. However, the Applicant failed to apply for a permit from DCRA to construct the deck for which the variance is now sought and failed to have it inspected by DCRA after construction.

Notwithstanding the absence of the proper permits, the ANC supports the requested relief upon the following conditions, which the Applicant has agreed to:

1. The approval of the use of the roof deck shall be for a period of 5 years. At the end of the 5 year period, the Applicant shall return to the ANC and BZA to seek renewed approval for the continued use of the space.

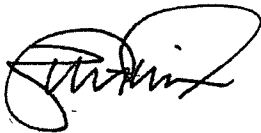
Serving Logan Circle, Thomas Circle, Old City, Blagden Alley, Franklin Square, and parts of Shaw and Downtown

Connect with us: www.ANC2F.org • www.facebook.com/ANC2F • www.twitter.com/ANC2F

2. No animals shall be permitted on the roof deck between the hours of 6:00 p.m. and 9:00 a.m.
3. No more than five animals shall be permitted on the roof deck at any one time.
4. A Wagtime employee shall be on the roof deck at all times when there are animals present.
5. A Liaison Committee shall be established to address any neighborhood concerns regarding the operation of the site. The names of the committee members shall be provided to the ANC within 60 days of the approval of the application by the BZA. The committee shall include a representative from Wagtime and a neighborhood representative selected by the ANC commissioner in whose district the business is located.
6. Starting 6 months after the BZA's approval of the application, the liaison committee shall begin review of the Applicant's operation at the property and report its findings to the ANC. The review period shall extend for the entirety of the 5 year period of the variance. If at any time during the 5 year period of the variance the ANC finds that the conditions of the variance are not being met, the ANC shall recommend changes to the variance agreement to the BZA, up to and including the complete revocation of the variance.

After careful scrutiny and consideration, the ANC therefore urges the BZA, pursuant to District of Columbia Code §1-309.10, to accord great weight to its advice and grant the above referenced variance relief, pursuant to §3103.2 of the Zoning Regulations (11 DCMR §3103.2).

Respectfully Submitted,



Walt Cain
Commissioner, ANC 2F
Chairman, Community Development Committee

cc: *(via email only)*
ANC 2F Commissioners
Jennifer Dusek, Executive Director, ANC 2F
Leila Batties, Holland & Knight

Exhibit F



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St No:	1232	St Name:	9TH	Suffix:	ST	Qu
Zip:		Square	368	Suffix:		Lo
Lot 3:		Lot Ext:		Cluster:		W
Parcel Key:		Address:	1232 9TH ST NW			

Building Permit

Rec Type:	BUILDING	App. Date:		Issued Date	01/23/2008	File
Bldg Permit No	114992	Permit Type:	DEMO	Flrs:		Un
Use Group:		Use:				
Permit Fee:	562.5	Valuation:	0	Filing Fee	0	
Owner Name:	RONLES LLC					
Agent	OFER KHAL 202-498-9664					
Address:		City:		St		
Comments:	DEMOLITION PLANS ATTACHED.					

Record No:	107428	Added Date:		Updated By:		Up
Added By						Da



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Zip:		Square	368	Suffix:		Lo
Lot 3:		Lot Ext:		Cluster:		Wa
Parcel Key:		Address:	1232 9TH ST NW			

Building Permit

Rec Type:	BUILDING	App. Date:		Issued Date	01/23/2008	File
Bldg Permit No	114992	Permit Type:	DEMO	Flrs:		Un
Use Group:		Use:				
Permit Fee:	562.5	Valuation:	0	Filing Fee	0	
Owner Name:	RONLES LLC					
Agent	OFER KHAL 202-498-9664					
Address:		City:		St		
Comments:	DEMOLITION PLANS ATTACHED.					

