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April 9, 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 Application No. 18474 of Wagtime LLC / 1232 9th Street, NW**
Proposed Findings of Fact and Conclusions of Law

Dear Board Members

On behalf of Wagtime LLC, enclosed please find ten copies of the proposed findings of fact and conclusions of law for the above-referenced zoning application. We remain hopeful of the Board's favorable review of the Applicant's requests

Very truly yours,

HOLLAND & KNIGHT LLP

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO 18474
EXHIBIT NO 53

By Leila Batties
Leila M Jackson Batties

Enclosures

cc Ms. Jennifer Steingasser, Office of Planning (via email)
Mr Joel Lawson, Office of Planning (via email)
Mr Stephen Mordfin, Office of Planning (via email)
Advisory Neighborhood Commission 2F, c/o Commissioner Matthew Raymond, Chair
(via email)
Commissioner Greg Melcher, SMD Representative for ANC 2F06 (via email)
Meredith Moldenhauer, Esq, Griffin, Murphy, Moldenhauer & Wiggins, LLP (via email)

Application No. 18474 of Wagtime LLC, pursuant to 11 DCMR § 3104.1, for special exception approval under §§ 735, 736 and 739 to permit animal boarding, pet grooming and animal shelter uses and, pursuant to § 3103.2, variances from §§ 735.3, 736.5 and 739.6 in order to permit the use of an outdoor roof deck in connection with said uses in the C-2-A District at the premises located at 1232 9th Street, N.W. (Square 368, Lot 911)

HEARING DATE: March 5, 2013

DECISION DATE: April 23, 2013

DECISION AND ORDER

On September 7, 2012, Wagtime LLC (the "Applicant"), the lessor of the property that is the subject of this application (the "Property"), filed an application with the Board of Zoning Adjustment (the "Board") pursuant to 11 DCMR § 3104.1 for special exception approval, pursuant to §§ 735, 736 and 739, in order to permit animal boarding, pet grooming and animal shelter uses on the Property. (Exhibit 1.) On December 13, 2012, the Applicant filed with the Board a request to defer the public hearing on the application originally scheduled for December 18, 2012, in order to include requests for variances from §§ 735.6, 736.5 and 739.6 to allow the use of a roof deck in connection with said uses. (Exhibit 32.) The Board granted the Applicant's request and held a public hearing on the application on March 5, 2013. At the public meeting on April 23, 2013, the Board voted to approve the application subject to certain conditions

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2 (Exhibit 6)

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.1, notice of the hearing was sent to the Applicant, all individuals and entities owning property within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 2F, and the Office of Planning ("OP"). The Applicant posted placards at the subject property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 26.)

The Applicant's Case. Wagtime LLC filed the application on behalf of the owner of the Property, LesRon, LLC. The Applicant was represented by Leila Batties, Esq., of Holland & Knight LLP. Lisa Schreiber, the owner of Wagtime LLC, testified on behalf of the Applicant. Steven E. Sher, testified on behalf of the Applicant as an expert in land use and zoning.

ANC 2F. The Property is located within the area served by ANC 2F, which is automatically a party to this application. ANC 2F filed a letter and resolution, dated December 12, 2012, indicating that ANC 2F, at its regularly scheduled meeting on December 5, 2012, which was properly advertised and where a quorum was present, voted unanimously in support of the application and the requested special exception approvals. (Exhibit 31.) ANC 2F also filed a letter dated February 14, 2013, supporting the requested variances to permit the use of a second floor roof deck in connection with the animal boarding, pet grooming and animal shelter uses at the Property. (Exhibit 42)

Office of Planning (OP) Report. OP submitted a report on December 11, 2012, recommending approval of the special exceptions for the animal boarding, pet grooming, and animal shelter uses (Exhibit 30.) OP also filed a supplemental report on February 26, 2013, recommending approval of the variances to permit the use of the roof deck, subject to the following conditions:

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.

(Exhibit 46.)

Party in Opposition. Ms. Nayereh Sahrapour, the owner of the property at 1230 9th Street, N.W., which is adjacent to the Property to the south, submitted a request for party status. (Exhibit 35) The Board granted Ms Sahrapour's request.

Party in Opposition's Case. The Party in Opposition was represented by Meridith H. Moldenhauer, Esq., of Griffin, Murphy, Moldenhauer & Wiggins LLP. At the public hearing on the application, Ms. Sharapour was represented by her husband and authorized agent, George Behestian. Steven Dupont was accepted by the Board as an expert in architecture and testified on behalf of the Party in Opposition. Mr. Raymond Doratshan, who assisted the Party in Opposition in their due diligence for the purchase of their property, testified in support of the Party in Opposition.

