

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Steven E. Sher
Director of Zoning and Land Use Services
202 663 7278
steven.sher@hklaw.com

Outline of Testimony before the Board of Zoning Adjustment

BZA Application No. 18474

1232 9th Street, N.W.

Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP

March 5, 2013

I. Site location and description

A. Location

1. West side of 9th Street between M and N Streets, N.W.
2. Project site consists of Lot 911 in Square 368
3. Site located in the Shaw/Convention Center area

B. Size

1. Site area is approximately 2,561.66 square feet
2. Site is generally rectangular in shape with a 4.31' by 49.5' notch taken out at the southwest corner
3. Frontage of approximately 20 feet on 9th Street
4. Bounded by 30 foot wide public alley at the rear and by private property on the north and south sides

C. Existing site condition: improved with a 3 story plus cellar building with commercial use (Wagtime) on the cellar, first and second floors and a vacant residential unit on the 3rd floor

MAR 5

BOARD OF ZONING ADJUSTMENT
District of Columbia
Board of Zoning Adjustment
CASE NO. 18474
CASE NO. 18474
EXHIBIT NO. 48

II. Description of surrounding area

A. Shaw/Convention Center area

B. Remainder of 9th Street frontage in Square 368:

1. To the north

- a) 1 story building used as a gallery immediately to the north
- b) 1, 2 and 3 story vacant commercial buildings
- c) Vacant lot at the southwest corner of 9th and N Streets

2. To the south:

- a) 2, 3 and 4 story vacant commercial buildings
- b) Vacant lot
- c) 4 story building at the corner of 9th and M Streets with liquor store on the ground floor and residential above

C. To the north:

- 1. Mixed commercial uses along 9th Street, including churches
- 2. City Market at O Street mixed use project
- 3. Mixed residential uses

D. To the east: Walter E. Washington Convention Center

E. To the south: mix of low and mid rise structures with highrise apartment houses on the north and west sides of the square bounded by 9th, 10th, L and M Streets

F. To the west:

- 1. Blagden Alley - interior of subject square including mix of commercial and residential uses
- 2. Parking lots, churches, mixed residential buildings

I. Existing zoning: ~~C-2~~-A

A. Uses (§§721 – 734)

1. Commercial use permitted as a matter-of-right, including retail and service uses
2. Residential use permitted as carry-over from Special Purpose and Residential Districts
3. Animal boarding use permitted as a special exception (§735)
4. Pet grooming permitted as a special exception (§736)
5. Animal shelter permitted as a special exception (§739)

B. Height - maximum of 50 feet (§770.1)

C. Density - maximum of 2.5 FAR, with nonresidential uses limited to 1.5 FAR (§771.2)

D. Lot occupancy - residential uses limited to 60% (§772.1)

E. Rear yard - 15 feet (§774.1)

F. Side yard - not required (§775.5)

G. Parking (§2101.1)

1. For residential use: 1 space for each 2 dwelling units
2. For retail use: 1 space for each 300 square feet of gross floor area and cellar floor area in excess of 3,000 square feet

III. Proposed uses: animal boarding, pet grooming and animal shelter within the existing building

IV. Relief required:

A. Special exception for animal boarding (§735)

B. Special exception for pet grooming (§736)

C. Special exception for animal shelter (§739)

- D. For the animal boarding, variance from §§735.3 and 735.6 to permit use of an outdoor roof deck
- E. For the pet grooming, variance from §§736.5 to permit use of an outdoor roof deck
- F. For the animal shelter, variance to permit use of an outdoor roof deck within 200 feet of a residential use (§739.6)

V. Standards for the special exception for animal boarding:

- A. Use shall not abut a Residence Zone
- B. 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; windows and doors of the premises shall be kept closed and no animals shall be permitted in an external yard on the premises
- C. 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 or an equivalently effective odor control system
- D. Board may impose additional requirements pertaining to the location of buildings or other structures; entrances and exits; buffers, barriers, and fencing; soundproofing; odor control; waste storage and removal (including frequency); the species and/or number and/or breeds of animals; or other requirements, as necessary to protect adjacent or nearby property
- E. External yards or other exterior facilities for the keeping of animals shall not be permitted

VI. Standards for the special exception for pet grooming:

- A. Establishment shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste
- B. 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
- C. Establishment shall not abut an existing residential use or Residence District
- D. External yards or other external facilities shall not be permitted

- E. Sale of pet supplies is permitted as an accessory use
- F. Board may impose additional requirements as it deems necessary to protect nearby properties

VII. Standards for the special exception for animal shelter:

- A. Shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste
- B. Shall utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry, and acoustical landscaping
- C. 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
- D. Shall not abut an existing residential use or a Residence District
- E. External yards or other external facilities for the keeping of animals shall not be permitted unless the entire yard is located a minimum of 200 feet from an existing residential use or Residence District
- F. Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties

VIII. Compliance with the special exception standards:

- A. Use does not abut an existing residential use or Residence District
- B. Nearest residential use is approximately 82 feet to the north
- C. Building is a concrete masonry structure, thereby minimizing noise from inside
- D. Establishment is located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste; floors are sealed with industry standard flooring sealants
- E. All animal waste will be placed in closed waste disposal containers and will be collected 3 times per week
- F. Building is equipped with an air filtration system maintained and cleaned by a professional company

- G. No external yard but are seeking variance to allow use of roof deck over first floor at the rear
 - H. Board may impose additional requirements as it deems necessary to protect nearby properties
- IX. Standards for a variance (§3103.2)
- A. Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,
 - B. the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 (1994 Repl.) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship;
 - C. Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.
- II. Compliance with the variance standards
- A. Exceptional situation:
 - 1. Size and shape of the building on the lot as related to the proposed use
 - 2. Construction of roof deck at considerable expense by the operators of the business
 - B. Practical difficulty/undue hardship:
 - 1. Site had been unused for approximately 10 years prior to occupancy by Wagtime
 - 2. Configuration of building, including roof deck, makes it suitable for the proposed uses
 - 3. Owner and tenant have expended considerable sums to make the building suitable for the proposed use
 - 4. Business would suffer undue hardship if outdoor deck could not be used, due to staffing required to take the dogs to an outdoor off-site location

C. No substantial detriment:

1. Use has been in existence for 8 years without apparent adverse impact on surrounding properties; note substantial number of letters in support
2. Use provides a valuable neighborhood service
3. Conditions recommended by ANC 2F and Office of Planning (with which Applicant agrees) will govern use of the outside roof deck

X. Conclusions

- A. For animal boarding, pet grooming and animal shelter, basic use is permitted by special exceptions
- B. Uses meet all specific criteria of §§735, 736 and 739, except for use of outdoor space
- C. Business would suffer undue hardship if outdoor deck space cannot be used
- D. Conditions agreed to with the ANC can be imposed on the grant of the application to insure that any potential adverse impacts are prevented or mitigated
- E. Application should be approved