Record No:	107428	Added Date:		Updated By:		Up Da
Added By						



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St Name: 9TH

Suffix: ST

Zip:

Square 0368

Suffix: 0000

Lot 3:

Lot Ext:

Cluster:

Parcel Key: 18744

Address: 1232 9TH ST NW

Building Permit

Rec Type: PLUMBING

App. Date: 08/04/2008

Issued Date 08/05/2008

Bldg Permit No

Permit Type:

Flrs:

Use Group:

Use:

Permit Fee: 492

Valuation:

Filling Fee

Owner Name: LESRON LLC

Agent J E BARRY P & H

Address: P O BOX 51141

City: WASHINGTON

Comments:

Record No: 117360

Added By LHACKNEY

Added Date: 8/5/2008

Updated By:



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Zip:		Square	0368	Suffix:	0000	Lo
Lot 3:		Lot Ext:		Cluster:		We
Parcel Key:	18744	Address:	1232 9TH ST NW			

Building Permit

Rec Type:	PLUMBING	App. Date:	08/04/2008	Issued Date	08/05/2008	File
Bldg Permit No		Permit Type:		Flrs:		Un
Use Group:				Use:		
Permit Fee:	492	Valuation:		Filing Fee		
Owner Name:	LESRON LLC					
Agent	J E BARRY P & H					
Address:	P O BOX 51141	City:	WASHINGTON	State		
Comments:						

Record No:	117360				
Added By	LHACKNEY	Added Date:	8/5/2008	Updated By:	Up Da



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Zip:		Square	0368	Suffix:	0000	Lo
Lot 3:		Lot Ext:		Cluster:		We
Parcel Key:	18744	Address:	1232 9TH ST NW			

Building Permit

Rec Type:	BUILDING	App. Date:	03/21/2005	Issued Date	04/04/2005	File
Bldg Permit No	B471913	Permit Type:	ALT/REP	Firs:	3+B	Un
Use Group:	GROUP B			Use:	RETAIL	
Permit Fee:	170	Valuation:		Filling Fee	33	
Owner Name:	SHAW CENTRE, LLC					
Agent	JAMES F. SMITH MR. PERMIT, L.L.C. AGENT					
Address:	1339 14TH ST NW			City:	WASH	Sta
Comments:	ALTERATION AND REPAIR TO EXIST'G 1ST FL. OF RETAIL PET STORE. MECH. SYSTE					

Record No:	32876				
Added By	AMERRITT	Added Date:	4/7/2005	Updated By:	JSMITH



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Suffix: ST

Zip:

Square 0368

Suffix: 0000

Lot 3:

Lot Ext:

Cluster:

Parcel Key: 18744

Address: 1232 9TH ST NW

Building Permit

Rec Type: BUILDING

App. Date: 11/30/2004

Issued Date 12/03/2004

Bldg Permit No B468099

Permit Type: ALT/REP

Firs: 3+B

Use Group: GROUP B

Use: OFFICE

Permit Fee: 230

Valuation: 10000

Filling Fee

Owner Name: SHAW CENTRE LLC

Agent CLIFORD DIXON

Address:

City:

Comments: INTERIOR REPAIRS & FINISH. IN HISTORIC DISTRICT INTERIOR WORK ONLY.

Record No: 24809

Added By AMERRITT

Added Date: 12/3/2004

Updated By:



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Suffix: ST

Zip:

Square 0368

Suffix:

Lot 3:

Lot Ext:

Cluster:

Parcel Key:

Address: 1232 9TH ST NW

Building Permit

Rec Type: BUILDING

App. Date:

Issued Date 05/30/2008

Bldg Permit No 115796

Permit Type: Alteration and Repai

Firs:

Use Group:

Use:

Permit Fee: 3267.6

Valuation: 152000

Filing Fee 0

Owner Name: Ronless, LLC

Agent TOM HROMADA RAPID PERMIT SERVICE 703-759-9170

Address:

City:

Comments: Exterior facade repairs to include trim & cornice repairs, window & storefront replacem

Record No: 114517

Added By

Added Date:

Updated By:



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Quad Name: NW



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Zip:		Square	0368	Suffix:	0000	Lo
Lot 3:		Lot Ext:		Cluster:		We
Parcel Key:	18744	Address:	1232 9TH ST NW			

Building Permit

Rec Type:	PLUMBING	App. Date:	04/27/2005	Issued Date	04/27/2005	File
Bldg Permit No	B471913	Permit Type:	REPLACEMENT	Firs:		Un
Use Group:				Use:		
Permit Fee:	20	Valuation:		Filling Fee		
Owner Name:	SHAW CENTRE, L.L.C.					
Agent	MAGNOLIA PLBG					
Address:		City:				St
Comments:						

Record No:	34391					
Added By	LHACKNEY	Added Date:	4/28/2005	Updated By:		Up Da



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St Name 9TH

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St Type ST

Quad Name NW

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Address

St No	1232	St Name	9TH	Suffix	ST	Qu
Zip		Square	0368	Suffix	0000	Lo
Lot 3		Lot Ext		Cluster		We
Parcel Key	18744	Address	1232 9TH ST NW			

