Arent Fox

Arent Fox LLP / Attorneys at Law
Washington, DC / New York, NY / Los Angeles, CA
www arentfox com

August 27, 2013

VIA ELECTRONIC MAIL AND HAND DELIVERY

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 Fourth Street NW
Washington DC 20001

Kinley R. Bray
Counsel
202 715 8572 DIRECT
202 857 6395 FAX
bray kinley@arentfox com

Reference Number
035067.00001

Re: Application of Stepjan Sostaric
BZA Case No. 18584
Party Opponents' Supplemental Statement in Opposition

Dear Chairman Jordan and Members of the Board:

Attached for filing please find an original and 20 copies of the Party Opponents' response to the Applicant's August 13, 2013 supplemental filing in the above-referenced case, which was authorized by the Board at the public hearing in this matter.

We note for the record that the Applicant's August 13, 2013 filing makes no independent conclusion of its own and instead relies upon a report that is not in evidence in this case. To that end, we respectfully ask the Board to disregard the Applicant's supplemental filing, but in the alternative, offer our attached response from acoustic expert, James Robinson, whose resume is attached for your information.

Also attached is a memorandum from Party Opponent Dr. Patricia Fisher, who lives immediately adjacent to the Subject Property. Dr. Fisher routinely hears activity in the adjacent building, which is directly contrary to the Applicant's statements.

Finally, after reviewing the record in this case, I note that Ellen McCarthy's written testimony, which was submitted at the public hearing, has not been logged as an exhibit in this case. I am attaching a copy of such testimony, and ask that the Board accept this document into the record.

We remind the Board that the burden of proof in this case is the Applicant's to bear, and note that the record is devoid of any reference to specific improvements the Applicant or City Dogs intends to make to ensure that the building will be, as they claim and as the regulations require, "sound proof." As noted in the attached reports, the Applicant's own consultants fail to demonstrate how the building will be improved to meet the requirements of the Zoning Regulations.

GENBUS/943896.1

The presence of 45-55 dogs on a daily basis wedged between an office and a residential row dwelling is an affront to the Party Opponents and to the neighborhood in general. Not only has the Applicant failed to meet its burden of proof under the special exception requirements, the Party Opponents having clearly demonstrated that there will be significant impacts due to noise, the Applicant has utterly failed to demonstrate any unique characteristic of this property that warrants the variance relief required to grant the application. We urge the Board to deny the relief requested.

Sincerely,

Kinley R. Bray

Enclosures
Cc: Judy Wood
Andie Moss
Office of Planning
Advisory Neighborhood Commission
Martin Sullivan, Esq.
Ellen McCarthy
Dr. Patricia Fisher
Bob McMichael
Joseph Sandler, Esq.
Col. Kasse Andrews-Weller

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this August 27, 2013 via first class mail to the following:

Martin Sullivan, Esq.
Sullivan & Barros
1990 M Street, NW Suite 200
Washington, DC 20036

Advisory Neighborhood Commission 6B
921 Pennsylvania Ave SE
Washington DC 20003

Kinley R. Bray

GENBUS/943896.1

Coffeen Fricke & Associates, Inc.
CONSULTANTS IN ACOUSTICS AND AUDIO VISUAL COMMUNICATIONS

August 22, 2013

Ms. Kasse Andrews-Weller
P.O. Box 15599
Washington DC 20003

Re: Noise Control Review
City Dogs
Washington DC
CFA File B3068

Dear Kasse:

We reviewed the original acoustical report prepared by Scantek, Inc. and responded with a report dated July 26, 2013. Recently the City Dogs applicant has submitted additional information provided by Scantek. This new information is a graph illustrating dBA values for dog related noise at another existing facility. Apparently this sound data was used in Scantek's original report as an estimate of the dog noise that would be experienced in the proposed facility at 1310 Pennsylvania Avenue. Our response is discussed below.

The new Scantek sound level graph is shown in Figure 1. This graph shows hourly dBA sound levels which are calculated from octave band data. Most of the graphs in the original report show dB sound levels in the various octave bands. Octave band sound data cannot be directly related to dBA hourly curves since one does not know what octave band data was used to calculate the dBA value. However, some conclusions can be made with the information submitted.

Much of the dog noise level shown in Figure 1 is in the range of 70 to 73 dBA. In order to achieve a dBA level in this range, much of the octave band dB values between 800 Hz and 8,000 Hz would be in the range of 65 or more. Figure 2 shows Figure 8 from the original Scantek report. Scantek expected maximum octave band ambient (background) noise levels in the front area of 1310 Pennsylvania in the range of 30 dB. As we stated in our earlier report, a normal conversation achieves noise levels close to 60 dB in some octave bands. If any of the dog noise shown in Scantek new graph occurs in the front area of the dog facility, some octave band noise levels will be in the range of 65 dB or higher. This is also highlighted in the attached Figure 2.

Scantek states that this 70 to 75 dBA noise was recorded in an existing area "used to care for larger dogs." We do not know if this was a "holding" area, a dog washing area, or exactly what activities take place in this subject area.

Summary Point 1: If any of the dog noise shown in Scantek's new dBA noise graph occurs in areas adjacent to 1308 or 1312 Pennsylvania, the noise level in those areas will be much higher than previously predicted by Scantek in their Figure 8.

Summary Point 2: If the dog noise shown in Scantek's new dBA noise graph is due to dog noise in a "holding" area, we know from experience and measurements at other dog facilities that dog noise in holding areas can reach up to 108 dBA, much higher than Scantek's values in the 70 to 73 dBA range.

14827 WEST 95TH STREET • LENEXA, KANSAS 66215-5220 U.S.A. • (913) 888-9111 • (913) 888-9193 FAX

Please let us know if you have any questions.

Very truly yours,

COFFEEN FRICKE & ASSOCIATES, INC.

