

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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Application of Petco Animal Supply Stores, Inc.

BZA Application No.

ANC 1A

Date: October 23, 2012

APPLICANT'S STATEMENT

This is the application of the Petco Animal Supply Stores, Inc. ("**Applicant**" or "**Petco**") for two special exceptions and two area variances to occupy an existing space in a retail building and use it for a pet shop and pet grooming establishment.¹ The property that is the subject of this application is known as DC USA and is located at 3100 14th Street, NW (Square 2674, Lot 721) ("**Property**"). A Surveyor's Plat is included in Exhibit C. The Property is in the C-3-A Zone District. An excerpt of the D.C. Zoning Map is included in Exhibit D.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("**Board**" or "**BZA**") approve two special exceptions, pursuant to Sections 736.1 and 737.1 of the Zoning Regulations to allow a pet shop and a pet grooming establishment to occupy space in a major retail building. Under Section 3104.1, the Board may grant the requested special exceptions if they are in harmony with the general purpose and intent of the Zoning Regulations and Zone Map and will not tend to adversely affect the use of neighboring property. Additionally, in order to establish the proposed uses, the Applicant seeks variance relief from two elements of the special exception tests (Sections 736.4 and 737.3), as described below.

¹ The Applicant is the lessee of the premises, which is owned by DC USA Operating Co. LLC.

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EXHIBIT NO. 3

Board of Zoning Adjustment
District of Columbia
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II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the special exception and variance relief requested pursuant to Sections 3104.1 and 3103.2 of the Zoning Regulations (11 DCMR §§ 3104.1 & 3103.2).

III. THE APPLICANT

Petco is a leading pet specialty retailer that provides products, services and advice that make it easier for customers to be great pet parents. The Company is guided by its vision for “Healthier Pets. Happier People. Better World.” Petco operates more than 1,150 stores nationwide, including more than 50 Unleashed by Petco locations – a smaller format neighborhood shop – and www.petco.com. The Petco Foundation, an independent nonprofit organization, has raised more than \$100 million since it was created in 1999 to help promote and improve the welfare of companion animals. In conjunction with the Foundation, Petco works with and supports approximately 8,000 local animal welfare groups across the country to help find homes for more than 250,000 animals through in-store adoption events every year.

IV. DESCRIPTION OF SUBJECT PROPERTY AND SURROUNDING AREA

A. The Subject Property

The Property is an irregularly shaped parcel containing approximately 215,940 square feet (4.96 acres) of land area. It is improved with a major retail building and parking garage that occupies virtually the entire site. The Property is bounded by Park Road to the north; Irving Street to the south; 14th Street to the east; and a public alley (Hiatt Place) to the west. The retail building houses several large retail establishments including Target, Marshall’s, Best Buy, Staples, and Bed, Bath & Beyond. The Property is located in Ward 1 in the Columbia Heights neighborhood.

Petco proposes to occupy Suite 124 in the building, which fronts on Irving Street NW, where the store’s entrance will be located (see plans in Exhibit E).

B. The Surrounding Area

The Property is located directly across 14th Street, N.W. from the Columbia Heights Metrorail station and occupies approximately one-third of the block. The remainder of the Square is comprised of apartment houses, a public school and rowhouses. The Columbia Heights Multicultural Campus (containing Lincoln Multicultural Middle School and Bell Multicultural High School) is located directly west, across Hiatt Place, from the portion of the building where Petco will be located. On the east side of Hiatt Place but to the north of the area where the store will be located is the athletic field for the Columbia Heights Multicultural Campus. Surrounding uses on adjacent blocks include retail and residential uses. An aerial photograph of the Property and the surrounding area is attached in Exhibit G.

C. Existing Zoning

The Property is located in the C-3-A Zone District. The C-3-A Zone District is designed to accommodate major business and employment centers supplementary to the Downtown and permits medium density development within a pattern of mixed-use development.

V. **DESCRIPTION OF PROJECT**

The DC USA building is a retail shopping center that comprises approximately 540,000 gross floor area of retail use and an underground parking garage that accommodates 1000 cars and 80 bicycle storage spaces. Most of the stores located within the building are large format national retailers, such as Target, Best Buy, and Bed, Bath & Beyond. Loading berths and trash dumpsters are accessed from Hiatt Place, and they are shared by all tenants in the building.

