

Patricia A. Fisher
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2013 AUG 27 PM 3:02

August 26, 2013

BZA Board
441 4th Street, N.W.
Suite 200S
Washington, D C

File 18584

Dear Mr. Nero

As a Party Status member in the above referenced case, I am submitting the attached three documents in response to the applicant's August 13th submission. I believe that these documents will provide additional information challenging the relevance of some of the applicant's assertions.

Thank you for your attention in this matter.

Sincerely,



Patricia A. Fisher, Ph.D

Attachments:

Response to Scantex Reports
Contrasts and Similarities Between City Dogs and Wagtime
Proposed Operational Conditions for City Dogs

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18584
EXHIBIT NO. 47

Board of Zoning Adjustment
District of Columbia
CASE NO.18584
EXHIBIT NO.47

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2013 AUG 27 PM 3:07

August 26, 2013

Re: City Dogs Application
BZA File No. 18584

RESPONSE TO SCANTEX REPORTS

As the 1308 Penn. Ave. property owner adjacent to the subject property at 1310 Penn Ave., I would like to address and correct several (mis)statements made in the Scantex reports. Also included in this document is a copy of a report from Morris Architects.

- 1 The 7/3/13 Scantex report failed to indicate that the tests were not being conducted in empty buildings

Comment: When the applicant's initial sound tests were done, the rear warehouse area was full of 'stuff' (and to a lesser extent the front, 2 level building), that the owner had not removed. The two side walls of the warehouse area were literally lined with floor to ceiling shelves containing boxes, equipment and all manner of 'things'. When I was invited into the building on June 11th, there was only a narrow path from the front to the rear of the warehouse. If the intent of the testing was to get a base, pre-occupancy sound level shouldn't the areas have been empty? I assume that the 'stuff' affected the accuracy and relevance of the sound levels obtained because the 'stuff' absorbed some of the sound and thus affected the results and their applicability. The test results did not accurately reflect the sounds of an empty building. Of major significance is the fact that the tests also did not include 55-80 simulated dogs barking and other dog-related sounds and the resultant sound levels. Was this not an important reason for the tests, i.e. to determine anticipated dog barking sound levels?

2. The applicant cites 'an average of about 45 dogs daily' is expected to be boarded at 1310 Penn. Ave".

Comment: A June 20, 2013 DC Dept of Health inspector's report indicated a daily average of 55 boarded dogs at their existing Dupont Circle site. The discrepancy in these numbers needs to be explained in light of the fact the proposed Penn. Ave. property is 2.5 – 3 times as large as the Dupont Circle facility. Does it make sense that a business would plan/expect to provide fewer services and/or have a lower revenue stream in a significantly larger space that presumably has higher operating costs/expenses? The Scantex report did not address or provide more realistic or accurate dog boarding and grooming numbers thus their sound level conclusions and the resultant implications are questionable re their relevance.

Note: To my knowledge, the applicant has not provided projected numbers re its various services which influence and impact on sound/noise levels. I have therefore taken the liberty of making what I consider to be reasonable, realistic numerical projections for anticipated services at the proposed Penn Ave. site. In my opinion, these figures are important because any sound tests performed should take them into consideration if the test results are to be taken seriously and as representative of the true sound levels. Attached (Attachment 1) is a chart illustrating several scenarios for the various services that City Dogs will provide based on their application and verbal comments made in two public ANC meetings and the BZA hearing.

3. "Scantex incorrectly assumed there is no noise generated in the front areas of 1310 " (James Robinson report)

COMMENT: Having worked in and/or lived at 1308 Penn. Ave. since 1987 (26 years), I can unequivocally attest to the fact that sounds are transmitted through the ONE (1) level brick wall separating the two levels of 1308 and 1310 Penn. Ave. (See Attachment 2 Morris Architects Report). When the current commercial construction company owner, Mr. Sostoric, had visitors or staff in his 2nd floor front office (which is parallel to my master bedroom), I could hear the 1-3 muffled voices of his guests. As late as 2 weeks ago, while sitting in my middle bedroom, I heard Mr Heier, one of the City Dogs co-owners, going up and down the steps which are located on the wall parallel to my middle bedroom and master bath walls. Of particular concern to me is the front door slamming noise when persons enter and exit the 1310 Penn. Ave. building. Undoubtedly, this noise will increase in density and frequency if City Dogs is allowed to operate. I could/can hear the slamming front door as staff and visitors entered and existed the building all day when Mr. Sostoric operated his business at 1310 Penn. Ave. (That front door is directly under my master bedroom's east side window. I can hear the door closings even when my window is closed and my AC on.) There is no doubt that these noises will adversely affect my right to the quiet enjoyment of my home including my sleep/rest.