James E. Robinson

James E Robinson, Manager of Acoustical Services

Enclosures

FIGURE 1

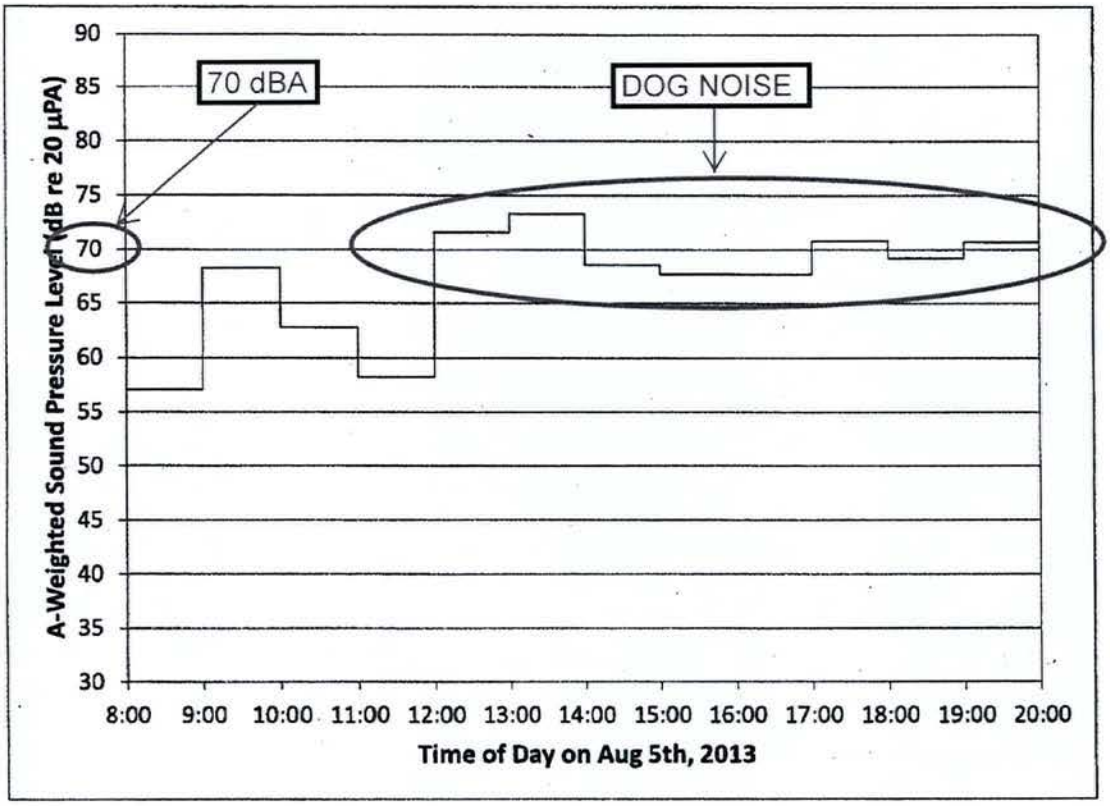
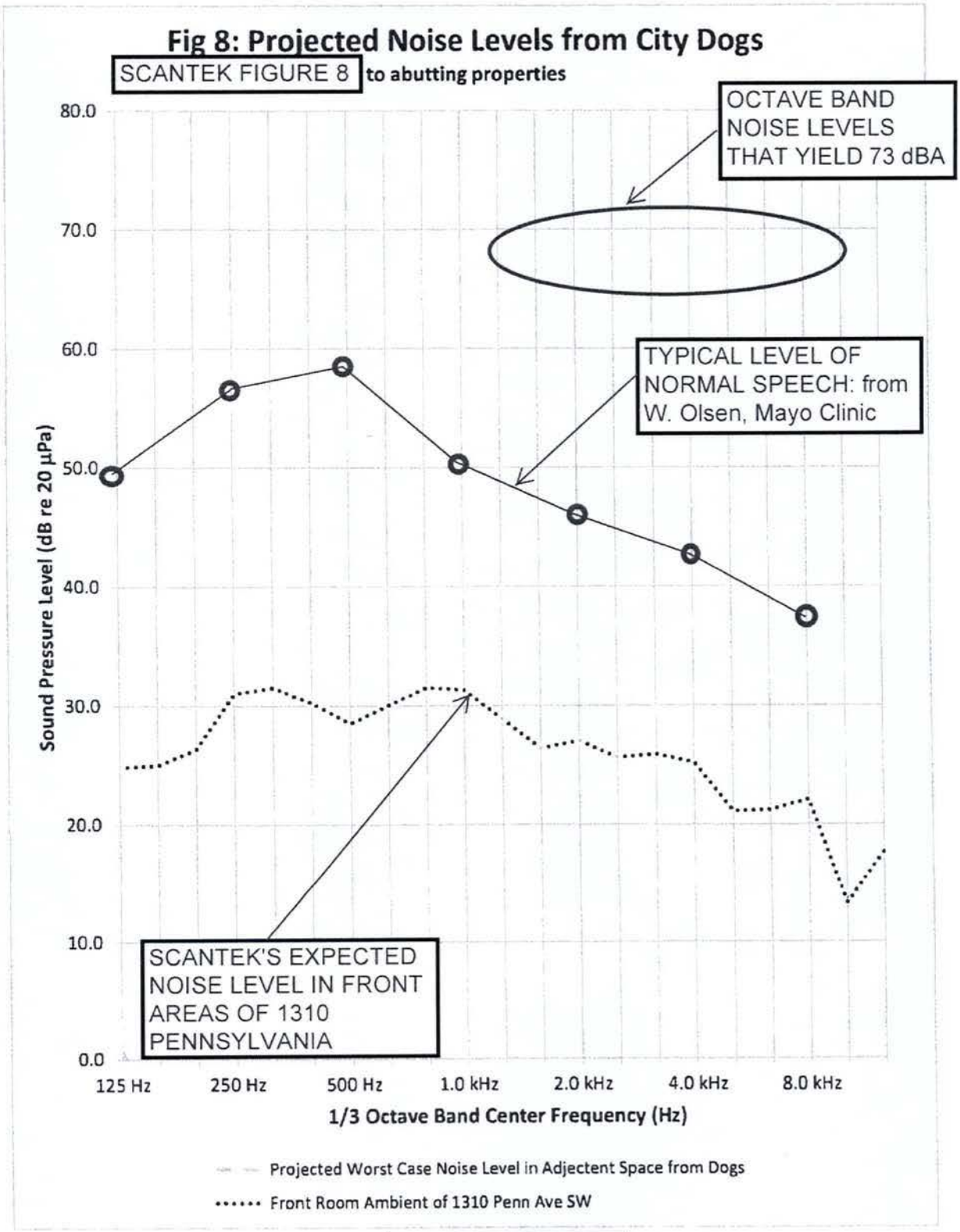


Figure 1: Hourly Energy Average Sound Pressure Level of Dogs Cared for in Lower Room of City Dogs, Dupont Circle

SCANTEK REPORT DATED AUGUST 8, 2013

FIGURE 2



CFA B3068 L02.docx

Coffeen Fricke & Associates, Inc.
CONSULTANTS IN ACOUSTICS AND AUDIO VISUAL COMMUNICATIONS

July 26, 2013

Ms. Kasse Andrews-Weller
P.O. Box 15599
Washington DC 20003

Re: Noise Control Review
City Dogs
Washington DC
CFA File B3068

Dear Kasse:

We have reviewed the acoustical report prepared by Scantek, Inc. with regard to noise control from the proposed City Dogs facility. Our comments are discussed below.

SCANTEK ANALYSIS

Scantek's outdoor ambient noise level measurements appear to be a reasonable attempt to establish the area's present background noise level. This is helpful in that if the future dog related noise is sufficiently below this level, it would not be noticeable or only slightly noticeable to neighbors.

In order to calculate the expected dog related noise outside of the 1310 Pennsylvania facility, one would need to have an idea of the expected noise level inside the building, and the expected sound transmission loss through the various building assemblies (i.e. exterior partitions, roof assembly, skylights, windows, and doors). Scantek states that they recorded maximum dog related noise levels at another existing facility (Dupont Circle). Unfortunately this noise level data is not presented in Scantek's report. It would be helpful if Scantek had included this sound data in either single octave band format or one-third octave band format. Industry data and our in-house measurements indicate that dog related noise inside a kennel or day care facility can reach as high as 108 dBA. Experience has shown that although noise levels in a dog holding area can be relatively quiet during parts of the day, when someone enters the space to feed the dogs or for other reasons the barking noise can become quite high. This dog barking noise level is then a basis for further calculations related to noise control.

It appears that the front sections of 1308, 1310, and 1312 Pennsylvania abut each other but 1310 is a longer building. Therefore the back portion of 1310 is surrounded by the outdoor environment. Scantek states that they could not gain access to the adjacent buildings to conduct measurements of expected noise transmission to those adjacent buildings. The best determination of the sound transmission loss between the buildings would be to conduct an NIC (Noise Isolation Class) test between the buildings. This would involve the generation of a loud noise source (usually pink noise) in one building, and recording the noise level in the "sending" building and the resulting noise level in the "receiving" building. This would help quantify the actual sound transmission loss of the existing construction and would help estimate the future noise effect of the dog related noise. The resulting NIC value can also be related to an estimated STC (Sound Transmission Class) value for the existing construction. STC values themselves can only be determined in a laboratory environment. Conducting a NIC test would also help identify unknown weak points in the construction that could allow dog related noise to be transmitted into the adjacent properties.

14827 WEST 95TH STREET • LENEXA, KANSAS 66215-5220 U.S.A. • (913) 888-9111 • (913) 888-9193 FAX

An alternative to completing a NIC test would be to use the dog barking noise level and known acoustical data for construction assemblies to calculate the expected noise level in the adjacent buildings and outside the rear portion of 1310 Pennsylvania. Over time the acoustical industry has tested many construction materials (gypsum board, brick, masonry block, glass, etc.) and construction assemblies for their ability to attenuate airborne sound. Using this data, one can calculate the expected dog related noise level outside of the 1310 Pennsylvania building. As stated earlier, the expected dog noise level inside 1310 is not shown in the Scantek report.

