

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

In the Matter of Application of Shiao Feng Chen
for Special Exception for Animal Boarding Use - BZA Case No 18669

ADDITIONAL SUBMISSION OF
ALAN N HERNANDEZ AND MARY D RODRIGUEZ
AS OPPONENTS

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I. Introduction

We are the owners and, together with our two school-aged children, occupy the residential property at 4823 Reservoir Road, NW, Washington, DC 20007. Our home, which is located on Lot No 0034, Square No 1388, is directly behind the Diva Dogs business located on Lot No 0025, Square No 1388 that is owned by the Applicant. We purchased our home at significant expense in order to be closer to our children's schools and our places of employment in the District of Columbia. We selected our home in the Palisades area of D C in large part because of the peacefulness of the area compared to other busy and more commercialized areas of the city. We then substantially renovated our home, at further significant expense, to provide a more comfortable place for our family to live, sleep, study and work. We made these significant investments in our home in the belief that we could quietly and peaceably enjoy it for the foreseeable future. It was therefore quite distressing for us to learn that a dog boarding establishment (in effect, a dog kennel), with its attendant noise, odor and waste, planned to operate just a few feet away from our new home. What should have been a joyous occasion associated with a new home has turned into an extremely stressful experience with no end in sight unless the Board rejects the Applicant's dog boarding application.

We are making this additional submission to address certain issues raised in the Memorandum dated December 3, 2013 from Paul Goldstein and Joel Lawson of the District of Columbia Office of Planning ("OP"), a copy of which we received on December 16, 2013 (the "OP Memorandum"). Because we received the OP Memorandum only yesterday, we respectfully request that the Board accept this additional submission at this time for further elucidation of the pertinent issues.

II. The Proposed Animal Boarding Use Abuts A Residence Zone

The Applicant's Diva Dogs business is located on the border of a C-2-A zone district along MacArthur Boulevard in the Palisades area that abuts the R-1-B district in which our home is located. The zone district boundary line separating these two districts runs through the middle of a 16-foot alley. See Zoning Map, 11 DCMR § 107.5 (zone district boundary lines shall follow center lines of alleys), OP Memorandum at p 2. This alley is currently used by the Applicant in its dog grooming business and will be further used by the Applicant as part of its proposed dog boarding business. The alley is also used by us and other residents who live on the 4800 block of Reservoir Rd, NW.

OP asserts that "[t]he Property does not abut a residence zone. The nearby R-1-B district is across the alley." OP Memorandum at p 4. The latter statement is potentially misleading because our residence zone begins in the middle of the alley, as noted above, and not on the other

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side of the alley from the Applicant's business. Moreover, the demarcation for determining whether an animal boarding business abuts a residence zone extends beyond the Applicant's rear lot line in this case. Section 735.2 of the District of Columbia's Zoning Regulations (the "**Zoning Regulations**") provides that "[t]he animal boarding use shall not abut a Residence Zone." 11 DCMR § 735.2 (emphasis added). In this case, the proposed dog boarding business will be necessarily using the alley. As OP states in the OP Memorandum:

"Rear outdoor waste disposal containers would contain animal waste and be picked-up by a private disposal company. OP urges the Applicant to confirm that waste pick-up would occur at least weekly."

OP Memorandum at p. 5.

It is our view therefore that the Applicant's proposed animal boarding use abuts a residence zone in violation of Section 735.2 of the Zoning Regulations.

Our view is corroborated by Advisory Neighborhood Commission 3-D ("ANC3D") which reviewed the Applicant's special exception application as well as the OP Memorandum. In a letter dated December 9, 2013 (the "**ANC3D Report**") urging the Board to deny Diva Dogs' application, the Chair of ANC3D reported that "ANC3D believes the property at 4824 MacArthur Boulevard does abut a Residential Zone, and therefore, the application for a special exception does not meet the Zoning requirements." ANC3D Report at p. 2. The ANC3D Report further explained that "[s]everal ANC3D Commissioners also questioned OP's position that this did not abut a Residence Zone because the only separation between the rear of 4824 MacArthur Blvd. and the neighbors' property is a service alley used by both neighbors and businesses." Id. We respectfully request that the ANC3D Report be given "great weight" by the Board in accordance with Sections 3012.6 and 3115.2 of the Board of Zoning Adjustment Rules of Practice and Procedure. See 11 DCMR §§ 3012.6, 3115.2.