Persons in Support. The Board heard testimony in support of the application from Geoffrey Proctor, who, for six years, lived at 1240 9th Street, NW, approximately 50 feet from the Property. Mr. Proctor testified that he never had a problem with odors or barking from the Applicant's use of the Property while residing at 1240 9th Street, NW. Additionally, 58 letters in support of the Application were filed with the Board.

FINDINGS OF FACT

Background on Applicant and Property

1. The Applicant, Wagtime LLC, was established in 2001 by Lisa Schreiber and Ofer Khal and began operations at the Property in March of 2005. 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. Wagtime also fosters dogs for local rescue groups and provides assistance and advice for dog adoptions. Wagtime has demonstrated a commitment to providing quality services and employing a professionally trained and compassionate staff who have helped 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.
2. The Property is located at 1232 9th Street, N.W. and is improved with a 3-story masonry building that occupies the entire lot (the "Building"). The Building includes a cellar, which has its own entrance from 9th Street. The first and second floors of the Building share a single entrance from 9th Street; and the third level of the Building has a separate entrance from 9th Street. The Applicant started leasing the Property in March 2005 from the previous property owner and immediately renovated the first floor of the Building in order to operate its business.
3. The Applicant obtained a certificate of occupancy for the use of the first floor of the Building on May 9, 2005. (Exhibit 35, Tab 2.) The certificate of occupancy only identifies the pet shop use because, at the time it was issued, there were no zoning regulations in effect for dog daycare center, animal boarding or pet grooming uses. The animal boarding regulations took effect on August 4, 2006, more than a year after the certificate of occupancy for the Applicant's use of the Property was issued. The regulations for pet grooming, pet shops and animal shelter uses took effect on September 14, 2007, more than two years after the certificate of occupancy for the Applicant's use of the Property was issued.
4. Based on the Applicant's prehearing statement dated February 19, 2013, marked as Exhibit 43 of the Record, and the Applicant's testimony at the public hearing, at the time the certificate of occupancy was issued, the Department of Consumer and Regulatory Affairs ("DCRA") advised the Applicant that once the new zoning regulations took effect, the authorized pet store use would encompass the pet grooming, animal boarding and animal shelter uses, and those uses would be grandfathered at the Property because

they were being established at the Property prior to the applicable zoning regulations taking effect.

5. In August of 2007, the Property was purchased by LesRon, LLC, in the amount of \$1.2 million. LesRon, LLC is owned and operated by Leslie Schreiber, Lisa Schreiber's mother.
6. In 2008, the Applicant hired Interplan Inc. and Corbett Construction to design and construct renovations to the Building. The renovations included significant improvements to the interior of the Building as well as the construction of the roof deck at the second floor of the Building. The Applicant expended approximately \$1.1 million on the Building renovations. Of that amount, approximately \$35,000 was spent on the construction of the roof deck, which was built for the sole purpose of providing outdoor space for dogs.
7. Upon completion of the renovations in 2009, the Applicant attempted to obtain a certification of occupancy for the expansion of its business to the cellar and second floor of the Building, but DCRA advised the Applicant that it would not issue the certificate of occupancy because of the lawsuit pending on the Property between LesRon, LLC and the Party in Opposition.
8. The Applicant has used the roof deck as outdoor space for dogs since 2009. The employees take dogs to the roof deck for outdoor exercise for limited periods of time, in limited numbers. Specifically, between the hours of 9:00 a.m. and 6:00 p.m., no more than five dogs at one time are taken onto the roof deck for 20 to 30 minutes intervals.
9. The Applicant has operated its business at the Property for approximately eight years. At the time the Applicant moved to the Property in 2005, it was the only business on this section of 9th Street, N.W. Today, it is only one of two businesses on this section of 9th Street, N.W.
10. Despite the fact that the certificate of occupancy for the Applicant's use of the Property pertains to the first floor of the Building and the Applicant has occupied the cellar, first and second floors of the Building since 2009, the District has not issued a notice of violation against the Property.
11. The Property has a total land area of approximately 2,475 square feet, and the Building occupies the entire lot. According to the floor plans included with the Applicant's prehearing statement dated February 19, 2013, the cellar consists of 1,110 square feet, the first floor of the Building consists of 2,092 square feet, the second floor consists of 1,000 square feet, and the third floor consists of 602 square feet. (Exhibit 43, Tab B.)
12. The Applicant uses the cellar for pet grooming, animal boarding and animal shelter uses; the first floor is used for the pet store, animal boarding and animal shelter uses, and the second floor of the building is used for animal boarding and animal shelter uses. There is

also a roof deck on the second floor at the rear of the building that is used as outdoor space for dogs. The third floor of the Building houses a vacant residential unit.

- 13 Like the Property, the immediately surrounding parcels along 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 the vacant structure owned by the Party in Opposition 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 west side of the alley, is a high-end restaurant.
14. According to the Zoning Map, the closest residential uses to the Property are located approximately 82 feet north fronting on the south side of N Street. To the south, approximately 170 feet from the Property, are residential uses fronting on the north side of M Street. The residential parcels to the west are situated more than 200 feet from the Property.