Scantex conducted two tests at 1310 Pennsylvania. One test was intended to estimate the transfer of dog noise from the rear holding area of 1310 to the front portion of 1310. This was done due to the fact that only the front 2/3rds portion of 1310 directly abuts 1308 and 1312. Scantek also conducted a test of the rear portion of 1310, determining the sound transmission from inside the building to the outdoors. We note that even though 2/3rds of the front of the buildings abut each other, Scantek used the sound reduction value between the rear and front areas of 1310 used a "receiving " location at the very front of 1310 (Figure 1). This would result in the lowest transmission of sound since Scantek's Location 1 is as far away from Location 2 as possible. If the receiving location was located at point 3, one would expect the sound reduction to be less, and this location is also a valid "receiver" location because it too abuts 1308 Pennsylvania (i.e. Scantek's expected sound levels in the front areas of 1310 would be higher at this number 3 test location).

In Scantek's analysis they use their estimated sound level at Location 1 to calculate the sound transmission into the adjacent 1308 Pennsylvania. Scantek incorrectly assumes there is no noise generated in the front areas of 1310. They then apparently use transmission loss data for three layers of brick to obtain an estimated reduction in sound from the holding area to the inside of residence 1308. We assume Scantek is correct in using three layers of brick between the two buildings. Scantek's Figure 7 (attached) shows Scantek's expected noise reduction between 1310 and 1308 of 80 plus dB at 125 Hz to close to 130 dB at 8,000 Hz. As stated above, these are "best case" values due to Scantek's method of calculating the expected noise level at Location 1, and the assumption of no noise in the front areas of 1310. Any noise or dog barking in the front areas of 1310 is not included in Scantek's calculation. In addition, calculated noise reduction values can be overly optimistic compared to actual test data because calculated values do not take into account unknown openings, cracks, and weak points in the assumed construction. The actual sound attenuation of three layers of brick is shown in the attached version of Scantek's Figure 7. This indicates how optimistic Scantek's analysis is of noise transmitted from 1310 to 1308.

Scantek's Figure 8 (attached) is supposed to show the expected noise level in 1308 and 1312 Pennsylvania due to noise from 1310. This figure is based on two optimistic assumptions. The first assumption is that the noise level in the front 2/3rds of 1310 barely exceeds 30 dB in any of the octave bands. This would be equivalent to a very quiet private office noise level with no conversations, no background music and certainly no barking dogs. If only two people have a normal conversation in the area, this would increase the front room ambient noise level to above 60 dB in several octave bands. The attached version of Scantek's Figure 8 shows Scantek's expected noise level in the front of 1310 versus the sound level of a man speaking in a normal voice. Any barking dogs would increase the noise level even further. Therefore, Scantek's expected noise level in 1310 is very optimistic. The second optimistic assumption is the expected sound transmission loss from 1310 into 1308 as discussed in the two paragraphs above. In other words this graph is not realistic.

Scantek's Figure 9 (attached) shows the measured sound reduction between the rear portion of 1310 and the outdoors. We cannot fully comment on the validity of this graph due to not knowing the exact procedure used by Scantek. The values shown in Figure 9 do not look unreasonable considering the presence of failing doorways and windows. Also not discussed in the Scantek report is the roof assembly and the skylights. Since the roof assembly apparently does not include any masonry, sound transmission should be higher through the roof assembly than the masonry side walls. Wood construction does not have the mass of masonry therefore more sound will be transmitted through this area. In addition, the skylights have even less mass than the roof assembly, thus transmitting more sound through those areas. We do not know if the skylights will be retained in the new facility. The wood doors and glass block windows do not have the same mass as masonry, so those areas will also pass sound more easily than the side walls.

Scantek's Figure 10 (attached) illustrates the expected noise level outdoors from the rear dog holding area of 1310. We cannot fully comment on this graph since it is based on expected dog noise levels that Scantek does not share in the report. This graph shows the expected noise level outside of 1310 (as high as 75 dB in some octave bands) compared to the known background or ambient noise level in that area. Apparently this is the expected noise level with no modifications to the building. Using the values shown in Figure 10, the expected noise level outside of 1310 could be as high as 75 dBA (no modifications to the building). This is well above the daytime code limit of 60 dBA (daytime) and 55 dBA (nighttime)(see attached). This indicates that major modifications are required to achieve the proper exterior noise levels as stated in the Washington DC noise code. Unfortunately Scantek does not show an expected noise level after the implementation of their proposed modifications.

SCANTEK RECOMMENDATIONS

Scantek has recommended the installation of sound absorbing materials over 1/3 of the ceiling surface and walls of the holding area. This will be helpful in improving the acoustical environment *within* the holding area but will not improve the transmission loss characteristics of the roof assembly. Unless a material with mass (i.e. gypsum board) is added to the ceiling in the holding area, dog barking noise will continue to pass out of the building's roof assembly. There was no mention of the skylights in the Scantek recommendations. The lack of mass in the skylight glazing will continue to allow dog noise to easily pass outside the building. In Scantek's report there is no mention of how reducing sound transmission through the existing or new roof vents will be accomplished. Ductwork can act as a sound path transmitting noise from one side of a construction assembly to the other (i.e. outside of the building).

The Scantek report does not mention if the new dog holding area will have a new gypsum board or plaster finish on the inside. Any new partition construction on the inside of the holding area would affect the transmission of sound to the outside.

Scantek recommends replacing the back garage door. This would be very helpful. Scantek proposed several options all of which are viable options except replacing the garage door with glass block. Glass block will not have the required sound transmission loss capability.

Scantek recommends rehabilitating the existing steel man door at the rear of the building or replacing the door with a new exterior grade door. We concur with this recommendation as long as the existing door and the new inner door of the Trash Room both are packed hollow metal doors with sound gaskets and an automatic drop seal.

Scantek recommends replacing any broken glass block around the back door. We do not believe that any of the glass block windows in the holding area of the building have the necessary sound attenuation characteristics, broken or not. Additional sound attenuation in these openings is required.

Scantek recommends closing off any existing open penetrations in the walls or ceilings leading to the outside. We concur with this recommendation as long as the remedy increases the openings sound attenuation to an appropriate level. In summary, there are many unknowns with regard to what modifications the applicant will actually implement.

CFA RECOMMENDATIONS

As shown above there are many uncertainties to the actual modifications that the dog facility plans to implement in their proposed facility. It appears that the side walls, roof assembly, doorways, glass block windows, and vent ductwork will require significant modifications to achieve proper noise levels outside of 1310 Pennsylvania. Coffeen Fricke and Associates can review any proposed modifications if new information is provided by the applicant.

