
FORM 140 - PARTY STATUS REQUEST

Before completing this form, please review the instructions on the reverse side.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.

(Please see reverse side for more information about this distinction.)

NAME: Last

First

Middle I.

McMichael

Robert

V

ADDRESS: Street

Apt. # (if any)

City

State

Zip Code

534 13th Street, SE

Washington

DC

20003

Phone No.

Fax No.

E-Mail

caphill52@verizon.net

I hereby request to appear and participate as a party.


Date
06/25/13

Will you appear as a(n)

☐

Proponent

☒

Opponent

Will you appear through legal counsel?

☒

Yes

☐

No

If yes, please enter the name and address of such legal counsel.

NAME: Last

First

Middle I.

Sandler

Joseph

E.

ADDRESS: Street

Ste. # (if any)

City

State

Zip Code

1025 Vermont Avenue, NW, Suite 300 Washington

DC

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Phone No.

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(202) 479-1111

(202) 479-1115

sandler@sandlerreiff.com

WITNESS INFORMATION:

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the person's behalf;
2. A summary of the testimony of each witness (*Zoning Commission only*);
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts (*Zoning Commission only*); and
4. The total amount of time being requested to present your case (*Zoning Commission only*).

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO.

18584

EXHIBIT NO.

30

PARTY STATUS CRITERIA:

On a separate piece of paper, please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)
3. What is the distance between the person's property and the property that is the subject of the appeal or application before the Commission/Board? (Preferably no farther than 200ft.)
4. What are the environmental, economic or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

Except for the applicant, appellant or the ANC, to participate as a party in a proceeding before the Commission/Board, any affected person shall file with the Zoning Commission or Board of Zoning Adjustment, this Form 140 not less than fourteen (14) days prior to the date set for the hearing.

CASE NO. 18584
EXHIBIT NO. 30

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**Robert V. McMichael
534 13th Street SE
Washington, DC 20003**

**BZA Case Number: 18584
Hearing Date: July 9, 2013 9:30 a.m.**

Form 140 - Party Status Request – Party Status Criteria

- 1. How will the property owned or occupied by such person, or in which the person has and interest be affected by the action requested of the Board?**

My quiet enjoyment of the home I have owned and resided in for the last 18 years will be negatively impacted if the Board grants the application for a special exemption to allow animal boarding and a variance for accessory pet grooming at 1310 Pennsylvania Avenue, SE. The noise, odor, rodent and pet waste disposal issues that will result if the Board grants the application will significantly interfere with my ability to enjoy my property.

- 2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)**

I have owned and resided in my home at 534 13th Street, SE (Square 1043, Lot 0810) for 18 years.

- 3. What is the distance between the person's property that is the subject of the application before the Board? (Preferably no farther than 200 ft.)**

My property is located within 20 feet of the rear of the subject property at 1310 Pennsylvania Avenue, SE (see Attachment 1). My home is in a Residence Zone (R-4), that abuts 1310 Pennsylvania Avenue, SE, the C-2-A premises that is the subject of the application.

The part of the property that is to be set aside for kenneling dogs, including animal rescue activities, physically abuts my property and is well within a 200 ft. radius of owner-occupied residences located at 532 and 530 13th Street, SE (my next door neighbors, both in the R-4 zone). In addition, the Escalade condo building (also in the R-4 zone) is adjacent to 530 13th Street, SE (see Attachment 2).

- 4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Board is approved or denied?**

I have spent substantial time and money creating a landscaped patio area within 20 feet of the proposed kenneling area (see Attachment 3). For the past 18 years, it has always been a quiet area punctuated by the low hum of air conditioners and the chirping of birds. Conversations by Department of Public Works Signage employees assembling first thing in the morning and departing in the evening can occasionally be overheard. Two street sweepers that are housed in an enclosed area in this part of the alley make no more noise than private cars entering the Iridium (1306 Pennsylvania Avenue S.E.) condo parking area adjacent to my backyard. And the DPW does not use the alley behind my home for equipment repairs; nor does it have maintenance facilities in this area (see Attachment 4). It is a quiet area, and if the Board approves the application, the noise generated by the kenneling and animal rescue operations will affect my quiet enjoyment of my property, my landscaping investment and my neighbors' enjoyment of their homes.