Petco proposes to lease approximately 12,437 gross square feet of the building in the portion of the building that fronts on Irving Street, N.W. and along the western side of the building. Its current plan is that the store will be open 9 a.m. to 9 p.m., Monday through Saturday and 10 a.m. to

7 p.m. on Sundays.

It is anticipated that approximately 2.5% of the premises will be used for companion animal (pet) sales, 5.25% of the premises for salon and pet services (grooming), and the remainder for sales of pet supplies. The store will employ approximately 25 people.

VI. RELIEF REQUESTED

Pet shops and pet grooming establishments are permitted in the C-3-A Zone District as special exceptions uses pursuant to Sections 736.1 and 737.1, respectively, of the Zoning Regulations, provided the applicant meets the special exception standards articulated in those sections and conforms to Section 3104 of the Regulations. Variance approval can be granted pursuant to Section 3103.2 of the Zoning Regulations.

A. Special Exception Relief

The standard for special exception relief requires establishing that the proposed project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and that relief can be granted without adversely affecting neighboring properties. Specifically, the Regulations permit these proposed uses in C-3-A Zone District provided that they satisfy the following standards such that the uses are in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect neighboring properties.

1. Pet Grooming Establishment

Section 736.2. The pet grooming establishment shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste.

The design and construction of the store and the building in which it will be located will eliminate nearly all objectionable impacts to nearby properties. The grooming area within the store will be set back 50 feet from the storefront, and it will

be approximately 150 feet from the nearest residential use across Irving Street. The grooming area will have a full height wall and acoustical or hard ceilings in all rooms within the grooming area, so there will minimal noise migration from this area within the rest of the Petco space. Further, the building frontage construction is a combination of CMU block and brick, so it will insulate all noise to the outside. Odors will be minimized by the ventilation system, and waste will be disposed of as discussed below.

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.

All waste shall be collected in plastic bags and retained within the store until it is disposed of with all other refuse. Along with the store's other refuse, the bags of animal waste will be disposed of in the large dumpsters for use by all tenants within the shopping center. These covered dumpsters are located at the rear of the building and within the building's structure. Via the loading area at the building's rear, the building's refuse is collected from the dumpsters multiple times per week. Therefore, at no time will animal waste be outside or exposed to the air to create unpleasant odors.

Odors from within the store will be filtered through the building's ventilation system. This system will help reduce any odors expelled from within the building.

Section 736.4. The pet grooming establishment shall not abut an existing residential use or Residence District.

The leased premises where the store will be located does not abut a residential use.

However, the building within which the store will be located does abut a residential zone district to the west. Given this fact, the Applicant seeks a variance from this standard as noted below.

Section 736.5. External yards or other external facilities for the keeping of animals shall not be permitted.

There will be no external facilities for the keeping of animals. All activities and pet services related to the grooming establishment will occur indoors. Pets waiting for grooming or pick up will remain indoors.

2. *Pet Shop*

Section 737.2. The pet shop shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.

Noise and odor will be confined to the interior of the establishment. As discussed above with reference to the grooming area, noise from the pet store will be virtually nonexistent to the outside. Very little noise is generated by the portion of the store that does not include the grooming area. Since the store will be contained within a large shopping center, any noise and odor will be well insulated from the outdoors, so the store will not have windows or ventilation that will open directly to the outside. From the outside, any noises and odors will be negligible if they are even detectable at all.

As discussed above, all waste shall be collected and retained within the store until it is disposed of with all other building refuse in closed dumpsters within the building. The building's refuse will be collected multiple times per week.

Section 737.3. The pet grooming establishment shall not abut an existing residential use or

Residence District.

The demised premise where the store will be located does not abut a residential use. However, the building within which the store will be located does abut a residential zone district. Given this fact, the Applicant seeks a variance for this standard as noted below.

Section 737.4. External yards or other external facilities for the keeping of animals shall not be permitted.

There will be no external facilities for the keeping of animals. All activities and pet services will occur indoors. Pets for sale and adoption will always be kept indoors.

Section 3104.1. The Board may grant the requested special exceptions if in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zone Maps and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

Since the proposed uses satisfy all the conditions of Sections 736 and 737 as described herein, and since these uses will be integrated into a single retail store within a large retail building, approving them is in harmony with the purpose and intent of the Regulations will not adversely affect the use of neighboring property.