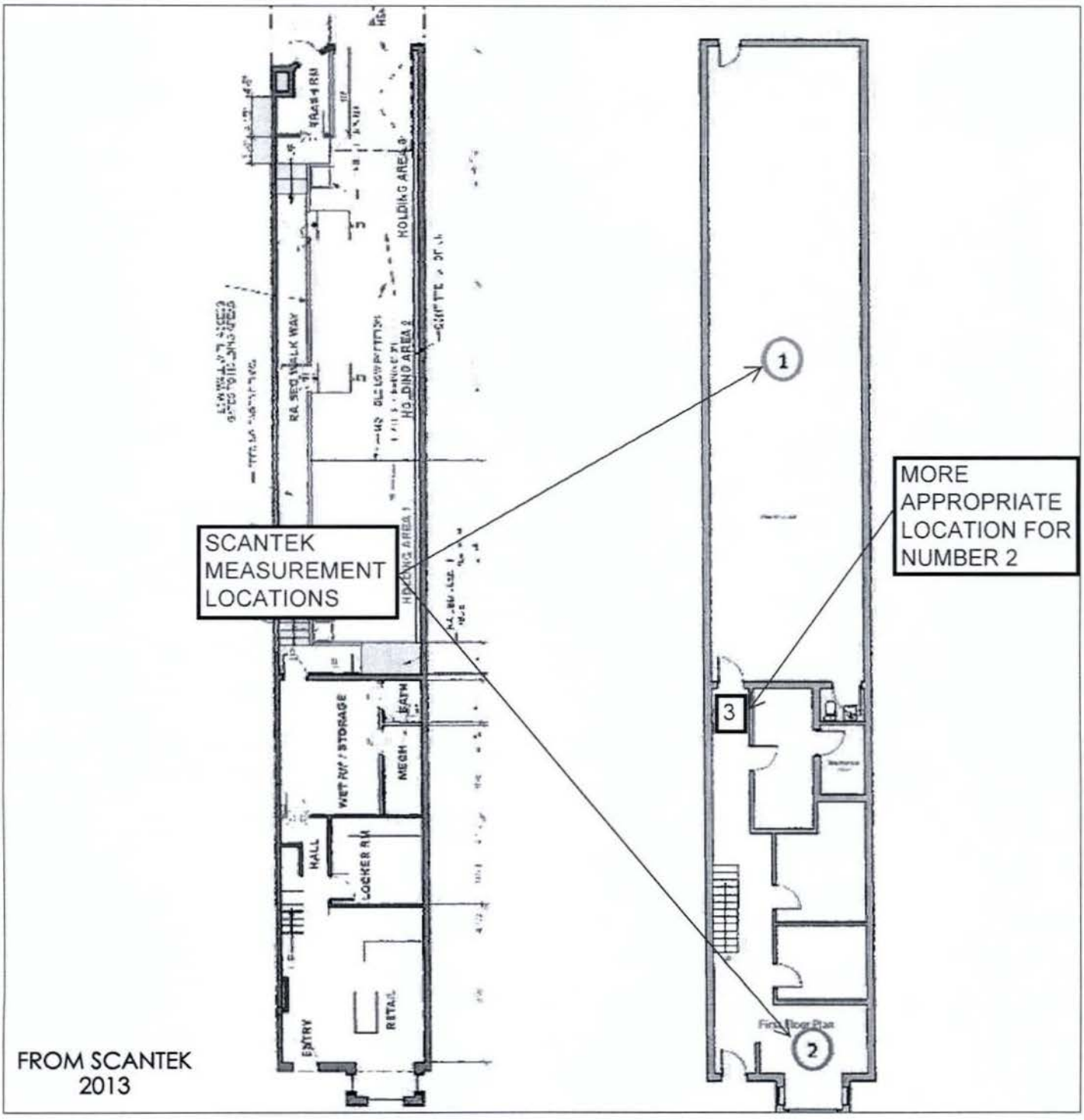
Please let us know if you have any questions.

Very truly yours,

COFFEEN FRICKE & ASSOCIATES, INC.