Background on Party in Opposition

15. The Party in Opposition purchased the property at 1230 9th Street, NW, on September 20, 2006, for the purpose of opening a restaurant, and obtained a license for the restaurant in 2007. However, the restaurant has never opened because their building has been under construction since it was purchased. According to the testimony of Mr. Behestian, the Party in Opposition has been unable to complete the building renovations because of its pending lawsuit with LesRon, LLC.

Zoning Relief Requested

Special Exception for Animal Boarding

- 16 The Applicant seeks special exception approval under § 735 of the Zoning Regulations to allow an animal boarding use on the Property. Under § 735, animal boarding may be permitted as a special exception if approved by the Board under § 3104.1, subject to the following provisions:

§ 735 2 The animal boarding use shall not abut¹ a Residence Zone

§ 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

§ 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

¹ The term "abut" is not defined in § 199 1 of the Zoning Regulations. § 199 2 states that words not defined shall have the meaning given in Webster's Unabridged Dictionary. In Webster's Unabridged Dictionary "abut" means "to border on reach or touch with an end, (2) to cause to abut. support by abutment."

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

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

17. The Applicant states that it meets all of the foregoing criteria, with the exception of § 735.6, for which it seeks a variance, for the following reasons:

- In accordance with § 735.2, the animal boarding use does not abut a Residence Zone. The Property is in the C-2-A District and is abutted on all sides by properties zoned C-2-A.
- As required under § 735.3, the animal boarding use is within an existing concrete masonry building, which is sound proof, and the Applicant also utilizes industry standard flooring sealants to help eliminate bacteria and minimize odors by preventing waste from penetrating into the concrete floor so as to produce no noise or odor objectionable to nearby properties. The windows and doors of the premises are kept closed and there is no external yard on the premises.
- As required under § 735.4, the Applicant places all animal waste from both indoor and outdoor areas in biodegradable bags and in closed waste disposal containers. The dog waste is placed into a trash chute affixed to the Building. The exterior of the chute is made of wood and the inside is lined with metal. The chute is designed so that after the waste is placed into a biodegradable bag and sealed, it goes into a dumpster so odors do not get into the air and impact other businesses on the alley. The Applicant utilizes a qualified waste disposal company to collect and dispose of all animal waste three 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 within the Building with an air filtration system for all air conditioner units in all daycare and animal shelter areas throughout the Building. The air conditioner units and vents are maintained and cleaned by a professional company.

Special Exception for Pet Grooming

18. The Applicant seeks special exception approval under § 736 of the Zoning Regulations to allow a pet grooming use on the Property. Under § 736, pet grooming may be permitted as a special exception if approved by the Board under § 3104.1, subject to the following provisions:

§ 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

§ 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.

§ 736 4 The pet grooming establishment shall not abut an existing residential use or Residence District

§ 736 5 External yards or other exterior facilities for the keeping of animals shall not be permitted.

19. The Applicant states that it meets all of the foregoing criteria, with the exception of § 736.5, for which it seeks a variance, for the following reasons:

- In accordance with § 736.2, the pet grooming takes place entirely within 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.
- In accordance with § 736.3, the Applicant places all solid animal waste in biodegradable bags and in closed waste disposal containers. The dog waste is placed into a trash chute affixed to the Building. The exterior of the chute is made of wood and the inside is lined with metal. The chute is designed so that after the waste is placed into a biodegradable bag and sealed, it goes into a dumpster so odors do not get into the air and impact other businesses on the alley. The Applicant utilizes a qualified waste disposal company to collect and dispose of all animal waste three 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 that portion of the Building for the pet grooming use. The air conditioners units and vents are maintained and cleaned by a professional company.
- In accordance with § 736.4, the pet grooming establishment does not abut an existing residential use or Residence District. The pet grooming use is limited to the cellar of the Building. Further, the Property is in the C-2-A District and is abutted on all sides by parcels being used for non-residential uses and zoned C-2-A.

Special Exception for Animal Shelter

20. The Applicant seeks special exception approval under § 739 of the Zoning Regulations to permit an animal shelter use on the Property. Under § 739, an animal shelter may be permitted as a special exception if approved by the Board under § 3104.1, subject to the following provisions:

§ 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

§ 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

§ 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.