Building Permit

Rec Type	ELECTRICAL	App Date	04/27/2005	Issued Date	04/27/2005	File
Bldg Permit No		Permit Type		Firs		Un
Use Group				Use		
Permit Fee	33	Valuation		Filing Fee		
Owner Name	STEVE GEORGIKIS					
Agent	TDK CUSTOM WIRING					
Address	4711 DEANWOOD DR.	City	CAPITOL HEIGHTS	St.		
Comments						

Record No	34436				
Added By	SWILLIAM	Added Date	4/27/2005	Updated By.	Up Da



DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS

Department of Consumer and Regulatory Affairs (DCRA)

Exhibit G



February 6, 2009

Ms. Lisa Lamp
Interplan Incorporated
5185 MacArthur Boulevard, NW Suite 200
Washington, DC 20016

Dear Ms. Lamp

Re: Wagtime 1232 9th Street, NW
Corbett Project # 9225
Proposed Change Order # 30 Roof pavers and fences

We hereby submit our cost in the amount of **\$39,957** to perform additional work on the owner's behalf as described below and shown on the attached breakdown.

Furnish and install 950 SF of Tile Tech pavers-Flat Natural- on pedestals per SKA 32.
Furnish and install new chain link fencing with top, middle and bottom rails per SKA 32.
Provide fence mounting posts made of schedule 40 pipe in lieu of 4 X 6's as shown on SKA 32.
Fence posts will be welded to plates that will attach to the LVL's below.
Build new wooden steps from lower roof to upper roof.
Provide flashing at roof penetrations.
Provide approximately 60 lf of 6' high chain link fence with ¹/₂ chain link gates in the alley. *! HM draw at back*
This work has not been performed and will not proceed without your written authorization.

Please indicate your acceptance of this proposal by returning a signed copy.

Sincerely,

Mary Neff
Sr. Project Manager

cc: Leslie Schreiber

ACCEPTED FOR: LESRON, LLC

By:

Date: 2/11/09

CORBETT

Project Name: Wagtime

Proposed Change Order # 30 Roof pavers and fences

Breakdown of Costs

Item #	Description	Cost
	General Conditions	\$0 00
	Temporary Protection/Miscellaneous materials	\$0 00
	Trash Removal	\$300 00
	Temporary Labor	\$0 00
	Testing and Inspections	\$0.00
	Tool, equipment rentals	\$0 00
	Copy and courier expense	\$0 00
	Shoring	\$0 00
	Demolition	\$0.00
	Tile Tech pavers and pedestals	\$21,500 00
	Fencing at alley with two chain link gates and roof with one chain link gate	\$12,545 00
	Concrete	\$0 00
	Masonry	\$0.00
	Misc metals, structural steel	\$0 00
	Carpentry Cut roof for posts and build steps	\$1,200 00
	Millwork	\$0 00
	Caulking and waterproofing	\$0 00
	Roofing Flash and seal 19 post penetrations	\$2,150 00
	Doors, Frames, Hardware	\$0 00
	Glass and glazing	\$0 00
	Drywall and Acoustical Ceilings	\$0 00
	Carpeting, vct and vinyl base	\$0 00
	Ceramic tile, stone	\$0 00
	Paint and wallcovering	\$0.00
	Fabric panels	\$0.00
	Window coverings	\$0.00
	Specialties	\$0 00
	Toilet accessories, partitions	\$0.00
	Appliances	\$0 00
	Elevator work, call button relocation	\$0 00
	HVAC	\$0 00
	Plumbing	\$0 00
	Sprinkler	\$0 00
	Electrical	\$0 00
	Other	\$0.00
	Subtotal	\$37,695 00
	Fee	\$2,261 70
	Total	\$39,956 70

Job No. _____
Order No. _____
Customer No. _____
Date 2-3-09

8545 Edgeworth Drive • Capitol Heights, Maryland 20743-3741
1-800-486-GATE (Outside Metro Area) • Fax (301) 336-0743
www.longfence.com

BUYER: CORBETT CONSTRUCTION		ATTENTION MARY NEFF	
STREET: 125 N. WASHINGTON ST.		CITY: FALLS CHURCH	STATE: VA ZIP: 22046
JOB NAME: ROOF TERRACE		TEL: 703-534-2672	FAX: 703-534-9411
ADDRESS: 1232 9TH ST. NW DC		COUNTY DIST OF COL	

Long Fence Company, Inc., herein referred to as Seller, proposes to furnish and install:

- INSTALL APPX 60' OF 6' HIGH CHAIN LINK FENCE WITH TWO 3' WALK GATES. PER FIELD MEASUREMENTS AND DRAWINGS.

