

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

**Application for Citydog! Club
 At View 14**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by View 14 Investments LLC, the owner of the subject property, and Citydog! Club, the proposed tenant of the subject property (collectively, the "Applicant") in support of their application pursuant to 11 DCMR §§3103.2 and 3104.1 for a special exception pursuant to §§735, 736 and 739 and variances from §§ 736.4 and 739.5 of the Zoning Regulations to permit animal boarding, pet grooming, and animal shelter uses in the C-2-B District in the View 14 building located at 2303 14th Street, NW (the "Property").

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board of Zoning Adjustment (the "Board" or "BZA") no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background

The Property is a mixed use building located on Lot 155 in Square 2868, on the east side of 14th Street, NW, between Florida Avenue and Belmont Street. The Property consists of approximately 32,000 square feet of retail and service uses at or below grade, along with 185 apartment units on the upper nine floors. The development was approved as a PUD by the Zoning Commission pursuant to ZC Order No. 05-22, dated January 9, 2006. The Applicant seeks special exception approval to utilize approximately 4,300 square feet of the ground floor retail space for animal boarding (Sec. 735), pet grooming (Sec. 736) and animal shelter (Sec. 739) uses.¹ The proposed establishment also requires a variance from Section 736.4 and Section 739.5 of the Zoning Regulations, which prohibit pet grooming and animal shelter establishments abutting residential uses.

¹ There will also be a retail use within the establishment, but that use does not require BZA approval.

II. Burden of Proof for Special Exception

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

A. Special Exception for Animal Boarding

Pursuant to Section 735 of the Zoning Regulations, animal boarding may be permitted as a special exception if approved by the Board under Section 3104.1, subject to the provisions of Sections 735.2 through 735.6. The Applicant complies with the special exception standards as follows:

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

The animal boarding use does not abut a Residence Zone. In fact, the Property does not abut any other parcel because it fronts on three streets -- 14th Street on the west, Florida Avenue on the south and Belmont Street on the north. Like the Property, all of the immediately surrounding parcels on these streets are in the C-2-B District. To the rear of the Property are residences in the R-5-B District, however they are separated from the Property by a public alley.

2. Section 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 animal boarding will take place entirely within an enclosed and soundproof space in such a way as to produce no noise or odor objectionable to nearby properties. The windows and doors of the premises will be kept closed. There are no external yards on the Property. Further, as with its other facilities, the Applicant will take special care to mitigate noise in the

establishment by playing music that calms dogs and hiring handlers that are specially trained to keep dogs quiet.

3. Section 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.

The Applicant will double-bag all animal waste and dispose of the bags in closed waste disposal containers. The waste will be removed from the establishment and placed in a separately designated trash enclosure space on the Property. A qualified waste disposal company will collect and dispose of all animal waste at least once per week. Odor will be controlled by means of an air filtration system, such as HEPA filtration, or an equivalently effective odor control system. The air filtration system will operate with the maximum allowable air turnover. To further control odor, custom "PooPee Patches" will attract dogs to specific areas; the patches will be washed and sanitized frequently and drain directly into the sewer. The Applicant will also utilize state of the art mini scrubbers and use Scent Air Tangerine Sparkle and Waxie Citrix Burst cleaning products to clean and disinfect surfaces.

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

The Property does not have an external yard. The Applicant will not use any exterior facilities on the Property for animal boarding.

B. Special Exception for Pet Grooming

Pursuant to Section 736 of the Zoning Regulations, a pet grooming establishment may be permitted as a special exception if approved by the Board of Zoning Adjustment under Section 3104.1, subject to the provisions of Sections 736.2 through 736.5. The Applicant complies with the special exception standards as follows:

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

As noted above, the Property fronts on three streets and has a public alley to the rear. Therefore, there are no immediately adjacent properties to the proposed establishment. Further, the pet grooming activities will be located and designed within the premises to create no objectionable condition to the nearby properties resulting from animal noise, odor, or waste.

2. Section 736.3 - All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system.

The Applicant will double-bag all animal waste and dispose of the bags in closed waste disposal containers. The waste will be removed from the establishment and placed in a separately designated trash enclosure space on the Property. A qualified waste disposal company will collect and dispose of all animal waste at least once per week. Odor will be controlled by means of an air filtration system, such as HEPA filtration, or an equivalently effective odor control system. The air filtration system will operate with the maximum allowable air turnover. To further control odor, custom "PooPee Patches" will attract dogs to specific areas; the patches will be washed and sanitized frequently and drain directly into the sewer. The Applicant will also utilize state of the art mini scrubbers and use Scent Air Tangerine Sparkle and Waxie Citrix Burst cleaning products to clean and disinfect surfaces.