In addition, if the Board approves the application for dog boarding/dog kenneling/dog grooming use, the value of my property will be adversely affected. Prospective buyers will undoubtedly shy away from a property abutting a dog kennel, given the noise and waste that will naturally result from such use. At a minimum, prospective buyers will reduce their offers due to the proximity of the boarding facility.

Finally, the proposed operation at 1310 Pennsylvania Avenue, SE is out of step with the character of the neighborhood and with similar commercial uses on Capitol Hill and the immediate area, which consists primarily of row houses or other attached homes. The character of my neighborhood will change if the Board grants this application, with an increase in two-legged and four-legged foot traffic.

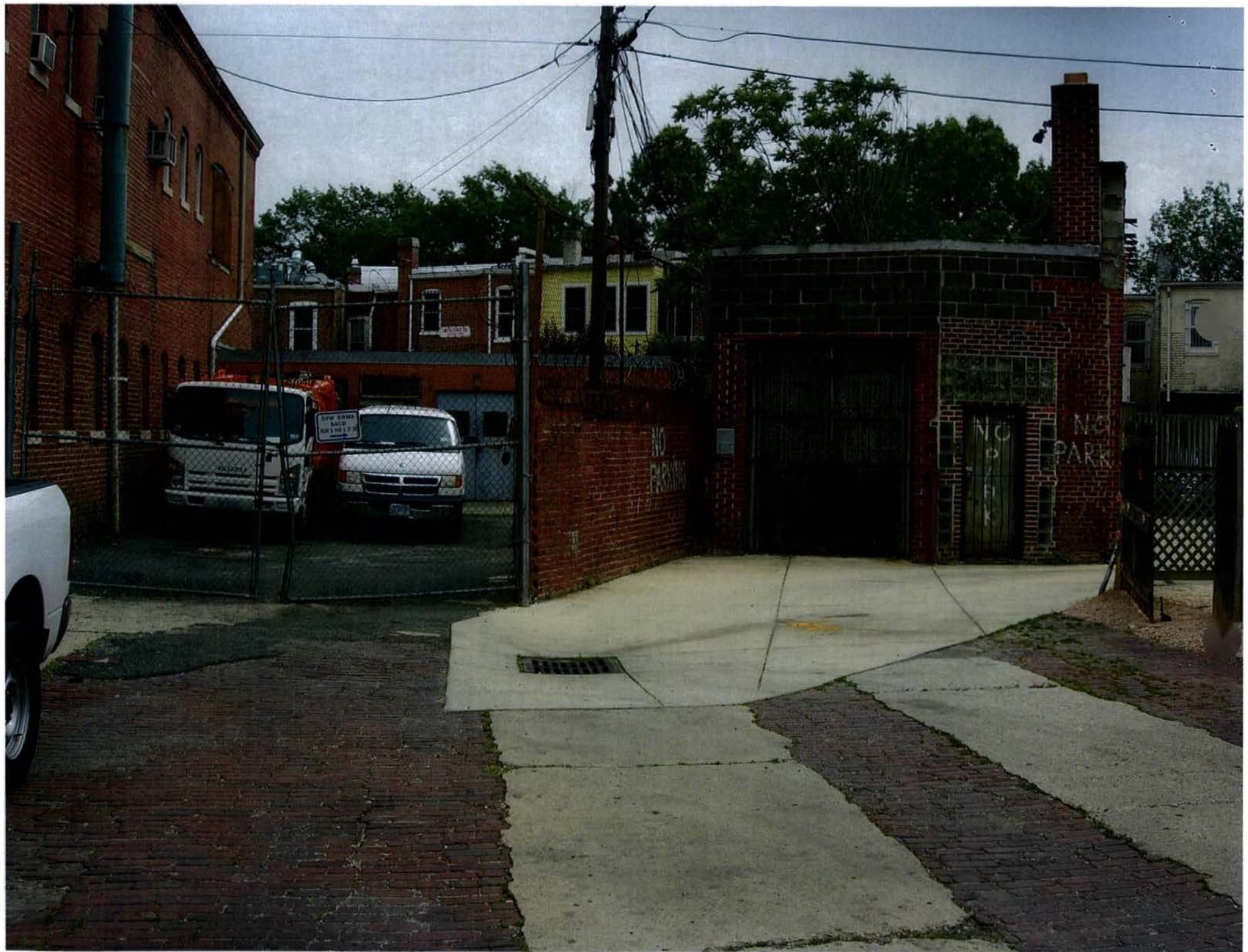
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Board is approved or denied.