- INSTALL APPX 78' OF 6' HIGH CHAIN LINK FENCE WITH ONE 3' SINGLE WALK GATE.

FENCE SUPPORTS will be ~~4x6~~ 4x6" ACQ pressure treated lumber. They will be thru bolted 40 bolts to the LVLs. (4) TOTAL FOR EACH POST. FENCE will HAVE TOP, MIDDLE AND BOTTOM RAILS. RAILS will be connected with a wood brace plate RAIL END.

Exclusions: Engineering, Survey/Stakeout, Clearing, Grading, Permits, Spoils removal, Electrical and Seeding

Seller proposes to furnish labor, equipment and materials — complete in accordance with the above specifications for the net cash sum of:

(\$ ~~460~~) 12 545

(\$ 5730) deposit with order, net cash balance of (\$ 5730) due on date of substantial completion.

Buyer to provide engineering, control joints for elevation, horizontal and vertical alignment, determination of property lines, access to work area, clearing, restoration of finished grade, re-seeding, on-site disposal area for spoils, core drilling, setting of Inserts Location of underground utilities or obstructions that are not identified through the local one-call service are to be marked by Buyer Seller is held harmless and indemnified against claims resulting from damages to unidentified utilities The work will be performed in compliance with industry standards and guaranteed against defects in materials and workmanship for one year This contract embodies the entire understanding between the parties There are no verbal agreements or representations in connection therewith. Estimate good for 30 days Any alterations from the above specifications or estimated quantities involving additional costs is extra to the contract All materials shall remain property of Seller until the contract is paid in full If balance is not paid in accordance with this agreement, purchaser agrees to all costs of collection including court costs and reasonable attorney's fees Cost of permit is not included in the price.

LONG FENCE COMPANY, INC. by Mark Donoway MARK DONOWAY License No.

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature: _____

Date: _____

Print Name and Title _____

Purchase Order No.: _____

Note: Quoted price is based on _____ Long Fence mobilization(s) to the site.

DISTRIBUTION White – Original Copy • Yellow – Customer's Copy • Pink – Office Copy

Form # 603 (Rev. 8/2005)

Over 50 Years of Excellence

 J.R. Roofing & Siding Co., Inc.
7311 Highland Street, Building 8
Springfield, Virginia 22150
(703) 569-2028
FAX (703) 569-0376

February 4, 2009

Mary B Neff
Corbett Construction
2810 Dorr Avenue
Fairfax, Virginia 22031
(703) 534-2672 x103 Fax (703) 534-9411

SUBJECT: Paver Installation
Wagtime
1232 9th Street, NW
Washington, DC

Dear Ms. Neff:

J.R. Roofing & Siding is pleased to provide you with the following proposal for the above referenced project.

We propose to furnish the labor and material to install pavers on pedestals and flash posts at the above referenced location as follows:

- Furnish and install flashing for nineteen (19) post;
 - Furnish and install 16" x 16" x 1 3/8" (flat natural) pavers by Tile Tech Pavers;
 - All pavers to be installed on pedestals;
 - Area to be covered Back roof and small roof between building an area of 950 SF;
- | | |
|-----------|-------------|
| Pavers: | \$21,500.00 |
| Flashing: | \$2,150.00 |

Any questions please contact me.

Sincerely,
J.R. ROOFING & SIDING COMPANY, INC.