Attachment 1: Supplemental Sound/Noise Factors

BACKGROUND: Other than citing 45 dogs as the average number currently being served at its current location and expected to be served by the proposed Penn. Ave. site, the applicant has failed to provide specific numbers for the other services currently provided at its Dupont Circle site as well as any numerical projections for said services that will be provided at the proposed Penn. Ave. facility. These numbers are important because they all reflect and include sounds, noise and noise levels that have not been measured and/or addressed. These other sounds/noises impact on the overall sound transmission levels and the subsequent adverse effects for the abutting properties.

NOTE: The technical aspects of both Scantex reports were evaluated by James Robinson of Coffeen Fricke & Associates, Inc. These reports are included in Kinley Bray's, Attorney, report. I will address those other factors/variables not covered but also germane to the noise/sound issue. questiona

ACTIVITY	LOW	HIGH	RANGE	AVERAGE
Front Door Openings & Openings:	x2 = Bldg Ins & Outs	x2 = Bldg Ins & Outs		
Dog Boarding Clients	55*x2=110	75x2=150	110-150	130
Dog Grooming Clients	5x2=10	15x2=30	10-30	20
Rescue Dogs	4x2=8	8x2=16	8-16	12
Dog Walking/Walkers	2x2=4	5x2=10	4-10	7
Staff & Volunteers	8x2=16	14x2=28	16-28	22
Retail Customers	5x2=10	15x2=30	10-30	20
Up & Down Steps-Daily	20x2=40	35x2=70	40-70	55
Total:	188	334	188-334	261
2 nd Floor Office Utilization	8	14	8-14	11
Dog Day Care Utilization-Warehouse	55	75	55-75	68
Dog Overnight Boarding – Warehouse	5	10	5-10	8
TOTALS:	256	433	256-433	345

*Number based on DOH Inspector's June 20, 2013 report for Dupont Circle site.

SUMMARY:

The above identified 'other' sound/noise sources illustrate serious flaws and omissions in Scantex's reports. For example, Scantex's first July 3, 2013 report did not acknowledge any noise transmission in the front building from barking dogs, clients, staff or volunteers or from the barking dogs from the rear holding area to the front building. That same report used sound transmission projections based on 3 layers of bricks between 1308 and 1310 Penn. Ave. Attachment 2 challenges that assertion. Finally, the report fails to acknowledge the above noise/sound variables/factors as ones that influence/affect noise/sound levels. Scantex's second August 8, 2013 report measured dog sounds in a room of its Dupont Circle site. There were no details re number or types of dogs, size of the room, etc. Attachment 2 provides additional information re that report.

In summary, in addition to both Scantex reports being flawed from several perspectives, there is the question as to whether the second report should even be allowed into the official record/file because it is not what the BZA requested at the 7/11/13 hearing. i.e. the omitted technical info missing from the original 7/3 report. The 8/8/13 report is not the originally omitted report.

MORRIS ARCHITECTS**60 MARKET STREET / GAITHERSBURG, MD 20878
301-527-1002****RECEIVED
DC OFFICE OF ZONING****2013 AUG 27 PM 3: 02**

TO: BOARD OF ZONING ADJUSTMENT
FROM: PAULA MORRIS 
DC ARCHITECT LICENSE 5556
RE: CITY DOGS
BZA FILE 18584
DATE: 27 AUGUST 2013

The DC Noise Control Act of 1977, and amended in 1996, states in Section 2701.1 that the noise level in residential areas shall not exceed 60 dba during the day, and 55 dba during the night. Yet the Scantek Report of 8/8/13 shows on Figure 1 that only two hours during their 12 hour testing was within noise levels as required by DC law. Since they are not in compliance with DC regulations at the current site it is reasonable to expect that they will not be able to meet current regulations at the new site, especially when the construction of 1310 is taken into consideration.