III. The Proposed Animal Boarding Use Is Only 16 Feet Away From The Nearest Residential Property

OP states in the OP Memorandum that "the subject building is roughly 40' to 50' away from the nearest residentially zoned properties, and 70' to 80' away from the nearest residential dwellings, across the public alley." OP Memorandum at p. 1. In addition to being inaccurate, this statement is misdirected. The rear lot line of the Applicant's business is only 16 feet away from our residential property, which is directly behind the Applicant's business. This distance is less than the length of the living rooms of the affected residents. Moreover, the test for determining distance from the proposed dog boarding business is not the four walls of our house but our residential property as a whole which includes our small rear yard and deck, the peaceful and quiet enjoyment of which would also be adversely impacted by the Applicant's proposed dog boarding business. Section 735.2 of the Zoning Regulations refers to "residence zone" – not residential dwelling – in restricting the location of animal boarding establishments. Similarly, Section 735.3 of the Zoning Regulations requires that "[t]he animal boarding use shall take place in such a way so as to produce no noise or odor objectionable to nearby properties." 11 DCMR § 735.3 (emphasis added). As the District of Columbia Zoning Commission ("ZC") is aware from its hearing on the proposed dog boarding zoning regulations, barking noise from an animal boarding business can be very loud and can travel significant

distances See In the Matter of Dog Boarding (Case No 05-21), ZC Pub Hearing Tr (Nov 3, 2005) In fact, the Veterinary Safety & Health Digest, a safety-specific newsletter directed to veterinary professionals, reports that

“Although it will vary from one breed to another, as well as one animal to another, noise level from a barking dog can reach 80-90 decibels It doesn't take much of a chorus of barking dogs to exceed the threshold limit for a noise hazard area As a matter of fact, noise levels in the kennels typically range from 95 to 115 decibels measured at the center of the room.”

“What is "Noise Hazard" in the veterinary practice?” found at [http //www safetyvet com/osh/noise htm](http://www.safetyvet.com/osh/noise.htm)

Moreover, in our case, there are no intervening buildings or other structures that can block dog barking noise from the Applicant's business Without any such barriers, noise from the Applicant's proposed dog boarding business would certainly travel more than the 16 feet where our rear yard begins

IV. OP's Recommendation That The Rear Of The Second Floor Not Be Occupied By Animals Is Not Practical Nor Enforceable

Acknowledging that the noise from the proposed animal boarding establishment would adversely affect residents on the 4800 block of Reservoir Rd , NW, OP has recommended that “ the rear facing rooms in the basement and second floor not be occupied by animals in order to minimize any sounds impacts [sic] on residential neighbors ” OP Memorandum at p 5 At the same time, OP reported that the Applicant proposes to “ use the second floor for animal pick-up, waiting, and day care space primarily ancillary to the grooming operations.” OP Memorandum at p 2 At worst, this recommendation is contradictory, and at best, it is neither practical nor enforceable It would be difficult for the Applicant not to have animals occupy any area of the second floor when at the same time the Applicant is using the second floor for animal day care Even if theoretical distinctions were made between overnight boarding and day care or where precisely dogs would occupy the second floor, those distinctions would, as a practical matter, be lost when the dogs are roaming in a cageless setting as the Applicant proposes Moreover, the recommendation would be impossible to enforce every night or even from time to time

V. The Applicant's Assertion That Only Four To Five Dogs Will Be Held At A Time Is Not Reliable

The Applicant has not been consistent in the maximum number of dogs that the Diva Dogs business would board In the OP Memorandum (which was prepared on or prior to December 3, 2013), OP stated that “the Applicant anticipates that approximately 4 to 5 dogs would be held overnight [and] also anticipates that only 4 to 5 dogs would typically be held in daycare ” OP Memorandum at p 2 During the ANC3D meeting held on December 4, 2013, the Applicant expressed the desire to board as many dogs as possible In the ANC3D Report that was prepared following the ANC3D meeting, the Chair of ANC3D reported that the Applicant “ stated they would be willing to limit the number of boarded dogs to six ” ANC3D Report at p 2 Given the Applicant's inconsistent statements, it is evident that the Applicant would like to

board as many dogs as possible and could very well do so irrespective of any limit specified by the Board. Moreover, given the combination of overnight dog boarding and day care, the number of dogs that will actually be “kept” (as that term is defined by the Board) in the Applicant’s business at any given time may actually be higher than six and, in Applicant’s estimation, may be in the range of 8 to 10. Furthermore, in the absence of any regulatory body in the District of Columbia regulating animal boarding establishments, it would be difficult to enforce how many dogs are actually kept on the premises at any given time. We respectfully submit that it should not be the responsibility of the neighbors who abut Diva Dogs to police the number of dogs in the Applicant’s business.