Because my property is in a Residence Zone that actually abuts the C-2-A premises, I will be adversely affected if the Board approves this application. The physical proximity of my property to the proposed facility results in my quiet enjoyment of my property being directly affected by the proposed use, especially the use of my landscaped patio that I have invested time and money into creating over the years.

6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

Given my close physical proximity, and unlike other persons in the general public, I will be in a position to hear and observe any violations of the “conditions” attached by ANC 6 at their June 5, 2013 Planning and Zoning Committee meeting before they would grant a Certificate of Occupancy (namely, sound proofing). Given that the ANC Commissioners agreed at their meeting that there is no single entity that exists for handling complaints, I will be in the unique position of not only being able to observe or hear violations but of also having to determine where to make such complaints in order to enforce conditions surrounding noise, odors, rodent problems, etc. I do not wish to perform these functions, but rather simply enjoy my home and patio.

ATTACHMENT 1

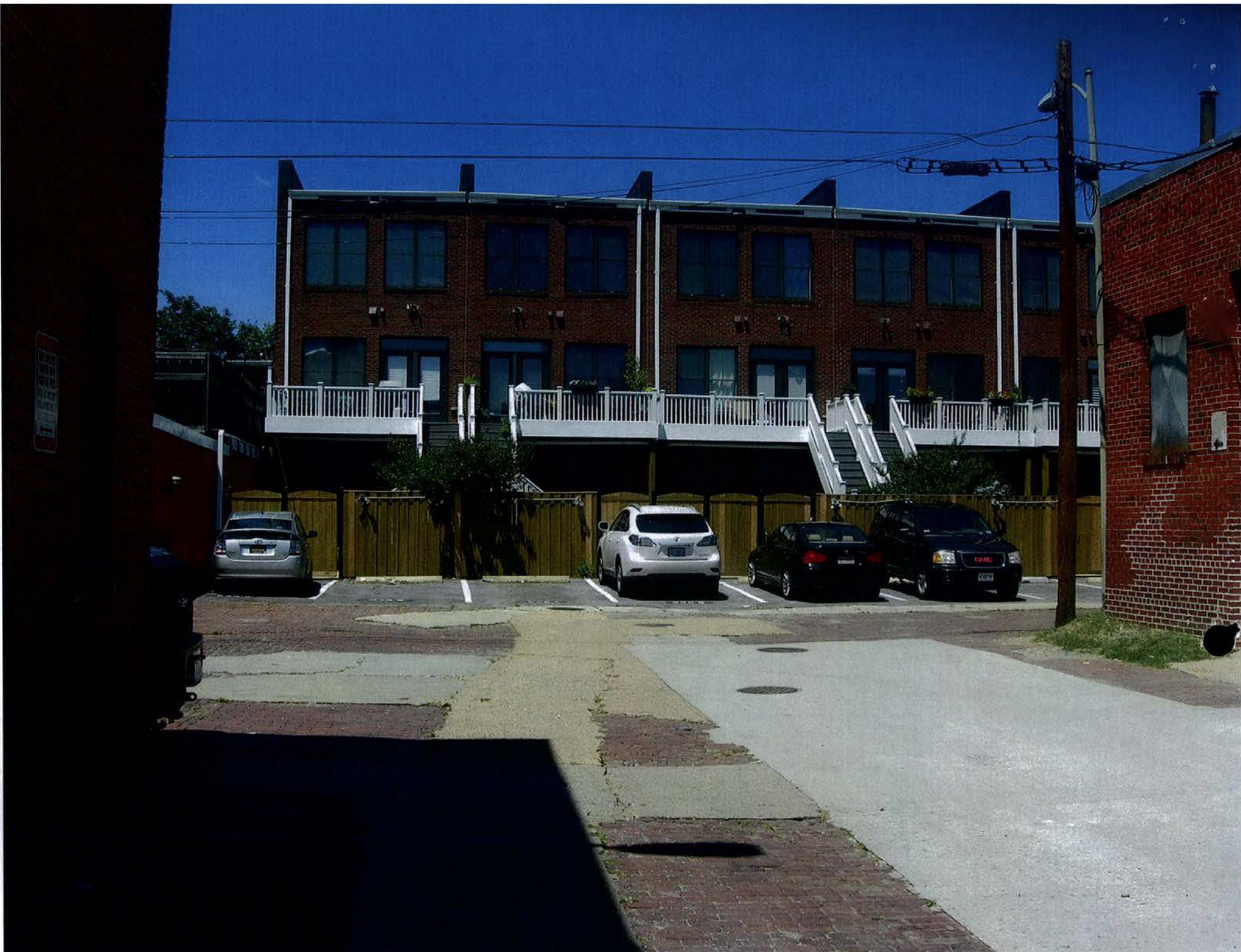






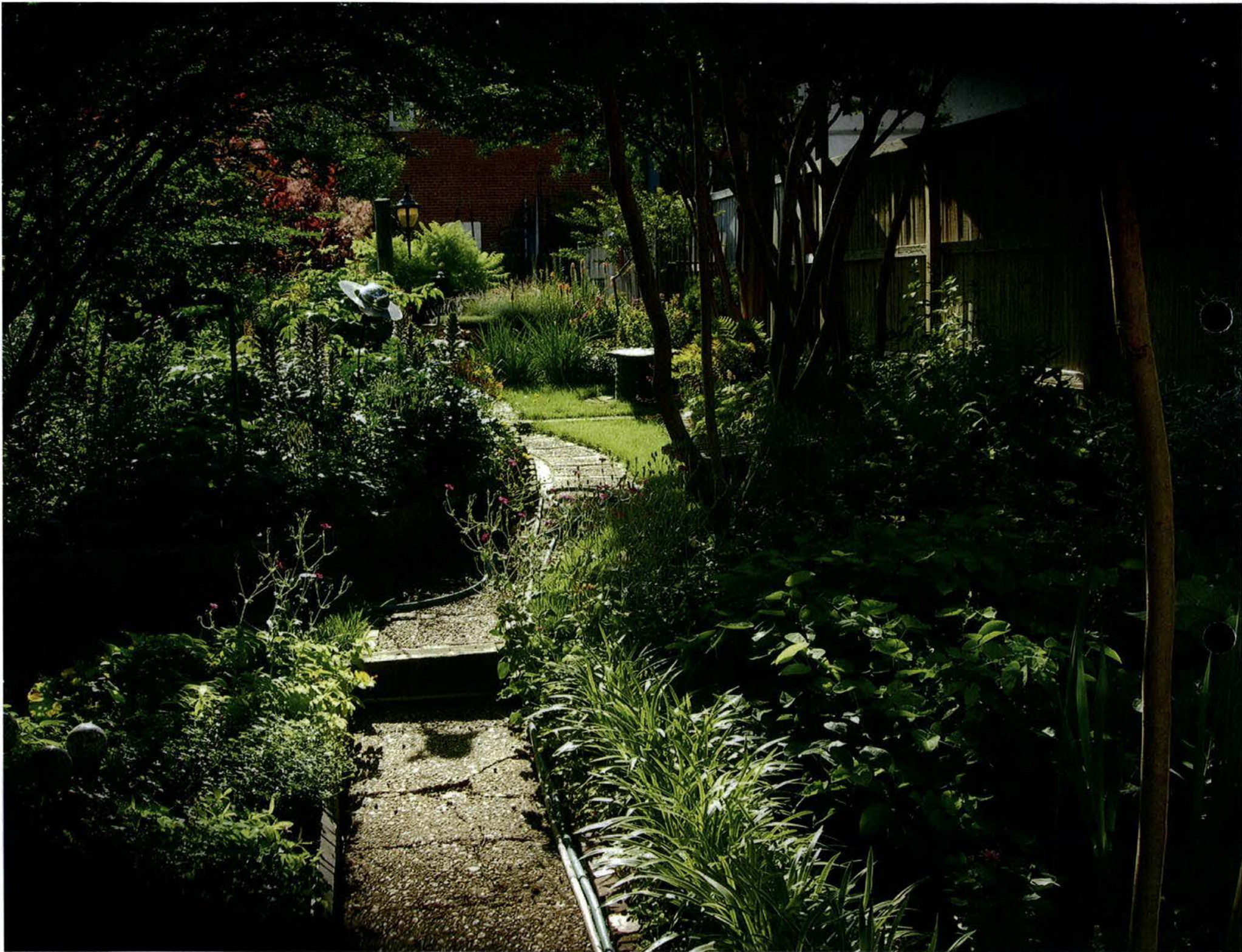
ATTACHMENT 2





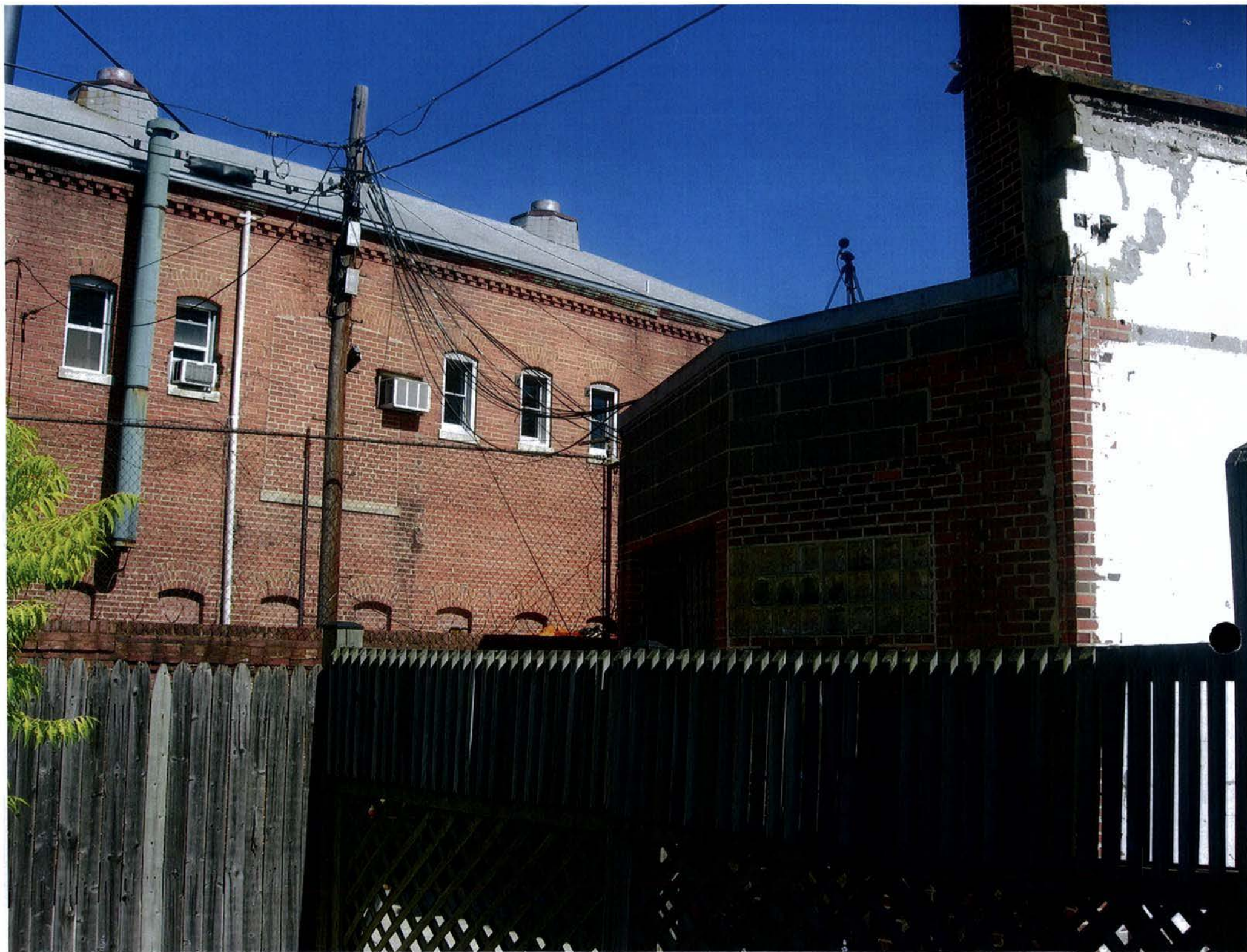


ATTACHMENT 3











ATTACHMENT 4



**Robert V. McMichael
534 13th Street SE
Washington DC 20003**

**BZA Case Number: 18584
Hearing Date: July 9, 2013 at 9:30 am**

Form 140 - Party Status Request – Party Witness Information

The following person(s) will testify on my behalf.

**Robert V. McMichael
534 13th Street SE
Washington DC 20003**

Board of Zoning Adjustment Case Number: 18584
Hearing Date: July 9, 2013 at 9:30 am

**Opposition of Robert V. McMichael to
Applicant's Request for Special Exemption and Area Variance**