Morris Architects has surveyed and measured both 1308 and 1310 Pennsylvania Avenue and observed that there are only two single wythes of 4" thick brick separating the units. This was not uncommon at the time of construction in 1890. The current stairs to the second floor at 1310 are attached to this common wall and allows an inordinate amount of noise to be transmitted through the wall to 1308. When in 1308, one can clearly hear when people are walking up and down the steps in 1310.

The front door at 1310 is located close to the party wall shared with 1308, and the front wall is not separated between the units. This creates a condition that allows for a great deal of vibration as well as noise transmission. When the door at 1310 is opened and closed, the resultant noise is so loud it is startling in 1308. The vibration is palpable on both the second and third floors in the front half of 1308 as well.

At the time of the survey of 1310, Morris Architects observed that the warehouse roof was uninsulated corrugated metal. During a rainstorm the noise level was so high it was impossible to converse, even when yelling. If the roof has not been changed, it is reasonable to assume the sound of barking dogs in the warehouse would be heard throughout the neighborhood because of transmission through the roof, despite the fact that the walls are concrete block. The rear wall of the warehouse has a double-wide garage door. This door, as well as the warehouse, were not insulated, therefore the sound transmission would likely occur through the garage door quite easily.

The items mentioned above should be remedied if they have not already been included on the City Dogs building permit application B1309666 filed on 8/5/13 at DCRA.

Furthermore, it should be noted that the adjacent neighbor at 1308 has not received the notification letter, nor the set of construction plans as required per DCMR Title 12 Section 3307A. This was to have been sent by certified mail, and the receipt was to have been given to the Code Official upon submission of the application. The adjacent neighbor wants the opportunity to review the drawings in accordance with District of Columbia law.

Patricia Fisher, Ph.D.
1308 Penn Ave., SE
Washington, DC 20003

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2013 AUG 27 PM 3: 02

BZA File: 18584

CONTRASTS AND SIMILARITIES BETWEEN CITY DOGS & WAGTIME

Background: City Dogs' (CD) owners and their lawyer as well as some 6B ANC Commissioners have repeatedly referenced the similarities between the proposed Penn. Ave. facility and the Wagtime (WT) M Street facility variance approval as an example and precedent for why City Dogs variance request should be granted. The comparison of the two facilities illustrated below demonstrates that that argument is not supported by the facts. Using several relevant variables/factors, the similarities and differences between the two facilities will be shown:

	Proposed City Dogs (CD) 1310 Penn. Ave., SE	Wagtime Too (WT) 1232 M St., SE	
Gen. streetscape description of facilities' blocks	Penn. Ave. is a busy, heavily traversed auto & pedestrian block with a heavily used bus stop at the corner of 13 th St.. It has a mix of small businesses, 2 residential homes and a 8 unit condo.	Wagime's M St. block is on a busy auto traversed street. As a gen. rule, there are few pedestrians walking down or up this end and side of M Street. In addition to WT and Domino, there is 1 building on the 10 th St. corner. Across the street from WT's is the Navy Yard and a bus stop. On the street behind M St. (Potomac St.) are several row homes & a dog training facility.	
Gen. facility design/description	The proposed Penn. Ave. row house bldg. has a two level brick front & side masonry walls in the rear' warehouse' area. It occupies a long rectangular lot that is	Wagtime's large glass window surround, store front like, free standing, 2 story bldg. occupies a little over half of the block's area. A Domino's is situated bet. the 2 WT bldgs. A fence enclosed	T h e r e i