§ 739.5 The animal boarding use shall not abut an existing residential use or a Residence District

§ 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

21. The Applicant states that it meets all of the foregoing criteria, with the exception of § 739.6, for which it seeks a variance, for the following reasons:

- In accordance with § 739.2, the animal shelter use takes place in the cellar and the first and second floors of the Building and is located and designed in a manner that creates no objectionable condition to the adjacent properties resulting from animal noise, odor, or waste.
- In accordance with § 739.3, the animal shelter use is within an enclosed concrete masonry building, which is soundproof, minimizing impacts from any noise generated inside the Building.
- In accordance with § 739.4, 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. The dog waste is placed into a trash chute affixed to the Building. The exterior of the chute is made of wood and the inside is lined with metal. The chute is designed so that after the waste is placed into a biodegradable bag and sealed, it goes into a dumpster so odors do not get into the air and impact other businesses on the alley. Odor within the Building 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.
- In accordance with § 739.5, the animal shelter use does not abut an existing residential use² or a Residence District. The Property is in the C-2-A District and is abutted on all sides by parcels being used for non-residential uses and parcels zoned C-2-A.

² The Applicant does not address the residential unit on the third floor of the Building. However, the application includes a variance from § 739.6 of the Zoning Regulations, which prohibits the use of external facilities within 200 feet from an existing residential use. The spacing provision applies to all of the residential uses within 200 feet of the Property, including the residential unit on the third floor of the Building.

Variance for Use of Roof Deck

22. The Applicant seeks a variance from §§ 735.6 (animal boarding) and 736.5 (pet grooming), which prohibit the use of external yards or other exterior facilities for the keeping of animals, and § 739.6 (animal shelter) which prohibits the use of external yards or other external facilities for the keeping of animals unless the entire yard is located a minimum of two hundred (200) feet from an existing residential use or Residence District.
23. In its prehearing statement dated February 14, 2012, marked as Exhibit 43 of the record, the Applicant argues that the variance for the use of the roof deck in connection with the animal shelter use, is an area variance, while the variances for the use of the roof deck in connection with the animal boarding and pet grooming uses are hybrid variances. In the prehearing statement, the Applicant maintains that it would suffer both practical difficulty and undue hardship if §§ 735.6, 736.5, and 739.6 were strictly applied to the Property prohibiting the use of the roof deck.

Exceptional Situation or Condition

24. According to the Applicant, the exceptional situation or condition affecting the Property results from a confluence of factors as follows:
- The Applicant obtained a certificate of occupancy for the use of the first floor of the Building on May 9, 2005. The certificate of occupancy only identifies the pet shop use because, at the time it was issued, there were no zoning regulations in effect for dog daycare center, animal boarding or pet grooming uses. The animal boarding regulations took effect on August 4, 2006, more than a year after the certificate of occupancy for the Applicant's use of the Property was issued. The regulations for pet grooming, pet shops and animal shelter uses took effect on September 14, 2007, more than two years after the certificate of occupancy for the Property was issued.
 - At the time the certificate of occupancy was issued, DCRA advised the Applicant that once the new zoning regulations took effect, the authorized pet store use would encompass the pet grooming, animal boarding and animal shelter uses, and those uses would be grandfathered at the Property because they were being established at the Property before the applicable zoning regulations taking effect.
 - In August of 2007, the Property was purchased by LesRon, LLC, in the amount of \$1.2 million. LesRon, LLC is owned and operated by Leslie Schreiber, Lisa Schreiber's mother.
 - In 2008, the Applicant hired Interplan Inc. and Corbett Construction to design and construct renovations to the Building. The renovations included significant improvements to the interior of the Building as well as the construction of the roof deck at the second floor of the Building. The Applicant expended approximately \$1.1 million on the building renovations. Of that amount, approximately \$35,000 was

spent on the construction of the roof deck, which was built for the sole purpose of providing outdoor space for dogs.

- Upon completion of the renovations in 2009, the Applicant attempted to obtain a certification of occupancy for the expansion of its business to the cellar and second floor of the Building, but DCRA advised the Applicant that it would not issue the certificate of occupancy because of the lawsuit pending on the Property between LesRon, LLC and the Party in Opposition
- The Applicant has used the roof deck as outdoor space for dogs since 2009. Employees take dogs to the roof deck for outdoor exercise for limited periods of time, in limited numbers. Specifically, between the hours of 9:00 a.m. and 6:00 p.m., no more than five dogs at one time are taken onto the roof deck for 20 to 30 minutes intervals.
- The Applicant has operated its business at the Property for approximately eight years. At the time the Applicant moved to the Property in 2005, it was the only business on this section of 9th Street, N.W. Today, it is only one of two businesses on this section of 9th Street, N.W.
- 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 cared for by the Applicant. 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

Practical Difficulty/Undue Hardship

25. The Applicant contends that the strict application of the regulations prohibiting the use of the roof deck would result in a practical difficulty and an undue financial hardship for the following reasons.
- The use of the roof deck is a basic service for the Applicant's business. The Applicant regularly uses the roof deck as outdoor space for the dogs. Without use of the roof deck, the dogs would be forced to remain indoors with the exception of periodic walks on a leash.
 - If the Applicant were not permitted to use the roof deck, 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, 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.