Re: Application of Stjepan Sostaric, on behalf of Greater Washington Animal Services Inc., d/b/a/ City Dogs pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to allow animal boarding under section 735, and a variance under subsection 735.2, in the C-2-A at premises 1310 Pennsylvania Avenue, SE (Square 1043, Lot 865)

Mr. McMichael, through undersigned counsel opposes the above-referenced application. Mr. McMichael has owned and resided at 534 13th Street SE (Square 1043, Lot 0810) for the past 18 years. His home is in a Residence Zone (R-4) that abuts the C-2-A premises that is the subject of the application. For the reasons stated below, the Board should deny the request for the special exemption and area variance.

1. Granting the special exemption will adversely affect neighboring property

Pursuant to Section 3104.1, the Board is authorized to grant special exemptions where the special exemption "will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." The Board reviews special exemption requests to ensure that certain negative impacts on the surrounding properties will not occur.

Section 735.2 of the zoning regulations states that an "animal boarding use shall not abut a Residence Zone." The reasons for this regulation are obvious. The noise, odors and waste disposal issues from such a facility would clearly be objectionable to anyone living next door. Mr. McMichael's property, located in a Residence Zone (R-4) directly abuts the rear of the subject premises. The building on the subject premises is located within 20 feet of Mr. McMichael's rear yard.

Were the Board to grant the application, the use of Mr. McMichael's neighboring property would be adversely affected. Mr. McMichael has spent substantial time and money creating a landscaped patio area within 20 feet of the proposed kenneling area (see Attachment ____). It is a quiet area, and if the Board approves the application, the noise generated by the kenneling and animal rescue operations will affect his quiet enjoyment of his property, his landscaping investment and his neighbors' enjoyment of their homes.