James E Robinson, Manager of Acoustical Services

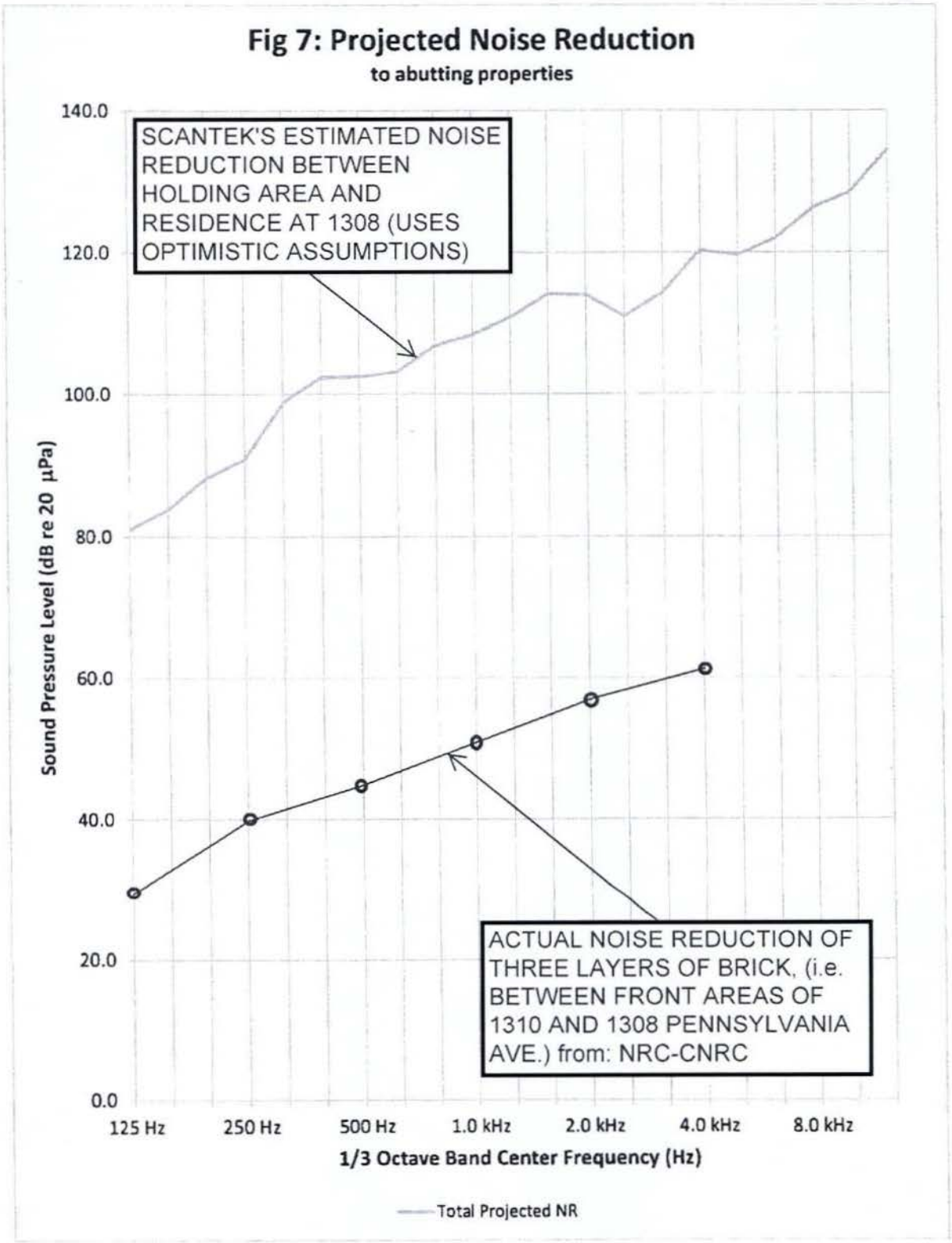
Enclosures



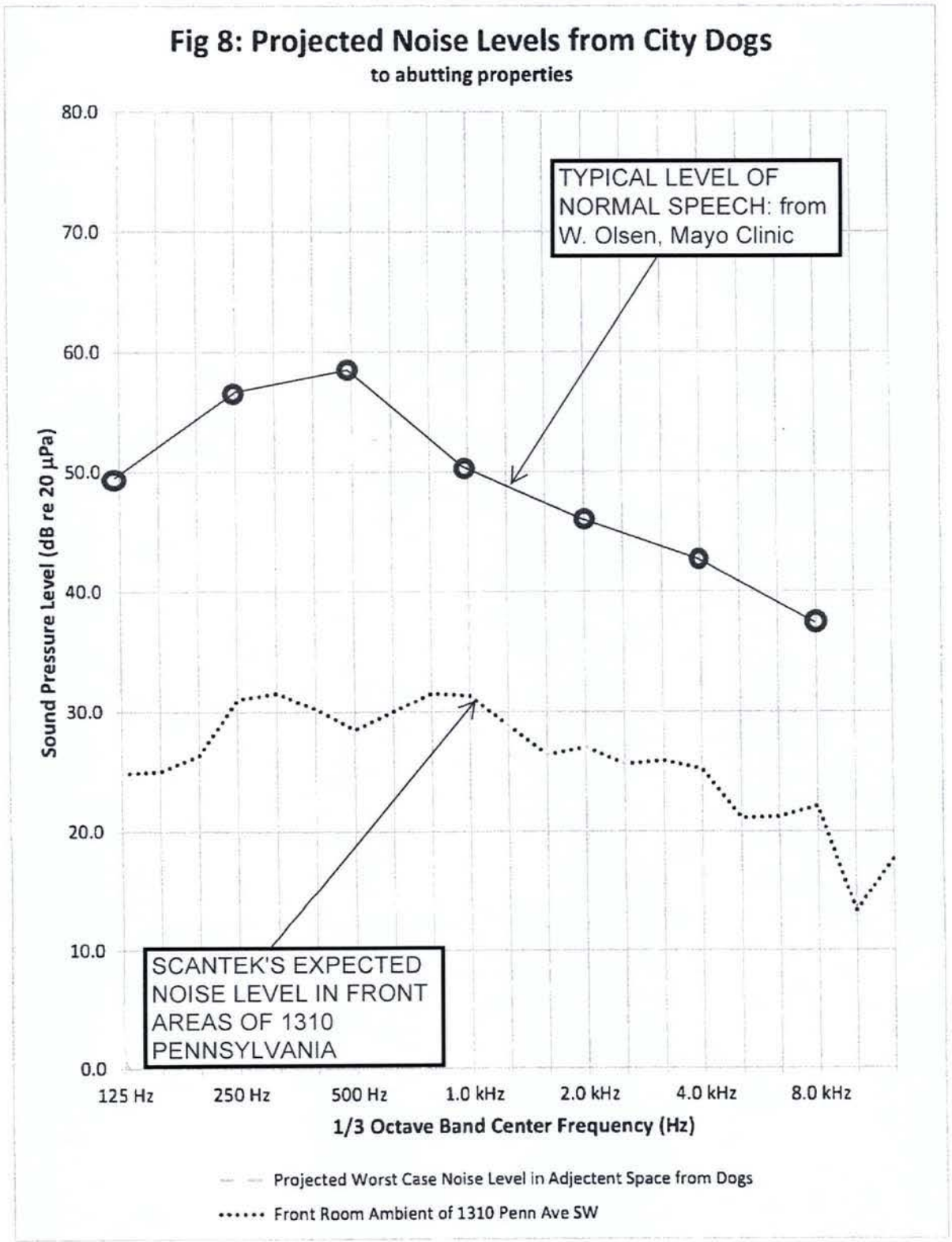
NOT TO SCALE

SHEET: FIGURE 1 B3068 AC 01	CITY DOGS WASHINGTON DC SCANTEK MEASUREMENT LOCATIONS VS APPROPRIATE	Coffeen Fricke & Associates, Inc. CONSULTANTS IN ACOUSTICS AND AUDIO VISUAL COMMUNICATIONS 14827 WEST 95TH STREET · LENEXA, KS 66215-5220 USA (913) 888-9111 · (913) 888-9193 FAX	DATE: 7/26/13 BY: JER FILE: B3068