	bordered by abutting properties on both sides. Its rear door exits directly onto the alley.	parking lot separates one WT bldg. & the 10 th St. corner bldg.. There are no residences on the block.	s a n d
Facility location	The Penn. Ave. site is located between 2 row houses – one a personal residence and the other an owner-occupied national consulting firm.	Wagtime is located on a block completely occupied by businesses, i.e. WT, Domino's & the corner bldg. occupied by allAfrica. There are no personal residences on the block.	
Services provided	Dog boarding (night), day care, grooming, dog walking, rescue dog housing, accessory retail services, dog adoption	Dog walking, grooming, day care, boarding, accessory retail services.	
Parking	There are 2 metered, 2 unmetered and 1 handicapped restricted space on the block. The bus stop area takes up the remainder of the block to the 13 th St. corner. Other, nearby parking is restricted to 2 hrs.	There is no street parking in front of the bldg. There is, however, a designated off-street parking lot adjacent to/on the M Street side of the bldg. + street parking around the corner on 9 th St. as well as Potomac St..	
Nearby Neighbors	There is a residential neighbor immediately adjacent to the Penn. Ave. location and a resident at 1314 Penn. Ave plus the residents in the 1306 Penn. Ave. 8 unit condo. The other block occupants are small businesses, i.e. a law firm & a nat'l consulting firm.	This is a commercial block. There are no residential homes on the 900 block of M Street. There are several row homes on Potomac St. behind the rear of WT's bldgs..	

Summary: The only similarity between Wagtime and the proposed Penn. Ave. City Dogs facility is the fact that they are both dog boarding and grooming facilities. Their respective neighborhood characteristics and locations are very different with Wagtime being in a primarily commercial block and having no immediate residential neighbors. That is significantly different from the proposed Penn. Ave. location which is on a more residential, small business, and pedestrian area as illustrated in the above chart as well as other info previously presented to the BZA (photos, plats). There are also differences in client parking capabilities as well as, most significantly, dog barking and other dog related noise sources, implications and impacts. The proposed CD Penn. Ave. facility would abut and literally be 'in the backyards' of the 1308 and 1312 Penn. Ave. properties. The blocks on which the facilities are located are very different in their overall characteristics and ambiances including population densities, useage and demograptics. For these and other reasons, suggesting that the two facilities are more similar than not in noise and other impacts is not true. The facts do not support that assertion.