- 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. The Applicant expended approximately \$1.2 million on the purchase of the Property and \$1.1 million on the renovation of the Building, including \$35,000 on the construction of the roof deck, which was built for the sole purpose of providing outdoor space for dogs. Given the use of the Property and the layout of the building, there is no other viable use for the roof deck.

No Substantial Detriment to the Public Good or Zone Plan

26. The Applicant contends that there will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the zone plan if the requested variances are granted for the following reasons:

- The Property is located in the C-2-A District and is surrounded on all sides by properties zoned C-2-A.
- In order to 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.

- Geoffrey Proctor testified at the public hearing in support of the application. For six years, Mr. Proctor lived at 1240 9th Street, approximately 50 feet from the Property. According to Mr. Proctor, he never had a problem with odor or barking from the Applicant's use of the Property.
- 58 letters in support of the Application were filed with the Board.
- The Applicant has benefitted the immediate neighborhood and the city, generally. When the Applicant moved to the Property in 2005, there were no businesses along this section of 9th Street and the structures, by and large, were not well maintained. Its 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

Issues Raised By Party In Opposition

27. The Party in Opposition raises the following issues concerning the application:

- The Applicant failed to address the following four areas of zoning relief in its application to the Board: (a) a variance for the parking requirements under § 2101.1; (b) a variance from the permitted proximity of external yards and facilities from residences and the provisions controlling noise, odor and waste³; (c) a variance from the FAR requirements; and (d) use of a rental yard.
- The Applicant has not provided sufficient information to indicate that it has met the required burden of proof for special exception approval as it relates to the control odor and noise through proper waste storage and removal, sound proofing and air filtration.
- The variances sought by the Applicant for the use of the roof deck constitute use variances and the Applicant fails to meet the three prong variance standard for the following reasons:

³ The Party in Opposition raised this issue in its statement dated November 26, 2012 (Exhibit 36) The Applicant amended its application on December 12, 2012 to include said zoning relief (Exhibit 32)

- a. The Property is not affected by an exceptional circumstance or condition. The Applicant cannot rely on the issuance of the certificate of occupancy for the pet store in May 2005 because it was well aware of the zoning issues associated with its desired uses when it applied for the certificate of occupancy. Further, the lack of a rear yard and lack of grass at the Property is not exceptional in this area of the city.
 - b. The Applicant does not meet the second prong of the use variance test -- demonstrating undue hardship. The Applicant's claim that the roof deck is an important part of their business lacks credibility since the Applicant did not seek the variances for the use of the roof deck in their original application.
 - c. The Applicant had actual or constructive knowledge of the zoning regulations pertaining to the animal boarding, pet grooming and animal shelter uses at the time it applied for a certificate of occupancy in May of 2005 and, therefore, the hardship the Applicant presently suffers is self-created.
 - d. The approval of the variances would be a detriment to the public good primarily because of the noise, odor and waste created. The Party in Opposition is in the process of renovating and opening a restaurant at its property, which would be adversely affected by the smell of dog waste, constant barking and runoff from dogs being bathed outside. At the hearing, the Party in Opposition also submitted into the record an email from a nearby resident, Ed Horvath (Exhibit 50.) to the Applicant, complaining about noise from the Applicant's operations.
- The roof deck for which the Applicant seeks a variance was constructed without a building permit.

CONCLUSIONS OF LAW

Special Exception to Permit Animal Boarding

- 1 The Board concludes that the Applicant meets the following applicable standards for special exception approval for animal boarding under § 735 of the Zoning Regulations:

§ 735 2 The animal boarding use shall not abut a Residence Zone. In this case, the Property is in the C-2-A District and is abutted on all sides by parcels zoned C-2-A.

§ 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. In this case, the animal boarding use is within a concrete masonry building, which is sound proof, and there is no

external yard on the Property. The Applicant utilizes standard flooring sealants to help eliminate bacteria and minimize odors by preventing waste from penetrating into the concrete floor so as to produce no noise or odor objectionable to nearby properties and that the windows and doors of the premises are kept closed. The Board accepted the same proffers in approving BZA Application No 18346.⁴

§ 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 dog waste is placed into a trash chute affixed to the Building. The exterior of the chute is made of wood and the inside is lined with metal. The chute is designed so that after the waste is placed into a biodegradable bag and sealed, it goes into a dumpster so odors do not get into the air and impact other businesses on the alley. A qualified waste disposal company collects and disposes of all animal waste three 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 and animal shelter areas throughout the Building. The air conditioner units and vents are maintained and cleaned by a professional company. The Board accepted the same proffers in approving BZA Application No. 18346.