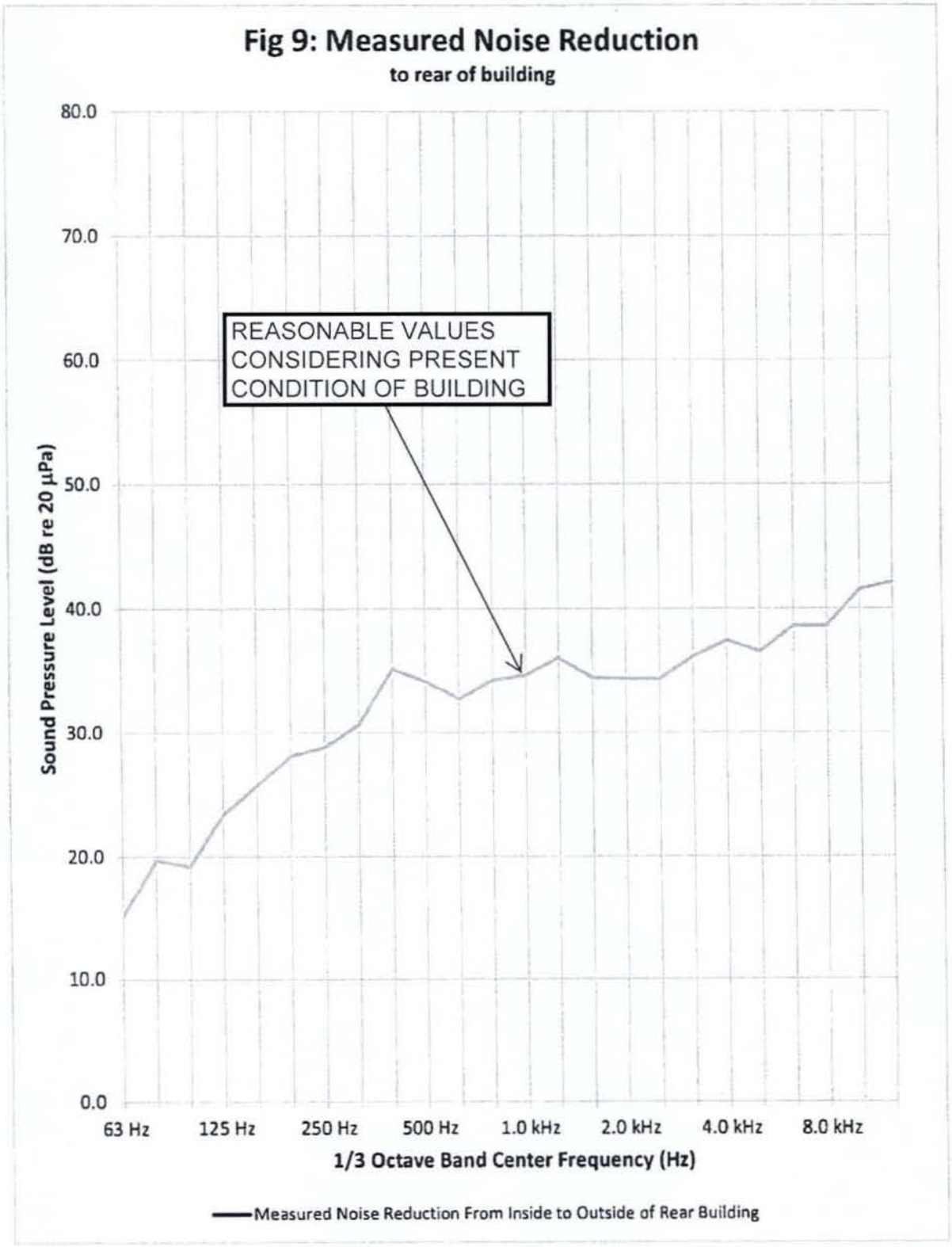
SCANTEK FIGURE 7



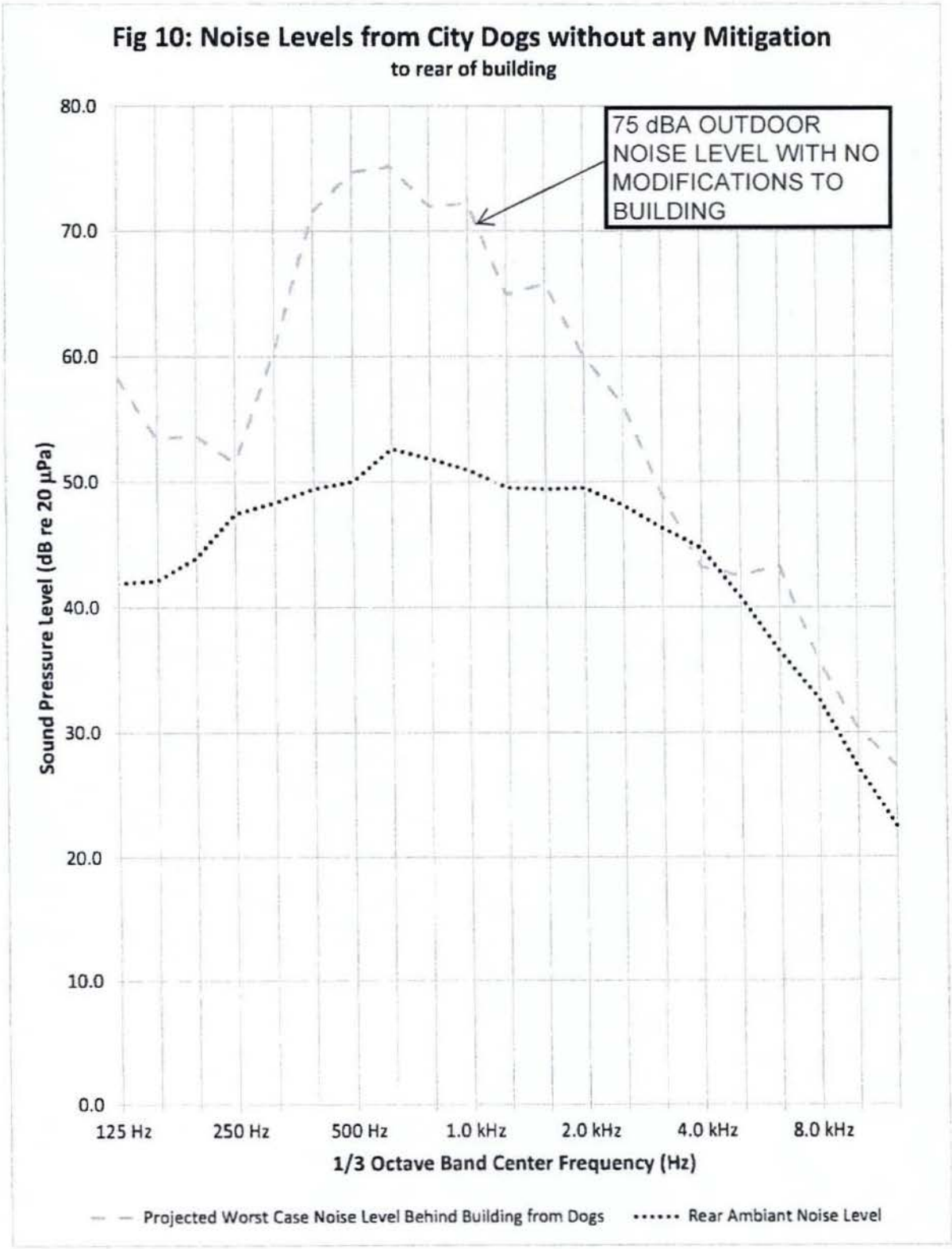
SCANTEK FIGURE 8



SCANTEK FIGURE 9



SCANTEK FIGURE 10



2701 MAXIMUM SOUND LEVELS

2701.1 Except for person engaged in the noise-producing activities that are subject §§ 2702 through 2704, and §§ 2800 through 2807 of this subtitle, no person shall cause, suffer, or permit any sound that emanates from an operation, activity, or noise source under his or her control to exceed the maximum permissible sound level established in the following table as applicable for the time of day or night and the zoning location where the noise originates. For the purposes of this subsection, the source level shall be measured at the property line of the property on which the noise source is located or as close as is practicable if there is an obstruction. Sound levels shall be measured according to the test procedures prescribed by the administering agency established under § 2700:

ZONE	MAXIMUM NOISE LEVEL	
	Daytime	Nighttime
Commercial or light-manufacturing zone	65 dB(A)	60 dB(A)
Industrial zone	70 dB(A)	65 dB(A)
Residential, special purpose, or waterfront zone	60 db(A)	55 db(A)

2701.2 For the purposes of this section, the sound level shall be measured at the property line of the property on which the noise source is located, or as close as is practicable if there is an obstruction.

2701.3 Sound levels shall be measured according to the test procedures prescribed by the administering agency established under § 2700.3 of this subtitle.

2701.4 If a sound can be measured in a contiguous noise zone that has a more restrictive noise limitation than that from which the noise emanates, the sound level measurement at the zone line shall not exceed that established for the more restrictive zone.

2701.5 If the sound emanates from a source within an area for which the maximum permissible sound level has not been established, the maximum level shall be sixty (60) dB (A)

2701.6 Unless restricted by another section of Chapters 27 and 28 of this subtitle, sounds emanating from a street or highway shall not exceed the most restrictive sound level established for the property bordering the street or highway.

2701 7 Noise emanating from inside a motor vehicle shall be measured at a distance of not less than fifty feet (50 ft.) from the vehicle.

SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293 (December 30, 1977); as amended by §2 of the Noise Control Amendment Act of 1996, D.C. Law 11-161, 43 DCR 3727 (July 19, 1996).

James E. Robinson

14827 W 95th Street • Lenexa, KS 66215 • Phone: 913 888 9111 • E-Mail jrobinson@cfaconsulting.com

Core Competencies

Acoustical Analysis	Noise and Vibration Control	Architectural Acoustics
Expert Testimony	TRANE Acoustics Program	AutoCAD

Employment

Coffeen Fricke & Associates, Inc., Lenexa, KS — July 1996-Present
Manager of Acoustical Services 2005
Project Manager for hundreds of acoustical projects worldwide, including eight dog kennel projects
Provide acoustical analysis associated with noise surveys, architectural acoustics, noise and vibration control

Self-Employed, Edmond, OK — March 1985-July 1996
Consulting Geologist
Developed oil and gas properties in Oklahoma
Performed geologic mapping, seismic analysis, and reservoir engineering for various clients

Texas Oil and Gas, Oklahoma City, OK — March 1983-March 1985
District Geologist
Geologist in charge of oil exploration in southern Oklahoma
Personally responsible for the discovery of two new oil fields

Petro-Lewis Corporation — June 1980-March 1983
District Geologist
In charge of the company's most active drilling program with a 90% success rate
Responsible for geologic mapping of complex geology in southern Oklahoma

Education

University of Oklahoma, Norman, OK — 1994-1996
Bachelor of Science in Mechanical Engineering, Nominated to Pi Tau Sigma, Honorary ME Society, Dean's Honor Roll Every Semester

Colorado School of Mines, Golden, CO — 1974-1978
Master of Science in Geology, Thesis Work Geologic mapping in Belize, Central America

Phillips University, Enid, OK — 1970-1974
Bachelor of Science in Geology, Minors in Chemistry and Spanish, Nominated to Who's Who in American Universities and Colleges 1974

Memberships, Affiliations, and Activities

Acoustical Society of America
American Society of Mechanical Engineers
Society of Automotive Engineers
Oklahoma Engineer in Training #EI 10310

Patricia A. Fisher
1308 Pennsylvania Avenue, SE o Washington, DC 20003
Mobile: 202-262-8409 o Email: docpatfisher@verizon.net

August 14, 2013

Re: Noise Control Review
City Dogs
Washington, DC
CFA File: 83068

RESPONSE TO JAMES ROBINSON ACOUSTICAL REPORT

DESCRIPTION OF 1308 PENNSYVANIA AVE., SE

The 1,652 SF, two level, brick row house was built in 1890. The property's front east wall abuts for 30' the west front walls of 1310 Penn. Ave.. The 2nd floor consists of 3 bedrooms and 2 full baths. The front area of the 1st floor is an open space area consisting of the living and dining areas plus the kitchen as well as a full bath and rear den. Off the den is an enclosed porch which leads to the exterior enclosed patio area. The patio is a 'fishbowl like' area surrounded by the 1306 Penn. Ave. condo building's east side wall and its south parking lot wall. The east side of 1308 Penn. Ave. shares a total of approximately 60' with 1310 Penn. Ave. (30' interior and 30'exterior). 1308 Penn. Ave. shares a 30' portion of the west warehouse/rear wall of 1310 Penn. Ave.. The front 30'of walls accounts for the 2 brick depth, 2 floor levels, shared/abutting walls between the two properties.