VI. The Applicant’s Dog Boarding Application Does Not Have The Support Of The Neighbors Who Would Be Most Affected

In the OP Memorandum, OP states that it “has reviewed 21 statements of support from neighbors, including what appear to be two adjacent neighbors.” OP Memorandum at 5. However, nearly all of the people who signed the “statements of support” that were provided to ANC3D do not live in the area that would be affected by the proposed dog boarding business. Some of the signers appear to be owners or employees of businesses on MacArthur Blvd, NW including the owners of the Diva Dogs business (i.e. the Applicant) and/or their relatives. They also include multiple family members or other residents at the same single-family address. Another person lives in Maryland. Only one person on the 4800 block of Reservoir Rd, NW signed the purported statement of support. Yet, she also raised a number of issues about the application and expressed her concerns via email to our ANC3D representative, W. Philip Thomas. A total of five households on the 4800 block of Reservoir Rd, NW wrote to our ANC3D representative and/or attended the December 4 ANC3D meeting or another meeting with the ANC3D Chair and our ANC3D representative at our home, expressing their opposition to the Applicant’s dog boarding application.

VII. The Applicant Cannot Be Relied Upon To Comply With The Conditions Proposed By OP

OP’s recommendation to approve the Applicant’s special exception application was made subject to a number of conditions with which the Applicant has not yet complied. Among other things, the Applicant has not provided satisfactory information about its systems for noise mitigation, odor control and waste disposal, including how its existing control system has the capacity to handle animal boarding. See OP Memorandum at pp. 1, 5. In addition, as noted above, it would be difficult to enforce OP’s proposed prohibition against dogs occupying the second floor of Applicant’s business.

Beyond the OP’s stated conditions, the OP Memorandum fails to note that the building proposed to board dogs is a circa 1930s rowhouse that was not constructed to house a business that emits high levels of noise, odor and waste. It is not “an enclosed and soundproof building” and, without major renovations that would drastically change the building, would not permit the Applicant to operate a dog boarding establishment “in such a way so as to produce no noise or odor objectionable to nearby properties” as required by Section 735.3 of the Zoning Regulations. See 11 DCMR § 735.3. Among other things, the building appears to have its original 1930s windows and doors which, in addition to being drafty and creating an uncomfortable environment for the dogs (especially overnight), would allow noise and odor to escape at a high

rate In the rear of the building, there are four windows and a door that appears to have a window that would create abundant opportunities for noise and odor to escape The Applicant has not provided evidence that its windows and doors provide a tight seal to prevent noise and odor from escaping When asked by ANC3D Commissioners about the Applicant's efforts to minimize noise from dogs barking overnight, the Applicant responded that he could use special collars on the dogs Not only would this strike many as being inhumane to the dogs, it is neither enforceable by any outside party nor likely to achieve the objective of preventing boarded dogs from making noise that can wake one of our or a neighbor's family members at night Simply put, neither the facility nor the location is appropriate for the boarding of dogs

VIII. ANC3D's Recommendation That The Application Be Denied Should Be Given Great Weight

ANC3D urged the Board to deny Diva Dogs' application While cognizant of the need to support businesses for the benefit of residents, ANC3D took note of the prohibition in Section 735 of the Zoning Regulations that animal boarding establishments shall not abut a residence zone and disagreed with OP's position on this issue ANC3D chose not to support the further expansion of an existing business in its district (even if some ANC3D residents support the expansion) if the expansion could potentially adversely affect neighboring properties In so doing, ANC3D elected to support the greater need to protect adjacent residents from the adverse effects of a business identified in the Zoning Regulations as potentially deleterious to residents We urge the Board to give great weight to ANC3D's recommendation and likewise reject the addition of dog boarding to Applicant's business as it would adversely affect residents adjacent to that business

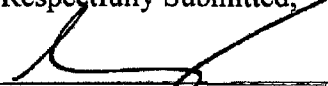
IX. Conclusion

We believe that the Applicant has not satisfied its burden of proof to show that it has met the conditions for a special exception for animal boarding as required by Section 3119.2 of the Board's Rules of Practice and Procedure See 11 DCMR § 3119 2. In particular, the Applicant has failed to show that the issuance to the Applicant of a special exception for animal boarding ". . will be in harmony with the general purpose and intent of the Zoning Regulations . ." See 11 DCMR § 3104 1 The Applicant has also not shown that the requested special exception " will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations " Accordingly, we respectfully request that the Board deny the Applicant's special exception application for animal boarding