John Rihaly

John Rihaly
President

Acknowledged and accepted

Date

Mary Neff

From: Mary Neff
Sent: Tuesday, February 10, 2009 12:19 PM
To: 'Lisa M. Lamp'
Cc: Leslie Schreiber
Subject: RE: Roof pavers and fencing

Phil
2/11
202 216-0556

Lisa, Leslie
In no particular order

- 1 Cost breakdown on the \$21,500 cost roof pavers included in PCO #30
Tile Tech pavers, pedestals, sales tax, and shipping quoted by Tile Tech to JR Roofing \$8850
PVC piping for extensions \$300
Subtotal Materials \$9150
Crane rental \$1000
Layout, install, cut borders, level finished surface and punch out \$8450
Subtotal Costs \$18,600 Overhead 10% = \$1860 Profit 5% = \$1023 Total \$21483
Round to \$21,500
- 2 We would only raise the deck height 2' if we went to a wood deck. The pedestal system does not involve raising the height
- 3 It may be cheaper to build a wood deck but as I stated last week I do not know for certain. I would need to get cost information from the steel erector and the lumber supplier. We would have to get Phil's design blessed by the Architect and Engineer. (Again more time for each vendor)
4. The roofer WILL NOT WARRANT patching at wood posts through the roof. This is why we changed to metal posts
5. At this point I have directed Phil to move with all speed toward finishing the project inside as contracted. This may well increase the cost of the eventual roof terrace as some work such as insulation will have to be redone. I do not know what else to do for any of us. Schedule delays are as real and costly as the terrace design

I will see you both tomorrow

Thanks,
Mary
Mary B. Neff
Sr. Project Manager
Corbett Construction
703-534-2672 x118
703-534-9411 fax

From: Lisa M. Lamp [mailto:LLamp@interplaninc.com]
Sent: Tuesday, February 10, 2009 11:19 AM
To: Leslie Schreiber
Cc: Mary Neff
Subject: RE: Roof pavers and fencing

Hello, Leslie

While I agree that the costs seem high I am not sure how we can look at cost saving alternatives. Firstly you need to realize that the proposed costs are for the deck AND fencing. The cost for the fencing is not insubstantial. Also, there are restrictive existing conditions that limit our options, such as the building's wood frame roof construction and limited access to the roof area. The only other possible construction material that I can think of is wood, for the entire structure of the roof deck. From conversations with Phil yesterday (after he had been talking to the roofer) they do not want to use wood posts for the fences because the flashing around these roof penetrations will be hard to maintain over time. The roofer also wants to elevate the roof deck to be 2-feet above the roof surface, so that when/if roof repairs are needed they can be done more easily, and without having to remove the roof deck tiles. I don't like this solution because it increases the height of the deck, meaning more

02/10/2009

steps to access it and taller fences / fence posts (more materials just add cost to the project).

I think we need to talk through the roof deck, and any possible alternative designs, at tomorrow's meeting

Lisa

Lisa M. Lamp, AIA, LEED AP
Principal
Interplan Inc
5185 MacArthur Blvd , NW - suite 200
Washington, DC 20016
p 202-362-5300 x 109
f 202-686-9273
c 202-669-7185
e llamp@interplaninc.com

From: Leslie Schreiber [mailto:schreibe@cox.net]
Sent: Tuesday, February 10, 2009 9:42 AM
To: Lisa M. Lamp; Mary Neff
Subject: Re: Roof pavers and fencing

Hi,

Just looked at the cost estimates and they are quite high. I really think at this point, with the cost overruns we have already, that we need to look at some cost savings here. Thanks. Les

----- Original Message -----

From: [Lisa M. Lamp](mailto:llamp@interplaninc.com)
To: [Mary Neff](mailto:MNeff@corbettco.com)
Cc: [Leslie Schreiber](mailto:schreibe@cox.net)
Sent: Friday, February 06, 2009 5:21 PM
Subject: RE: Roof pavers and fencing

Hello, Mary.

I want to better understand the roof terrace cost in your CO proposal. I can't get any perspective on the \$21,000 fee proposed for the work. Over the phone I was quoted a material cost of \$7.50 per SF. At 950 SF that is \$7,125. Can you please break down that cost so that we can understand 1) cost of tiles, 2) cost of pedestal support system, and 3) cost of labor to install? Thank you

Lisa

Lisa M. Lamp, AIA, LEED AP
Principal
Interplan Inc
5185 MacArthur Blvd , NW - suite 200
Washington, DC 20016
p 202-362-5300 x 109
f 202-686-9273
c 202-669-7185
e llamp@interplaninc.com

From: Mary Neff [mailto:MNeff@corbettco.com]
Sent: Friday, February 06, 2009 2:52 PM

02/10/2009

To: Lisa M. Lamp; Leslie Schreiber
Cc: Phil Spilker
Subject: Roof pavers and fencing
Importance: High

Leslie,

I have received 3 bids for fencing at the alley and roof, and 2 bids for roof pavers. The bids are within 5% of one another for the pavers and 10% for the fencing. All are over the allowance/budget I have been carrying. The cost to install the fence and pavers at the roof and the fence at the alley is \$39,957 I have attached the PCO with back up for your review

I have also attached a copy of the PCO Log so you can see where the costs are.