I purchased the property in 1987 and used it as my office until approximately 6 years ago when I retired. I gutted the building, did a major renovation, and returned the property to a row house state. The renovated property was designed to take into account my visual impairment and physical mobility issues. The property has been my primary residence since the spring of 2008.

COMMENTS RE ROBINSON ANAYLSIS

1. "Need to have an idea of the expected noise level inside the building"
   Comment: When the applicant's initial sound tests were done in early June, the warehouse area was full of 'stuff' that the owner had not yet removed. The two side walls were literally lined with 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. My thinking: the test results did not accurately reflect the sounds of an empty building. The tests also did not include simulated dog barking and other dog-related sounds. 2. The applicant quotes 'an average of about 45 dogs daily' are expected to be boarded at 1310 Penn. Ave. A June 20, 2013 DC Dept. of Health inspector's report indicated a daily average of 55 dogs at their existing Dupont Circle site. There was no mention of the number of dogs that would be groomed daily or an estimated number of customers utilizing their retail business operation. Both of these services also generate noise whose measurements were not acknowledged or measured in Scantex's tests. Note: the 1310 Penn. Ave. 2 buildings are approximately 2.5 – 3 times as large as the existing site. Question: Is it realistic to expect that City Dogs will be boarding and grooming fewer dogs in a significantly larger facility? To my knowledge, the applicant has not provided projected numbers re its various services. I have therefore taken the liberty of making what I consider to be realistic numerical projections for anticipated services. 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 and the BZA hearings.

2. "Scantex incorrectly assumed there is no noise generated in the front areas of 1310."
   COMMENT: Having worked and lived in 1308 Penn. Ave. since 1987 and for 26 years, I can attest to the fact that sounds are transmitted through the **TWO (2)** levels of brick walls separating 1308 and 1310 Penn. Ave. and on both the 1st and 2nd floors. (I challenge the veracity of Scantex's assertion that there are 3 levels of brick walls between the two properties. I don't know where or how Scantex came up with 3 levels of brick walls.) When the current owner, Mr. Sostoric, of a commercial construction company 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 last week, while sitting in my middle bedroom, heard Mr. Heier 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 because 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. (That front door is directly under one of my master bedroom east side window. I can hear the door closings even when my window is closed and my AC on.}

3. The architect who designed my renovated property also had access to 1310 Penn. Ave. during and after my renovation project period. She has indicated that she is willing to speak with you regarding more technical points of both properties. Let me know if you would like her contact information.

In conclusion, I hope the above information better helps you understand and respond to Scantex's report. If you need additional pictures, plats, etc. in addition to what Ms. Andrews-Weller sent you, let me know. Please do not hesitate to contact me if I can provide any clarification or additional info that may be helpful as you prepare your report. Thank you.

Patricia Fisher

Attachment 1: Sound/Noise Factors

ACTIVITY	LOW	HIGH	RANGE	AVERAGE	
Front Door Openings & Openings:					
Dog Boarding Clients	55x2=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	
2nd 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	

Testimony of Ellen M. McCarthy

BZA Case #18584

July 9, 2013

Good morning, Mr. Chair and Members of the Board. My name is Ellen McCarthy and I am testifying today as an expert with respect to issues of zoning, based on my forty (40) years of planning experience and more than twenty-five (25) years of experience with zoning in the District of Columbia. My testimony will:

1. review the history and context of the dog boarding zoning regulations;
2. address why the proposed use does not meet the adverse impact test of the requested special exception;
3. explain why the requested variance relief should be a use variance, not an area variance; and
4. establish that the applicant has not met the tests to justify granting either variance

Brief Overview of the History of the Zoning Regulations on Animal Boarding

In 2004, when I was serving as the Deputy Director for Development Review and Historic Preservation at the DC Office of Planning, the Zoning Administrator issued a certificate of occupancy to WagTime, a dog boarding operation, concluding that, although dog boarding was not specifically mentioned as a permitted use in the Zoning Regulations, it was similar in character and impacts to a veterinary hospital or public baths, which were allowed as a matter of right in the C-3-A zone. A group of neighbors in the 1400 Block of Q Street NW, which abutted the rear of WagTime across an alley, appealed the Zoning Administrator's determination. The Board of Zoning Adjustment agreed with the neighbors that dog boarding had potential adverse impacts that were far more severe than the other uses to which the ZA had compared them, and it overturned the Certificate of Occupancy that had been granted. Later, in 2005, the same group of neighbors approached us at OP, requesting that we propose a set of regulations to govern dog boarding. In Zoning Commission Cases 05-21 and 05-21A, the Commission approved the regulations, which broadened the definition to include all animal boarding, animal groomers who also provided day care and veterinary hospitals for which animal boarding was 50% or more of their business. The Commission heard compelling evidence that such boarding could create serious issues, particularly with respect to noise, odor and disposal of dog waste. It found that the potential for adverse impacts was serious enough that such establishments were prohibited not only in residential zones but also in commercially-zoned areas which merely abutted a residentially-zoned parcel, and the Commission determined that all animal boarding uses required a special exception, even in industrial areas.

There was considerable discussion of the noise factor in the hearings on the two cases, with the Chairperson of the Commission and another Commission member agreeing with witnesses who had

experienced noise as a severe negative impact, but found it extremely difficult to get any enforcement from the District of the noise violations.

There was no disagreement voiced on the transcript regarding the prohibition against having an animal boarding facility abutting a residentially-zoned area. In fact, Ms. Andrea Doughty, the main organizer of the Q Street Neighbors Association, the primary group involved in researching and proposing new regulations, noted:

> Because of the noise impact and the special nature of the enforcement problem with the noise impact, we completely agree with the Office of Planning . . . that dog boarding uses in general are not appropriate in locations that abut Residential Zones.

No one from the Commission or any of the witnesses disagreed.

Adverse Impacts

The subject property is located in a C-2-A zone district, abutting R-4 on to the northeast and CM-1 to the northwest. Animal boarding is permitted in the C-2-A zone only by special exception. Pursuant to Section 3104.1 of the Zoning Regulations, the Board is entitled to grant a special exception where, in its opinion, such relief can be granted in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Maps, and will not tend to adversely affect the use of neighboring property, subject to some specific conditions outlined in Section 735, designed to address the potential for adverse impact from a proposed use. These conditions include:

735.2 The animal boarding use shall not abut a Residence Zone.

The applicant can not meet this condition, and is asking for a variance.

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.

The applicant has the burden of proof to show that, indeed, he can provide this basic requirement that the animal boarding facility can operate without having a negative effect on the neighboring property. He has not met that burden of proof. Despite the fact that Section 735 clearly states that the boarding activity must take place within a soundproof building in a manner which would produce no noise, his counsel did not submit any professional determination that the structure is indeed soundproof. An acoustical report was submitted belatedly, and the opposition has had very little time to review it in detail. What is clear, however, is that the report mentions a variety of measures which might be undertaken to cushion the sound. There is no opinion in the report regarding whether the building is soundproof or will be soundproof after the installation of certain suggested mitigation technologies. Likewise, there is no commitment by the proposed business operator as to which

approaches are going to be used, and therefore, no authoritative determination that the building will indeed be soundproof.