X. Attachment

In further support of our submission, we have attached a copy of the memorandum that we submitted to ANC3D requesting that ANC3D recommend the denial of Applicant's special exception application

Respectfully Submitted,



Alan N. Hernandez
Mary D. Rodriguez

MEMORANDUM

TO Mrs Peggy Pagano
Chairperson, ANC 3D

Mr W Philip Thomas
Representative, ANC 3D 05

All ANC 3D Commissioners

FROM Neighbors from the 4800 Block of Reservoir Rd , NW

- Alan Hernandez and Mary Rodriguez, 4823 Reservoir Rd , NW
- Gene Ulm and Carolyn Machado, 4843 Reservoir Rd , NW
- Mark and Karen Linscott, 4831 Reservoir Rd , NW
- Cheryl Brown, 4827, Reservoir Rd , NW
- Andrew Winn and Family, 4821 Reservoir Rd , NW

DATE November 27, 2013

RE Request for ANC 3D Opposition to Diva Dogs' Application for a Special Exception to Establish an Unregulated Dog Kennel Behind our Residences (**BZA Case No. 18669**)

An Unregulated Dog Kennel Threatens the Peaceful and Healthy Enjoyment of Our Homes

- Each of the neighbors listed above owns and/or occupies a home that is less than 200 feet from the dog kennel Diva Dogs is currently operating at 4824 MacArthur Blvd , NW in our neighborhood
- The kennel is within 16 to 200 feet from our homes on the 4800 block of Reservoir Rd , NW
Thirteen homes are within 200 feet of the kennel, in a residential zone, R-1-B
- A kennel in our neighborhood will cause excessive noise, unsanitary conditions due to excessive dog waste and urine, negatively impact the quiet and peaceful enjoyment of our homes, change the residential character of our neighborhood, and decrease the value of our properties by making our block a less desirable place to live

D C Zoning Regulations Prohibit Kennels in Close Proximity to Homes and Residential Zones

- 11 DCMR §735 limits animal boarding to C-2 zones by special exception, subject to conditions
 - Dog kennels or dog boarding are not allowed in residential zones

- 11 DCMR §735.2 expressly provides: “*The animal boarding use shall not abut a Residence Zone*”
 - Diva Dogs’ kennel, in a C-2-A zone, borders a residential zone, R-1-B
- The BZA has not approved kennels that are 16 feet from residences and a residential zone
 - Even within C-2-A zones, the BZA has limited dog boarding to no less than 82 feet from the nearest residential zone
 - Diva Dogs is less than 80 feet from approximately 9 or 10 homes on Reservoir Rd, NW
- The BZA recognizes that, unlike veterinary clinics and pet shops, dog boarding facilities are characterized by greater amounts of noise and waste, and greater numbers of overnight stays

Kennels or Dog Boarding Facilities Are Not Regulated by the District of Columbia

- No agency in the District of Columbia regulates or conducts inspections to limit the number of dogs boarded at private kennels, kennel facility conditions, or appropriate waste disposal and odor control. Unvaccinated dogs are allowed in D.C. kennels. The D.C. government only regulates veterinary clinics and pet shops.
- There is no limit to the number of dogs that will be introduced into our neighborhood as a result of the kennel. Diva Dogs operates a “cage-less” kennel environment that does not limit the number of dogs based on available dog cages or structures. According to the owner, Diva Dogs plans to board “as many dogs as possible.”
- Neighboring jurisdictions fully regulate dog kennels. They require sound proofing, impermeable floor coatings, special HVAC and licensed waste disposal, and limit proximity to residential areas. They also regulate consumer and health matters, limit the number of dogs to be boarded, require a veterinary plan in the event an animal is injured, require up-to-date vaccinations for boarders, and posting of remedies in the event of non-payment of fees. There is no agency in the D.C. government that regulates any of these matters.
- Diva Dogs’ kennel is an unmodified townhouse that directly adjoins private residences and other businesses with no limitations on the number or condition of dogs it boards. Moreover, consumers and dogs that board at Diva Dogs do so at their own risk without any regulatory safeguards or protections. For example, during the ANC November 6th Meeting, Mr. Lee stated that he can use “special collars” on the dogs to prevent their barking.