It may be possible to save money on the roof terrace by going to a wood/plastic deck BUT there are issues with this alternative. Phil has devised an alternate design using metal posts and wood members but Lisa has not had a chance to review it and I have not had a chance to get it priced. We both think it will cost less but are not sure by how much. The alternate plan involves more steel posts and welded plates than shown on Lisa's sketch. Our steel contractor is extremely busy right now so we don't know how fast he could get to us or what the cost might be

On the other hand we know what the pavers will cost and that we have a system that will work. Additionally if we order the pavers and pedestals today we can have them in by next Friday. We can prep the underside of the roof next week, close in the LVL pockets, install the insulation and lighting, and finish the rest of the high work in room 110. If we do not know how we are proceeding on the roof we are reluctant to move forward on the high work hence holding up the floor or causing the floor to have to go down first. We would then have to roll scaffold across the new floor

Please let me know as soon as you can that we are authorized to proceed with the pavers.

Thank you

Mary

Mary B. Neff
Sr. Project Manager
Corbett Construction
703-534-2672 X118
703-534-9411 fax

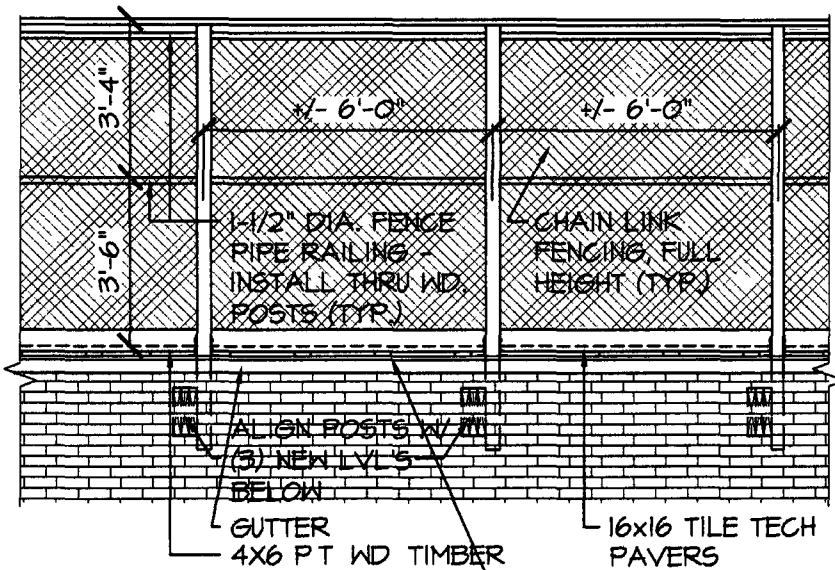
No virus found in this incoming message.

Checked by AVG.