Why is this a concern? You have already heard from a variety of parties in opposition why they fear the proposed use will have negative consequences. All dogs will enter from the front, which shares party walls with the structures on either side of 1310. And it is in the front section of 1310 that dog barking will potentially be set off by either the eagerness of the arriving dog to begin to play, or confrontations with other arriving dogs, across the party wall from either Dr. Fisher, who may be trying to sleep, or the Moss Group, which may be trying to host a webinar or hold a conference call. The second floor will host grooming, adjacent to the office space of the Moss Group; the grooming operation contains numerous opportunities to set off a commotion on the part of the canine clients. Even the back "warehouse" portion, which is a rather solid-looking masonry structure, has skylights which have a low sound mitigation. The applicant indicates that it will put in the required odor control and air filtration, but there are no details about where those vents, also capable of transmitting noise, will be located. There are flimsy doors which the acoustician indicates need to be replaced, but, as with the other items, there is no commitment on the part of the future operators as to how much they are willing to spend or what technology there are planning to use. Indeed, there has been no indication that additional soundproofing will be installed to shelter the party walls. The applicant submitted its application in April, but has not, until just a few days ago, engaged a consultant to predict the level of noise that will be generated and how much it can be attenuated. The report, which is crucial to determining adverse impact, was provided so late that the opponents have not had the opportunity to review it in detail or to engage their own expert to assess its validity.

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.

Not only are odors and waste disposal critical in terms of the peaceful enjoyment of the neighbors' property, but the professional publications for animal facility managers feature articles that create grave concern for the neighbors, with descriptions of serious zoonose diseases such as ringworm, leptospirosis, salmonella and toxoplasmosis. These and other viral, bacterial and fungal diseases are present, even with well-screened, seemingly healthy animals, and they are expelled through the exhaust fans into the open air, creating dangerous conditions for neighbors, pedestrians and outdoor diners if the filters are not properly installed, or not regularly changed, which can be an extremely expensive operation.

735.5 The Board may impose additional requirements pertaining to the location of buildings or other structures; entrances and exits; buffers, barriers, and fencing; soundproofing; odor control; waste storage and removal (including frequency); the species and/or

number and/or breeds of animals; or other requirements, as the Board deems necessary to protect adjacent or nearby property.

In this case, it is not even clear what additional requirements the Board may need to impose, since we do not have a specific commitment about modes of waste storage and disposal, air filtering, or a vestibule to keep the noise of barking dogs from escaping as clients enter and exit with their animals. The applicant has committed that all entrances and exits will be through the front, as will loading. Because the applicant did not provide a traffic and parking study, the Board has no way of knowing whether 45 or more dogs being dropped off in the morning rush hour and picked up at night, along with deliveries and waste disposal, will create problems with parking availability, congestion and traffic.

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

The applicant has at least agreed to comply with this requirement.

The Applicant has Erroneously Identified the Needed Variance as an Area Variance, When in Fact a Use Variance is Required

The Regulations say flatly that "The animal boarding **use** may not abut a Residence Zone." The purpose of this regulation was a determination by the Commission that it was not appropriate or advisable to locate animal boarding facilities abutting residence zones. The regulation does not provide a dimension, as it the case with some uses, or a minimum or maximum size of the yard; we are not talking about relief from a dimension, we are talking about introducing an inappropriate use in proximity to a residential zone. As such, the appropriate relief is a use variance, not an area variance. As the Board is well aware, a use variance carries an even stricter set of requirements.

Whether the Applicant Has Erred in Seeking an Area Variance Rather Than a Use Variance, the Applicant Has Not Met the Tests to Justify Either Type of Variance

As the Board is quite well aware, there are several "tests" that must be met to qualify for a variance, described in Section 3103:

1. The Applicant must show that its property is characterized by "exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations", or it has "exceptional topographical conditions or other extraordinary or exceptional situation or condition"
2. There must be a nexus between those factors which make the property unique and a determination that strict compliance with the Zoning Regulations would constitute either "peculiar and exceptional practical difficulties [area variance] to or exceptional and undue hardship [use variance] upon the owner of the property"

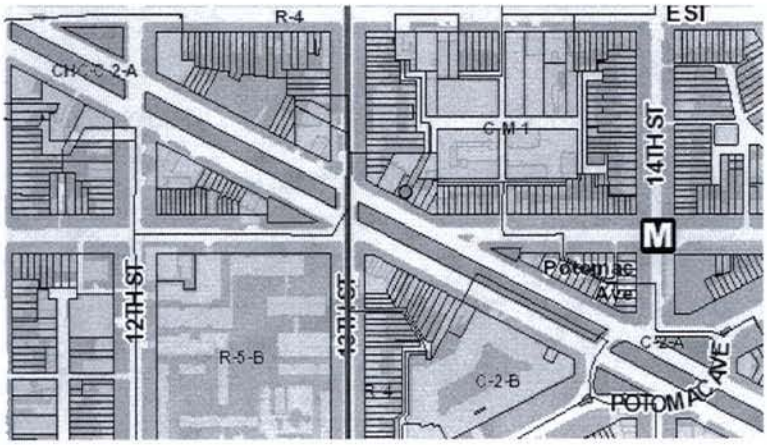
3. The requested relief must be able to be granted "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."

In this case, the Applicant meets none of the tests. It claims that the "extraordinary or exceptional situation" is that the lot is long and narrow, and the property owners sold an easement for access across the property to a neighboring owner. However, a review of Exhibit 1 (attached) shows quite clearly that, even in the immediately adjacent blocks there are other lots which are similarly long and narrow. Neither the Applicant nor the Office of Planning report document why that situation is exceptional. They certainly do not then make a connection between the shape of the lot or the easement with any "peculiar and exceptional practical difficulties" or "undue hardship" that would occur if the building were to be used for another purpose. As the applicant's statement indicates, the building was used until recently as an office for a construction company and warehouse. A very similarly-shaped lot is across Pennsylvania Avenue to the south and slightly east, and, according to Google Maps, it is being used as dental offices. The Potomac Avenue Metro Station is slightly more than a block away, and there is a new Harris Teeter grocery store across the street, making the building a very attractive redevelopment opportunity for any number of uses which are matter of right in this zone.

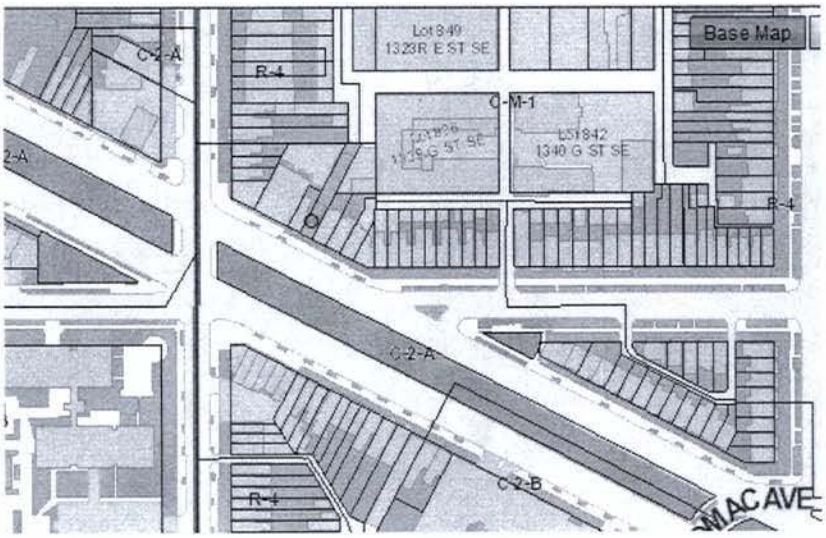
With respect to the "detriment to the public good", the testimony of the numerous neighbors as to how they will be adversely affected makes it clear that the variance request does not comply with the standards established in the Regulations for granting variance relief.

Without the requested relief, the Applicant has also not complied with the requirements of Section 735. Because the Applicant cannot comply with that requirement, and because, in my professional opinion, the Applicant has not met its burden of proof to demonstrate that there will not be serious adverse impacts, therefore, the application must be denied.

Exhibit 1. DC Property Quest Maps of Vicinity of 1310 Pennsylvania Ave. SE



Scale: 1:1,600



Scale 1: 1,300