Special Exception to Permit Pet Grooming

2. The Board concludes that the Applicant meets the following applicable standards for special exception approval for pet grooming under § 736 of the Zoning Regulations:

§ 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 entirely within the cellar of the Building and the location and design of the pet grooming use does not create any objectionable condition to the adjacent properties resulting from noise, odor or waste.

§ 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 dog waste is placed into a trash chute affixed to the Building. The exterior of the chute is made of wood and the inside is lined with metal. The chute is designed so that after the waste is placed into a biodegradable bag and sealed, it goes into a dumpster so odors do not get into the air and impact other businesses on the alley. A qualified waste disposal company collects and disposes of all animal waste three 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

⁴ Wagtime LLC was also the applicant in BZA Application No 18346, which requested special exception approval for animal boarding and animal shelter uses

drainage system. The Applicant controls odor with an air filtration system for all air conditioner units in all daycare and animal shelter areas throughout the building. The air conditioner units and vents are maintained and cleaned by a professional company. The Board accepted the same proffers in approving BZA Application No. 18346

§ 736.4 The pet grooming establishment shall not abut an existing residential use or Residence District. In this case, the Property is in the C-2-A District and is abutted on the north and south sides by non-residential uses on parcels that are zoned C-2-A. In its statement dated November 26, 2012, the Party in Opposition argues that the pet grooming use abuts the residential unit on the third floor of the Building and, therefore, does not comply with § 736.4 of the Zoning Regulations. (Exhibit 35.) However, the pet grooming use is limited to the cellar, which is three levels below the third floor of the Building. Therefore, the pet grooming use does not abut the existing residential use in the Building.

Special Exception to Permit Animal Shelter

3. The Board concludes that the Applicant meets the following applicable standards for special exception approved for an animal shelter pursuant to § 739 of the Zoning Regulations:

§ 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 takes place in the cellar and the first and second floors of the Building and the location and design does not create any objectionable condition to the adjacent properties resulting from noise, odor or waste.

§ 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 animal shelter use is within an enclosed concrete masonry building, which is sound proof, minimizing impacts from any noise generated inside the Building.

§ 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 dog waste is placed into a trash chute affixed to the Building. The exterior of the chute is made of wood and the inside is lined with metal. The chute is designed so that after the waste is placed into a biodegradable bag and sealed, it goes into a dumpster so odors do not get into the air and impact other businesses on the alley. A qualified waste disposal company collects and disposes of all animal waste three 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 and animal shelter areas throughout the building. The air

conditioner units and vents are maintained and cleaned by a professional company. The Board accepted the same proffers in approving BZA Application No. 18346.

§ 739.5. The animal shelter use shall not abut an existing residential use or a Residence District. In this case, the Property is in the C-2-A District and is abutted on the north and south sides by non-residential uses on parcels zoned C-2-A. The application includes a variance from § 739.6 of the Zoning Regulations in order to permit the use of the roof deck within 200 feet from an existing residential use or Residence District. The spacing provision applies to all of the residential uses within 200 feet of the Property, including the residential unit on the third floor of the Building.

Standard of Review for Variance Relief

4. The Board concludes that the variances requested by the Applicant are area variances. 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:
 - a. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional condition or situation;
 - b. The owner would encounter practical difficulties if the zoning regulations were strictly applied; 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.⁵
5. The Board concludes that the application meets the burden of proof for variances from §§ 735.6 (animal boarding), 736.5 (pet grooming) and 739.6 (animal shelter) of the Zoning Regulations for the reasons discussed below.

The Property is Affected by Exceptional and Extraordinary Conditions

6. The Board agrees with the Party in Opposition that the Building occupying the entire lot and being located within a part of the city where there is little, if any, public open space, does not, alone, constitute an exceptional and extraordinary condition of the Property. However, the Board concludes that the confluence of factors pertaining to the Applicant's use and improvement of the Building has resulted in the Property having an extraordinary and exceptional situation.
 - The Applicant started leasing the Property in 2005 from the previous property owner and renovated the first floor of the building in order to operate its business, which includes a pet store, dog daycare center, animal boarding and pet grooming.