Version: 7.5.552 / Virus Database: 270 10 17 - Release Date: 2/2/2009 12:00 AM

02/10/2009

Exhibit H



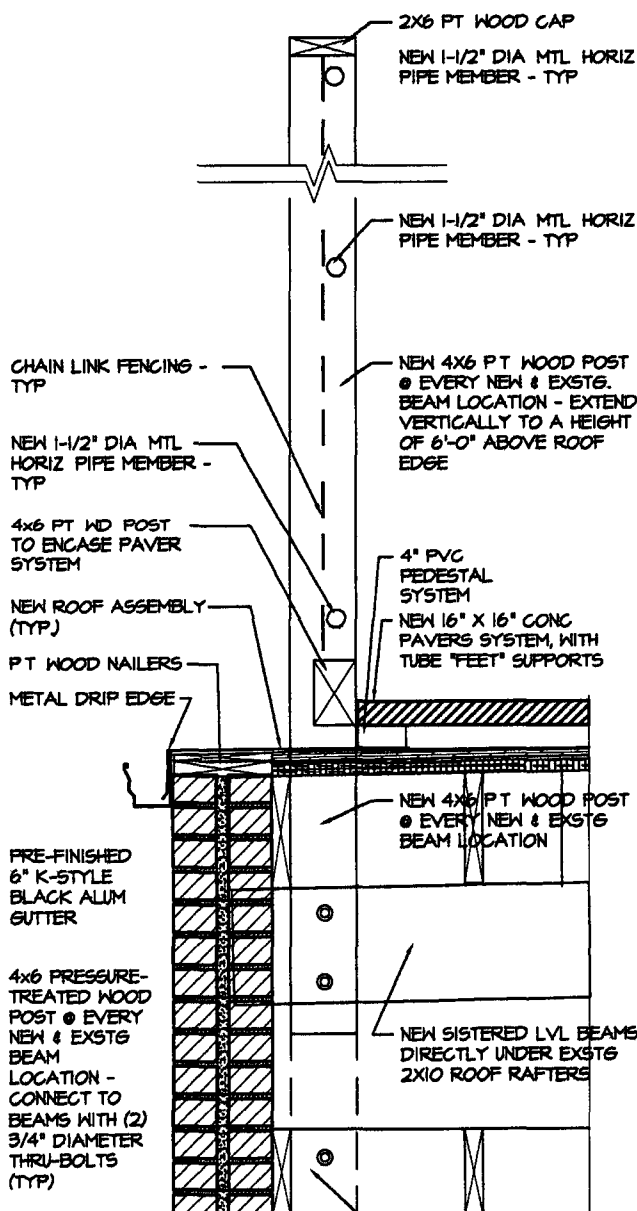
PROVIDE ROOFTOP CONCRETE PAVERS
PAVERS SHALL BE PRECAST, 16" X 16" X
1-3/8" THICK "FLAT NATURAL" SQUARE
PAVERS, as mfr'd by TILE TECH PAVERS

ROOF TILES SHALL BE INSTALLED ON
PEDESTALS, USING MFR'S RECOMMENDED
PEDESTAL PAVER SYSTEM. PEDESTALS
SHALL BE PLACED DIRECTLY OVER ROOF
MEMBRANE