B. Variance Relief

The burden of proof for variance relief is well established. The Applicant must demonstrate that the Property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially

impair the intent, purpose or integrity of the zone plan. *Palmer v. BZA*, 287 A.2d 535, 541 (D.C. 1972). As set forth below, the application meets the three-part test for area variance relief.

1. *The Property is Affected by an Exceptional Situation or Condition*

The District of Columbia Court of Appeals affirmed in *Gilmartin v. D. C. Board of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990) that the exceptional situation or condition standard is satisfied where the land is uniquely situated when considered in the context of neighboring properties. The court afforded an even more expansive reading of uniqueness in *Monaco v. D. C. Board of Zoning Adjustment*, 407 A.2d 1091 (1979), when it held that the history of the site as well as an agreement pertaining to use of the site should be considered in making the determination as to whether the property can be considered "unique." Courts have interpreted this prong of the variance standard broadly and have affirmed that the uniqueness prong does not need to be satisfied by physical aspects of the land but can be found due to an existing building or structure.

This request meets the "exceptional conditions" element of the variance test because it proposes that the uses be permitted in an existing building, built exclusively for large-format retail use. Petco is exactly the type of retail tenant for which the building was constructed. The Property is unique in that it contains a large-format retail building housing multiple large national retail stores while abutting a residential zone. Few, if any, other properties in the District have such characteristics.

While the existing building happens to abut a residential zone district, the leased premises, where the pet grooming establishment and pet shop are proposed to be located, are completely enclosed in the existing building. Thus, it is unique in its location within a large commercial center while abutting a residential zone district.

2. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

To satisfy the second element for an area variance standard, the Applicant must demonstrate a "practical difficulty." The Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

In this case, a strict application of the Regulations would prohibit these uses to occupy the leased premises, which was built for retail use, even though the actual pet grooming establishment and pet shop are approximately 150 feet removed from a residential use across Irving Street. As discussed, this large-format retail center was constructed to attract "big-box" stores like Petco.

If the Applicant were prevented from locating at this site because of the proximity to the residential zone, then the retail center would suffer financially by failing to fill space that has long remained vacant. Petco is an interested tenant and would like to fill this space. A pet store is exactly the type of retail establishment that compliments the other retail tenants in the building, but strict application of the Zoning Regulations prevents it from locating there, no matter how limited the noise, odor, waste, or other objectionable conditions are. Strict application of the Zoning Regulations will economically deprive the retail center because that space may otherwise stay

empty and place a financial burden on the building owner.

3. Relief can be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Finally, the applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. The granting of a variance from the special exception standards for a pet grooming establishment and a pet shop (Sections 736.4 and 737.3) can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zone Plan

The Property is located on a major arterial road, directly across a street from a Metrorail station, and is in the C-3-A Zone District which was designed for this type of retail use. This location and the surrounding neighborhood are well-accustomed to the presence of large-format national retailers like Petco. The purpose of prohibiting pet grooming establishments and pet stores from locations adjacent to residential zones is to protect nearby residences from the potential noise, odors, and other objectionable conditions that can accompany such establishments. None of those concerns are applicable in this case. First, as discussed above, all pets and activities will be confined to the inside of the building. Second, and most importantly, there are no residential buildings across the residential zone line directly to the west of the proposed facility. In fact, directly to the west are the athletic fields for the Colombia Heights Multicultural Campus. Thus, the impacts of this proposed Petco will be negligible, at worst, in the residential zone, and the educational facility is less prone to be adversely impacted by the Petco in any event.

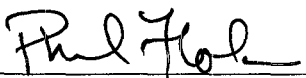
VII. EXHIBITS

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| 1. | Exhibit A | Application Forms and Self Certification Form and Agent Authorization Letter |
| 2. | Exhibit B | Statement |
| 3. | Exhibit C | Surveyor's Plat |
| 4. | Exhibit D | Zoning Map |
| 5. | Exhibit E | Plans |
| 6. | Exhibit F | Photographs |
| 7. | Exhibit G | Aerial View |
| 8. | Exhibit H | Property Owners List |

VIII. CONCLUSION

For the aforementioned reasons, the Applicant requests that the Board approve this application as submitted.

Respectfully Submitted,
GOULSTON & STORRS, P.C.



Phil Feola



Cary Kadlecek