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 certificate of occupancy obtained by the Applicant on May 9, 2005, pertains to the first floor of the building and identifies the use of the Property as a retail pet shop. The certificate of occupancy only identifies the pet shop use because, at the time it was issued, there were no zoning regulations in effect for dog daycare center, animal boarding or pet grooming uses. The animal boarding regulations took effect on August 4, 2006, more than a year after the certificate of occupancy for the Property was issued. The regulations for pet grooming, pet shops and animal shelter uses took effect on September 14, 2007, more than two years after the certificate of occupancy for the Property was issued.
- In 2005, the Applicant believed, based on its discussions with DCRA, that once the new zoning regulations took effect, the authorized pet store use would encompass the pet grooming, animal boarding and animal shelter uses, and those uses would be grandfathered at the Property because those uses were being established at the Property before the applicable Zoning Regulations were adopted.
- In August of 2007, the Property was purchased by LesRon, LLC, in the amount of \$12 million. LesRon, LLC is owned and operated by Leslie Schreiber, Lisa Schreiber's mother.
- In 2008, the Applicant hired Interplan Inc. and Corbett Construction to design and construct significant renovations to the Building. The renovations included improvements to the interior of the Building as well as the roof deck at the second floor of the Building, above the roof of the first floor. The Applicant expended approximately \$1.1 million on the Building renovations. Of that, approximately \$35,000 was spent on the construction of the roof deck, which was built for the sole purpose of providing outdoor space for dogs.
- Upon completion of the renovations in 2009, the Applicant attempted to obtain a certification of occupancy for the expansion of its business to the cellar and second floor of the building, but DCRA advised the Applicant that it would not issue the certificate of occupancy because there was a lawsuit pending on the Property between LesRon, LLC and the Party in Opposition to this case.
- Despite the fact that the certificate of occupancy pertains to the first floor of the Building and the Applicant has occupied the cellar, first and second levels of the Building since 2009, the District has not issued a notice of violation against the Property.

Practical Difficulty and Undue Hardship

7. The Board concludes that the property owner⁶ would suffer a practical difficulty and undue hardship if the requested relief for use of the roof deck is not granted for the reasons discussed below.
- The use of the roof deck is a basic service for the Applicant's business. The Applicant regularly uses the roof deck as outdoor space for dogs. Without use of the roof deck, the dogs would be forced to remain indoors with the exception of periodic walks on a leash. The Board disagrees with the Party in Opposition that the roof deck is not important to Applicant's business simply because the Applicant did not include the variance requests in its application originally.
 - If the Applicant were not permitted to use the roof deck, 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, 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.
 - 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, which is approximately \$35,000. The roof deck was built for the sole purpose of providing outdoor space for the dogs and, given the use of the Property and the layout of the building, there is no other viable use for the roof deck.
 - LesRon expended approximately \$1.2 million on the purchase of the Property and \$1.1 million on the renovation of the Building. If the Applicant's business is unsuccessful at the Property such that the Applicant had to relocate, LesRon, LLC is likely to have difficulty securing another tenant for the Property. When the Applicant moved to the Property in 2005 it was the only business on this section of 9th Street, N.W. Eight years later, it is only one of two businesses on this section of 9th Street, which indicates that there is not demand for businesses to relocate to this part of the city. The Building could remain vacant for an extended period of time resulting in significant financial loss to LesRon, LLC.
 - The Board concludes that the self-created hardship rule is not applicable to this case. The "self-created hardship" rule applies where an applicant knowingly violates the Zoning Regulations. 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

⁶ As the Party in Opposition noted in its pleadings and during the public hearing, the owner of the Property, LesRon, LLC, is controlled by Ms. Schreiber's mother, Leslie Schreiber. The Board acknowledges the commonality of interest between the Applicant and the property owner and recognizes that, in this case, it is appropriate to attribute the practical difficulty suffered by the Applicant to the owner of the Property.

property under the zoning ordinances *in effect* prior to or at the time of purchase. The "self-created hardship" rule does not apply to area variance cases. Since the Board has determined that the relief requested for the use of the roof deck are area variances, the self-created hardship rule does not apply to this application. However, if the Board had determined that the relief requested by the Applicant were either use or hybrid variances, the Board would conclude that the hardship suffered by the Applicant was not self-created because there were no zoning regulations pertaining to the animal boarding, animal shelter, and pet grooming uses *in effect* prior to or at the time the Applicant moved to the Property in 2005. The animal boarding regulations took effect on August 4, 2006, and the pet grooming, pet shops and animal shelter uses took effect on September 14, 2007, after the Property was purchased by LesRon, LLC

No Substantial Detriment to the Public Good or Zone Plan

- 8 For the reasons discussed below, the Board concludes that 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 the requested variances.
- Mr. Geoffrey Proctor, who lived at 1240 9th Street, N.W., approximately 50 feet from the Property, for approximately six years testified to the Board that he never once had a problem with smells or barking in connection with Wagtime's use of the Property.
 - Fifty-eight letters in support of the Applicant were filed with the Board, many of which are from property owners and residents of Blagden Alley. Among the letters of support, was one from the owner/operator of the art gallery adjacent to the Property to the north.
 - No parties testified or submitted letters in opposition to the Application, other than the Party in Opposition.
 - The Party in Opposition submitted one email correspondence from a resident to the Applicant expressing concerns about the barking from the dogs on the Property. (Exhibit 50.) Considering the Applicant has been in business at the Property for eight years and has utilized the roof deck for the last four years, the Board does not find the one complaint to be sufficient evidence that the use of the roof deck would be a substantial detriment or nuisance to the surrounding area.
 - Mr. Dupont testified on the porous nature of the concrete tiles used for the floor of the roof deck and an odor that could develop on the roof deck over time. However, he did not opine as to how long it would take for the odor to develop, nor did he indicate that he noticed an odor from the roof deck, which has been in use by the Applicant since 2009. Any concerns about odors emanating from the use of the roof deck can be addressed by the Liaison Committee proffered in connection with the approval of the Application.