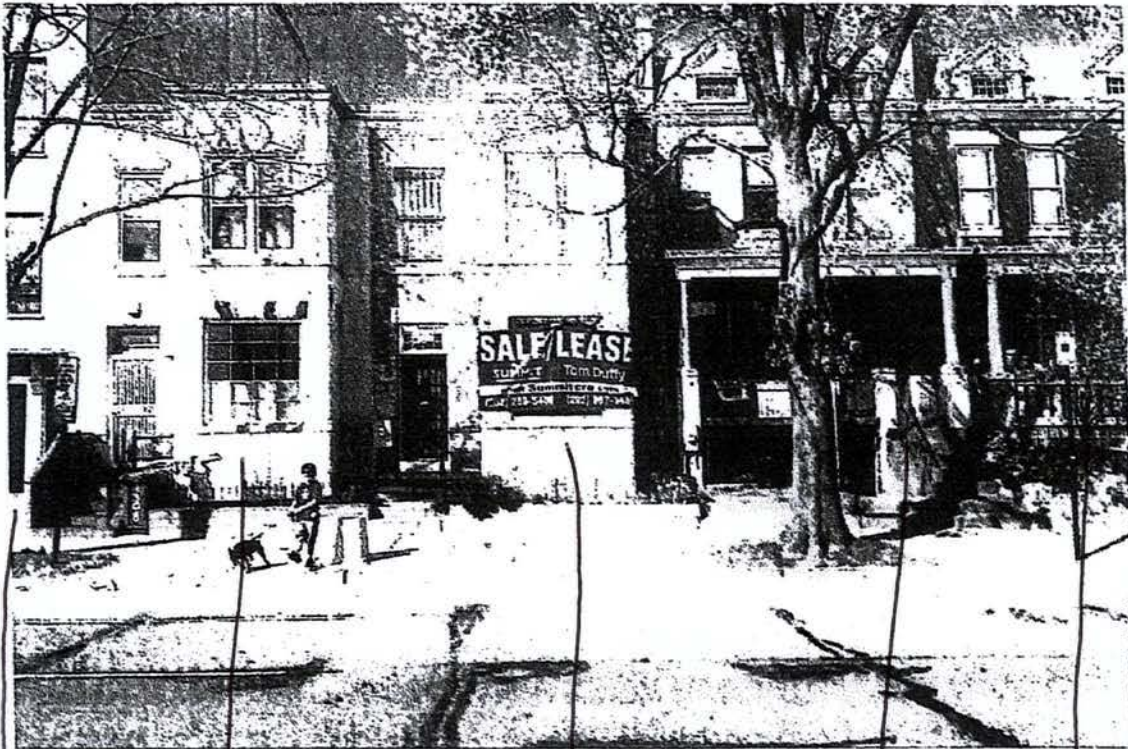


Waytime
Waytime
Domino's

Enclosed Parking
Lot

928
(call Africa)

M Street, S.E.



1306
(Condo)

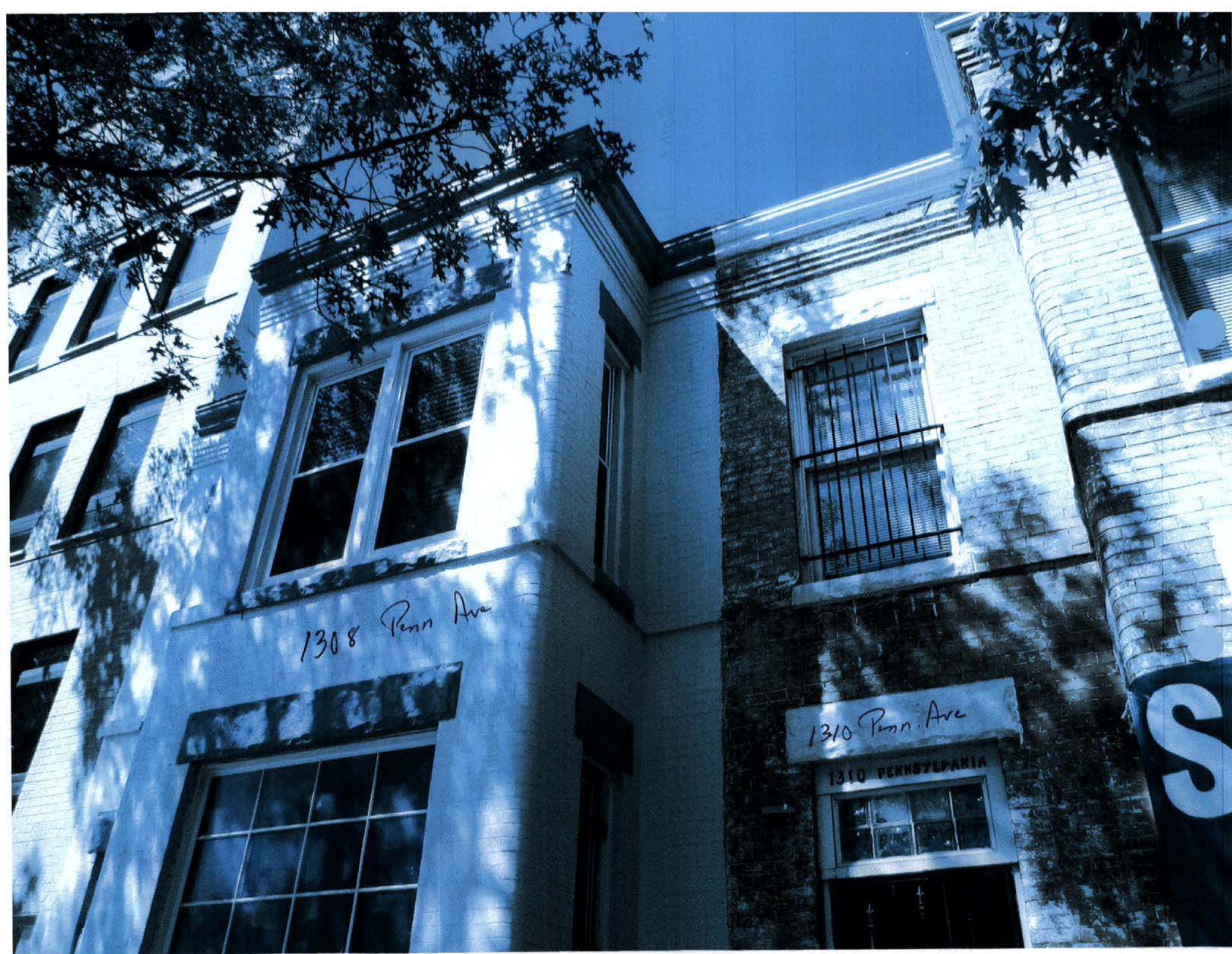
1308
(Residence)

1310
(Subject Property)

1312
(Consulting
Firm)

1314
(Residence)

Pennsylvania Ave, S.E.