A Kennel in our Neighborhood Poses Health and Environmental Risks

- Diva Dogs’ business plan for boarding dogs includes walking the dogs in a small park at the corner of MacArthur Blvd, NW and Reservoir Rd, NW. Diva Dogs’ employees also walk the

dogs along the 4800 block of Reservoir Rd , NW where we reside The dogs urinate and defecate in the park and on the grassy areas and gardens in front of our homes It is impossible to collect 100% of dog waste, and urine cannot be collected at all Residents of the 4800 block of Reservoir Rd., NW must walk on the grassy areas to get to our homes from the parking spaces on the block This condition can be unsanitary and potentially hazardous to health and to the environment

- If 50 dogs defecate and urinate three times daily, that amounts to a total of 300 bowel movements per day, or 109,500 per year Even if Diva Dogs is 90% effective in picking up fecal waste, that would still leave 165 per day and 60,225 per year of uncollected bowel movements in a very small city park and our neighborhood.
- An unlimited number of dogs using the small park and our block as waste disposal areas can contribute to the attraction of vermin, create unsanitary conditions near our homes, and negatively impact the environment and water supplies, including, in particular, the Georgetown Reservoir which is part of the water supply and treatment infrastructure for the District of Columbia and is only a few yards away from the park

Diva Dogs Is Currently Operating a Kennel Despite Lack of Approval by the BZA

- Diva Dogs is currently operating a kennel that is boarding dogs on the premises at 4824 MacArthur Blvd , NW, overnight for a fee, without the appropriate approval to do so
- Diva Dogs has been advertising its dog boarding services with a large sign in front of the shop and on the website, YELP The advertisement is clearly intended to attract customers beyond those who bring their dogs for grooming or live within the neighborhood
- The dogs are currently being kept on the second floor and other locations of the premises that are not appropriate for boarding dogs
- The owners' disregard for the existing zoning regulations that prohibit use of the property for animal boarding casts doubt on their commitment to comply with any conditions the BZA might be inclined to impose upon the operation of a kennel business

ANC 3D Should Oppose Diva Dogs' Application for a Special Exception to Operate a Dog Kennel that Abuts a Residential Zone and is 16-200 feet from 13 Residences

- The ANC is automatically a Party to Zoning Hearings and ANC Reports are given "great weight" in zoning decisions by the BZA

- The above-listed neighbors of the 4800 block of Reservoir Rd , NW, a residential zone, respectfully submit that the operation of an unregulated dog kennel so close to our homes will negatively impact the peaceful and quiet enjoyment of our homes and neighborhood. The attendant noise, odor, and unsanitary conditions caused by an unregulated kennel 16-200 feet from private homes, will change the character of our neighborhood, threaten the health of residents, and negatively impact the environment.
- For the reasons set forth above, the neighbors listed on page 1, respectfully request that the ANC 3D recommend to the Board of Zoning Adjustment that Diva Dogs' Application for a Special Exception to operate a dog kennel within 16 to 200 feet from 13 homes be denied.

Legal Authorities and References

Regulations

- 11 DCMR § 735
- 11 DCMR § 735.2

BZA Orders

- BZA Appeal No. 17092, of Stephanie Mencimer, et al. *overturning Zoning Administrator's decision to allow dog boarding facility in a commercial zone that was adjacent to a residential zone, finding that dog boarding facilities are characterized by greater amounts of noise and waste, and greater numbers of overnight and outdoor stays compared to veterinary hospitals and pet shops, at pp 4-5. Also crediting testimony of 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.* http://dcoz.dc.gov/orders/17092_1209-878.pdf
- BZA Order No. 18474, *granting Wagtime, LLP approval to operate dog boarding entirely within a C-2-A District. Properties in the vicinity were also zoned for C-2-A, and the dog boarding facility did not abut an existing residence or residential zone. The boundaries of the closest residential districts were approximately 82 feet to the north, 170 feet to the south, and 200 feet to the west.* <http://dcoz.dc.gov/orders/18474.pdf>

Zoning Map

- Showing 13 residences and residential zone R-1-B within 16 to 200 feet of Diva Dogs' kennel

Reference Materials.

- Herald-Tribune Article, *Dog Waste is More than a Pet Peeve*
<http://www.heraldtribune.com/article/20111029/COLUMNIST/111029516?template=printart>
- EPA Article on Environmental Impact of Pet Waste, *Pet Waste Management*,
<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=browse&Rbutton=detail&bmp=4>
- Diva Dogs Advertisements <http://www.yelp.com/biz/diva-dogs-grooming-washington>