In addition, if the Board approves the application for dog boarding/dog kenneling/dog grooming use, there will be a negative impact on all the surrounding residences. The value of Mr. McMichael's property will be adversely affected. Prospective buyers will undoubtedly shy away from a property abutting a dog kennel, given the noise and waste that will naturally result from such use. At a minimum, prospective buyers will reduce their offers due to the proximity of the boarding facility

In Board of Zoning Adjustment, Appeal No. 17092 (considering the differences between dog boarding facilities and veterinary hospitals) (available at http://www.dcoz.dc.gov/orders/17092_1209-878.pdf), the Board found that "the operations of a dog boarding facility are characterized by greater amounts of noise and waste [as opposed to veterinary hospitals], and a greater number of overnight and outdoor stays" (at pp. 4-5). In addition, in that same appeal, the Board noted the testimony of an expert in dog kennels that "most jurisdictions do not permit dog kennels within 200 feet of neighboring properties due to the greater noise levels and outdoor use associated with them" *Id.* Also, unlike a "Veterinary Hospital" use, an "Animal Boarding" use is not allowed in any zone by right. It has been treated differently than any other use due to its potential to not be compatible with other uses. The only remedy for compatibility is the separation distance between the uses and in this case, the separation distance is zero as the properties touch.

The zoning regulations do not prescribe a reasonable noise level for the animal boarding use. Section 735.3 requires that 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." While the applicant has stated that there will be no outdoor use by the on average 45 dogs expected per day at the proposed facility, the applicant cannot adequately ensure that there will not be negative impacts from the noise created by this type of use so close to an existing Residence District. The applicant cannot show that he will meet the requirement that the building be "soundproof."

The applicant has also indicated that the premises will also be used for accessory pet grooming. Pursuant to Section 736.4, a pet grooming establishment "shall not abut an existing residential use or Residence District." This proposed use is clearly inconsistent with the general purpose of the zoning regulations, namely to keep these kinds of operations away from existing and established residential properties given the greater amount of noise associated with them.

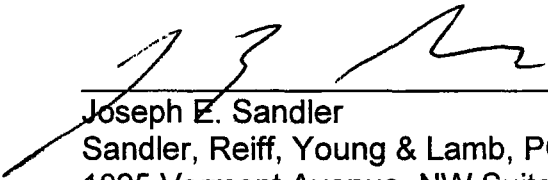
For the reasons stated above, the request for the special exemption should be denied because it is inconsistent with the general intent and purpose of the zoning regulations and will adversely affect use of the neighboring property.

2. A variance is not necessary as the property is not affected by an exceptional situation or condition.

Pursuant to Section 3103.2, the Board may grant an area variance if. 1) there are peculiar and exceptional, practical difficulties, such as the property is exceptionally narrow, shallow, oddly shaped, and/or has unusual topography, soil conditions or other special conditions, 2) granting the application will not be of substantial detriment to the public good; and 3) granting the application will not be inconsistent with the general intent and purpose of the zoning regulations.

The applicant contends that the property is affected by an exceptional situation or condition because the lot is long and narrow, thereby making the granting of a variance unnecessary. In fact, the lot is not an unusual shape for the area (see neighborhood drawing from online zoning map), nor is it extraordinarily long. Its length is comparable with other lots in the Residence Zone, including Mr. McMichael's lot. In addition, the large size of the lot is an asset to the applicant for the intended use.

Granting of the variance will be of substantial detriment to the public good, as the general intent of both sections 735.2 (animal boarding use shall not abut a Residence Zone) and 736.4 (pet grooming establishment shall not abut an existing residential use or Residence District) is to keep these types of facilities a reasonable distance from where people live given the increased amounts of noise and waste produced. The variance should be denied.



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Counsel for Robert V McMichael

ATTACHMENT 1