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

The establishment does not abut a Residence District. However, it will be situated immediately below five units in the apartment community above. Therefore, the Applicant seeks a variance from this provision prohibiting a pet grooming establishment from abutting a residential use.

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

There are no external yards on the Property. The Applicant will not use any exterior facilities of the Property for pet grooming.

C. Special Exception for Animal Shelter

Pursuant to Section 739 of the Zoning Regulations, an animal shelter may be permitted as a special exception if approved by the Board of Zoning Adjustment under Section 3104.1, subject to the provisions of Sections 739.2 through 739.6. The Applicant complies with the special exception standards as follows:

1. Section 739.2 - The animal shelter shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.

The animal shelter will be located and designed within the building in a manner that creates no objectionable condition to the adjacent properties resulting from animal noise, odor, or waste.

2. Section 739.3 - The animal shelter shall utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry, and acoustical landscaping.

The Applicant will utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry in connection with the animal shelter use.

3. Section 739.4 - All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system.

The Applicant will double-bag all animal waste and dispose of the bags in closed waste disposal containers. The waste will be removed from the establishment and placed in a separately designated trash enclosure space on the Property. A qualified waste disposal company will collect and dispose of all animal waste at least once per week. Odor will be controlled by means of an air filtration system, such as HEPA filtration, or an equivalently effective odor control system. The air filtration system will operate with the maximum allowable air turnover. To further control odor, custom "PooPee Patches" will attract dogs to specific areas; the patches will be washed and sanitized frequently and drain directly into the sewer. The Applicant will also utilize state of the art mini scrubbers and use Scent Air Tangerine Sparkle and Waxie Citrix Burst cleaning products to clean and disinfect floor surfaces.

4. Section 739.5 - The animal boarding use shall not abut an existing residential use or a Residence District.

The Property does not abut an existing residential use or a Residence District. The Property is in the C-2-B District and is surrounded on three sides by properties zoned C-2-B. To the east of the Property are residences in the R-5-B District; however, they are separated from the Property by a public alley.

5. Section 735.6 - External yards or other external facilities for the keeping of animals shall not be permitted unless the entire yard is located a minimum of two hundred (200) feet from an existing residential use or Residence District.

There are no external yards on the Property. The Applicant will not use any other external facilities on the Property for the animal shelter use.

A. Standard of Review for Area Variances - Animal Shelter Use

Under D.C. Code § 6-641.07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

1. the property is affected by exceptional size, shape or topography or other extraordinary or exceptional condition or situation;
2. the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
3. the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.²

The D.C. Court of Appeals has determined that, to satisfy the practical difficulty element of the area variance test, an applicant must demonstrate that “compliance with the area restriction would be unnecessarily burdensome” and that the practical difficulty is “unique to the particular

² See *French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

property.”³ The Court has further stated that “the severity of the variance(s) requested;” “the weight of the burden of strict compliance;” “the effect the proposed variance(s) would have on the overall zone plan;” and the “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration” in determining whether to grant an area variance.⁴

The foregoing standard applies to relief sought from Sections 736.4 and 739.5 of the Zoning Regulations. These provisions prohibit the pet grooming and animal shelter uses from abutting a residential use. In this case, the pet grooming and animal shelter uses are situated directly below five units in the apartment community above. The apartments and all of the ground floor retail space in the building are owned by View 14 Investments, LLC.

1. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition.

The exceptional situation affecting the Property as it relates to the relief requested is that one of the applicants, View 14 Investments LLC, owns both the ground floor retail space and the apartment community above. Therefore, View 14 Investments LLC has a vested interest in ensuring that noise, odor and other impacts from the proposed establishment do not adversely impact the residential use above. Failing to do so would have an adverse financial impact on the Property.

2. The owner would encounter practical difficulties if the zoning regulations were strictly applied.

The strict application of Section 736.4 and 739.6 of the Zoning Regulations in this case would result in a practical difficulty. The Applicants have partnered together on multiple sites

³ *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

⁴ *Id.* at 1171.

throughout the country in order to have a dog day care center/pet grooming establishment as an amenity for its tenants and the immediate neighborhood. Given the layout of the building, with apartment units sitting directly above the retail space, the proposed establishment cannot be relocated to another area of the building without abutting a residential use. Therefore, if relief from Sections 736.4 and 736.9 is not granted, the proposed establishment would be prohibited on the Property altogether, despite being a valuable amenity to the residential tenants of the building and the immediate neighborhood.

3. The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the zone plan with the approval of the requested variances. The Property is in the C-2-B with primary frontage on 14th Street, a major commercial thoroughfare. The proposed dog day care/pet grooming establishment is compatible with the mix of uses in the area and will be a service/amenity for people who live and work in the neighborhood.