- To mitigate any impacts on the surrounding 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.
- The animal shelter use abuts the vacant residential unit on the third floor of the Building, which is owned by the Applicant. No outside property owners or residents are impacted by the proximity of these uses to one another.

ISSUES RAISED BY PARTY IN OPPOSITION

9. Variance for the parking requirements under § 2101.1 The Party in Opposition argues that the Applicant failed to request relief from the parking requirements under § 2101.1. The Board concludes that the Applicant is not required to provide any off-street parking in connection with the application because the Building is a historic structure within the Shaw Historic District. Section 2120.3 states that a historic resource and any additional thereto are exempt from the requirement of § 2100.4 to provide additional parking as a result of an increase of intensity of use, except that parking shall be required for any addition where:
 - a) The gross floor area of the historic resource is being increased by 50% or more, and

- b) The parking requirement attributable to the increase in gross floor area is at least four (4) spaces

10. Variance from the permitted proximity of external yards and facilities residences and the provisions controlling noise, odor and waste. In its initial statement dated November 26, 2012, marked as Exhibit 35 of the Record, the Party in Opposition indicated that the application requires a variance for the use of the roof deck. The Applicant amended its application to include requests for variances relating to the use of the roof deck.
11. Variance from the FAR Requirements. The Party in Opposition believes that the third floor is used for the Applicant's business and not residential purposes and, therefore, does not comply with the FAR requirements. Also, Steve Dupont testified that if the third floor of the Building were being used for commercial purposes he thinks it is "very likely" that the Property would exceed the FAR requirements. However, he also acknowledged that he never measured the dimensions of the Building.

Under § 771.2 of the Zoning Regulations for the C-2-A District, the permitted maximum FAR for the Property is 2.5, 1.5 of which may be used for commercial uses. The Property has a total land area of approximately 2,475 square feet. Therefore, the permitted maximum FAR is 6,187.5 square feet, and up to 3,712.5 square feet of the Building may be used for commercial use.⁷ In this case, the first and second floors of the Building total approximately 3,092 square feet, which is 620.5 square feet below the permitted FAR threshold for commercial uses. This means that under the Zoning Regulations there is capacity to utilize additional floor area in the Building for commercial uses. Therefore, the Board concludes that the application complies with the FAR requirements.

12. Variance for use of a rental yard. The Party in Opposition claims that the Applicant failed to seek relief for use of a rental yard located south of the Property. Based on the Applicant's testimony, the Board concludes that the yard is not currently used for the Applicant's business; therefore, a variance for the use of the yard is not required.
13. Roof deck was constructed without a permit. Based on the Applicant's prehearing statement, marked as Exhibit 43 of the Record, and the Applicant's testimony, the Board concludes that the Applicant did not knowingly construct the roof deck without the proper building permit. The Applicant hired Interplan Inc. and Corbett Construction to design and construct significant renovations to the Building and believed that they would have pulled all of the permits necessary for the improvements to the Building.⁸ During the hearing, Mr. Dupont acknowledged that the architect handling the building renovations or an expediter should have pulled permits for the construction of the roof deck.

⁷ Under § 199.1 of the Zoning Regulations, the cellar is not counted toward the FAR calculations for the Property

⁸ The construction team pulled building permits for the other renovations to the Property (Exhibit 43, Tab F.)

14. Section 13(b)(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Code § 1-309.10(d)(A)), requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, ANC 2F recommended approval of the requested relief subject to the conditions enumerated herein. (Exhibit 42.) The Board accords the ANC recommendation the great weight to which it is entitled and concurs in its recommendation.
15. The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Code § 6-623.04) to give great weight to OP recommendations. The Board concurs with OP's recommendation that the zoning relief should be granted. (Exhibits 30, 46.)
16. Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief pursuant to 11 DCMR §§ 3104.1, 735, 736 and 739 and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. Additionally, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for a variance from the requirements of §§ 735.3, 736.5 and 739.6 pertaining to the use of exterior facilities (the roof deck) for the animal boarding, pet grooming and animal shelter uses; that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with these provisions of the Zoning Regulations; and that the requested 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. Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED**, with the following conditions:
 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.

VOTE: --- (_____)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member has approved the issuance of this order.

ATTESTED BY:

SARA BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED. RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

BZA APPLICATION NO. 18474

As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANC's and SMD's that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below

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ATTESTED BY: _____
SARA BARDIN
DIRECTOR, OFFICE OF ZONING