Proposed Operational Conditions for City Dogs
(1310 Pennsylvania Avenue, S.E.)

BACKGROUND: The 6B ANC voted to support the applicant's application at its June 11, 2013 meeting. There were, however, several 'Conditions' that accompanied the recommendation. These 'Conditions' were 'negotiated' between the ANC Commissioner, Nicole Opkins, and the applicant and presented to the opposition group late afternoon Friday, July 5th in an email. There was never a 'negotiation' between all the parties and subsequently no input from the opposition group. Based on this fact, I am submitting supplemental 'Conditions' which reflect the opposition group's concerns and interests. They are as follows:

The Opposition Group's Recommended Conditions

1. The applicant shall improve the existing concrete masonry building walls, doors, windows, and skylights located in the rear warehouse as well as the two-level front building walls to eliminate all dog sounds including reverberating ones. The improvements will include a minimum of 2" of sound insulation on the 2 levels of abutting walls of the 1308 and 1312 Penn. Ave. properties, soundproofing the slamming front door and other areas as recommended by acoustical experts. At their expense, the applicant also agrees to engage an independent, certified and licensed soundproofing expert acceptable to the opposition group to ensure 100% soundproofing equivalent to the barking of 55-80 dogs as well as the immediate adjacent properties (1308 and 1312 Penn. Ave.). The results of these tests will be submitted to the applicant, the opposition group, and DCRA prior to the issuance of the COO. The applicant will be required to demonstrate that all soundproofing and odor retardant requirements in both buildings are completely satisfied prior to the issuance of the COO
2. The applicant shall place all solid animal waste from the indoor dog areas in heavy duty, industrial plastic bags and in closed, secured metal waste disposal containers. The waste company will collect and dispose of all animal waste a minimum of four (4) times per week. More frequent weekly pickups will be required if odor, rodents, or other waste disposal problems occur
3. The applicant shall control dog odors by installing an industry standard, acceptable HEPA filtration systems for all air conditioner units in both buildings, i.e. all daycare, grooming, boarding, staff and other areas. The units and vents shall be maintained and cleaned by a professional company twice a year and/or other times as necessary by objectionable odors as determined by the neighbors and businesses
4. The applicant will encourage all customers to park legally. The applicant will discourage customers from illegal parking in the WMATA bus stop zone as well as the restricted handicap space located in the 1300 block of Pennsylvania Avenue, S.E., through verbal and written messages. The 6B ANC will ask DPW to improve the street markings and signage of

the existing handicapped space in front of 1314 Penn. Ave.. The 6B ANC will also ask the DCPD to monitor the block for illegal parking.

5. The applicant will provide the opposition group with written policies and procedures regarding: operating days and hours; dog walking schedules, safety procedures, waste pickup and disposal, 24/7 live emergency contact information; and complaint remediation and correction policies and procedures.

6. In addition to the applicant and ANC representatives providing monitoring and oversight of the facility, we are requesting that two (2) additional opposition members (one resident and one business person) also be included in this group and process. This group will be responsible for providing ongoing oversight and monitoring of the facility and its operations. It will also make recommendations with regard to the applicant's compliance with the conditional zoning variance if it is granted. The group will report to the 6B ANC on relevant matters regarding the subject property on a monthly basis. The group will make its first inspection of the facility one month after it opens and every three months thereafter.

7. When applicable and appropriate, the above Conditions should be met prior to the issuance of the Certificate of Occupancy if the BZA approves a conditional variance to the applicant. Furthermore, these Conditions may be amended should changing circumstances warrant it.