START PAVERS @ NORTH SIDE OF ROOF @
3" ABV. ROOF TO TOP OF PAVER. SET
TOP OF PAVERS @ SOUTH SIDE OF ROOF
@ 7" ABV. ROOF

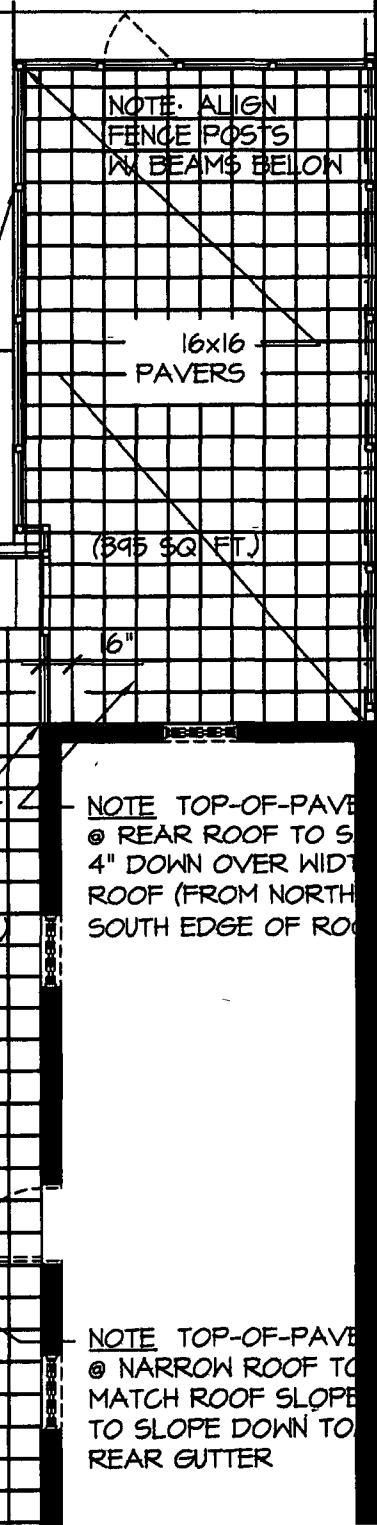
2 RAILING ELEVATION

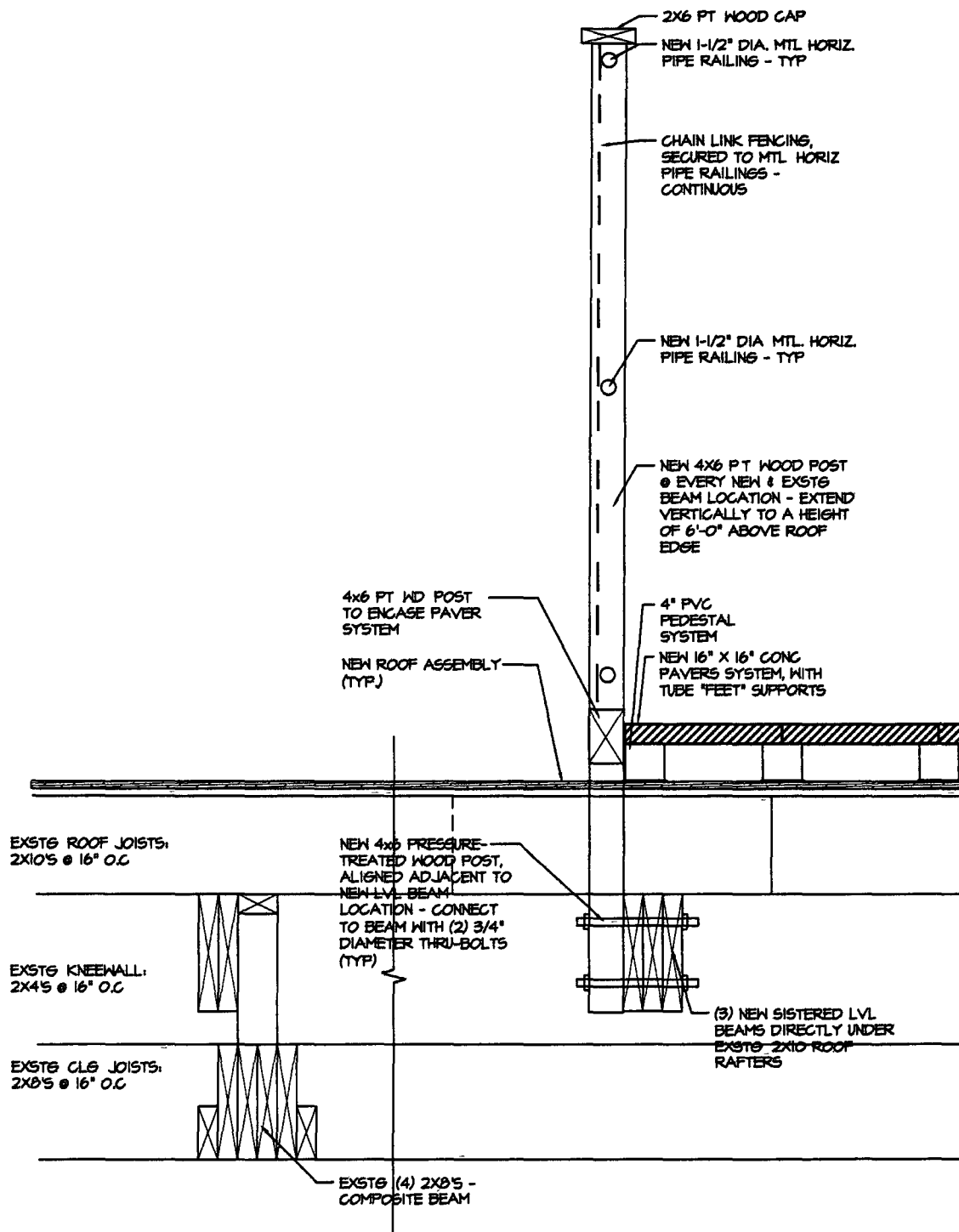
5KA-35 SCALE 1/4" = 1'-0"



WD POST
RAILING
SYSTEM

TILE TECH
PAVER START





ROOFTOP TERRACE - FENCE POST SECTION

SCALE. 3/4" = 1'-0"

INTERPLAN
Incorporated

5185 MacArthur Boulevard NW - Suite 200
t. 202 362 5300 f. 202 686 9273

Washington DC 20016-3341
www.interplaninc.com

1232 9TH STREET N.W.
WASHINGTON, D C
27 JANUARY 2009
JOB # 2890

SKA-32
sheet 2 of 2

Exhibit I



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.