

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

Application for Jemal's Hecht's LLC

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by Jemal's Hecht's LLC, the owner of the subject property (the "Applicant") in support of its application pursuant to 11 DCMR §§3103.2 and 3104.1 for a special exception pursuant to §§802.21, 802.25 and 802.26 of the Zoning Regulations to permit animal boarding, pet grooming, and pet shop uses in the C-M-3 District at 1401 New York Avenue, NE (the "Property") in the Hecht Warehouse District.

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 located on Lot 804 in Square 4037, on the south side of New York Avenue, NE, between Fenwick Street and 16th Street in the Hecht Warehouse District. The Property is currently under construction with a structure that will have ground floor retail and six levels of parking above. Each level of the structure consists of approximately 62,800 square feet. The Applicant seeks special exception approval to utilize approximately 12,437 square feet of the ground floor retail space for animal boarding (Sec. 802.21), pet grooming (Sec. 802.25) and pet shop (Sec. 802.26) uses in order to permit a Petco store at the premises. The Property is within the boundaries of ANC 5D, which voted unanimously to support this application at its regularly scheduled public meeting on June 10th. A copy of the letter of support is attached at the end of this statement.

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 802.21 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 802.22 through 802.24. This application complies with the special exception standards as follows:

1. Section 802.22. The animal boarding use shall be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor or waste.

The main entrance for the Petco store proposed for the site will be along New York Avenue. There will be other retail uses in the building where the Petco store will be located, but the parcels to the east and west, which are owned by the Applicant, are separated from the Property by a drive aisle. Notwithstanding, the store will be designed to create no objectionable condition resulting from animal noise, odor or waste.

2. Section 802.23 - The animal boarding use shall not abut a Residence District.

The animal boarding use does not abut a Residence District. The Petco will abut neighboring retail space within the building on the Property. The Property is surrounded by parcels in the C-M-2 and C-M-1 Districts on the south side of New York Avenue; the Property on the north side of New York Avenue is in the M District.

3. Section 802.24 - External yards or other exterior facilities for the keeping of animals shall not be permitted.

There will not be any external yards on the Property, and Petco will not use any exterior facilities on the Property for animal boarding.

B. Special Exception for Pet Grooming

Pursuant to Section 802.25 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 802.25(a) - (d). This application complies with the special exception standards as follows:

1. Section 802.25(a) - The pet grooming establishment shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.

The main entrance for the Petco store proposed for the site will be along New York Avenue. There will be other retail uses in the building where the Petco store will be located, but the parcels to the east and west, which are owned by the Applicant, are separated from the Property by a drive aisle. Notwithstanding, the store will be designed to create no objectionable condition resulting from animal noise, odor or waste.

2. Section 802.25(b) - 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.

Petco employees 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.

3. Section 802.25(c) - The pet grooming establishment shall not abut an existing residential use or Residence District.

Petco will not abut an existing residential use or Residence District. Further, other than the retail spaces within the building on the Property, the establishment does not abut any other use. The Property is surrounded by properties in the C-M-2 and C-M-1 Districts on the south side of New York Avenue. The north side of New York Avenue is in the M District. All of the uses surrounding the Property on the south side of New York Avenue are industrial and the Amtrak railroad tracks are located on the north side of New York Avenue.

4. Section 802.25(d) - External yards or other exterior facilities for the keeping of animals shall not be permitted.

There will not be any external yards on the Property, and Petco will not use any exterior facilities of the Property for pet grooming.

C. Special Exception for Pet Shop

Pursuant to Section 802.26 of the Zoning Regulations, a pet shop 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 802.26(a) through 802.26(c). This application complies with the special exception standards as follows:

1. Section 802.26(a) - The pet shop shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste.

The main entrance for the Petco store proposed for the site will be along New York Avenue. There will be other retail uses in the building where the Petco store will be located, but the parcels to the east and west, which are owned by the Applicant, are separated from the Property by a drive aisle. Notwithstanding, the store will be designed to create no objectionable condition resulting from animal noise, odor or waste.

2. Section 802.26(b) - The pet shop shall not abut an existing residential use or a Residence District.

Petco will not abut an existing residential use or Residence District. Further, other than the retail spaces within the building on the Property, the establishment does not abut any other use. The Property is surrounded by properties in the C-M-2 and C-M-1 Districts on the south side of New York Avenue. The north side of New York Avenue is in the M District. All of the uses surrounding the Property on the south side of New York Avenue are industrial and the Amtrak railroad tracks are located on the north side of New York Avenue.

3. Section 802.26(c) - External yards or other external facilities for the keeping of animals shall not be permitted.

There will not be any external yards on the Property, and Petco will not use any other external facilities on the Property for the animal shelter use.

**DISTRICT OF COLUMBIA GOVERNMENT
ADVISORY NEIGHBORHOOD COMMISSION 5D**



June 10, 2014

Board of Zoning Adjustment
The District of Columbia
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

Re: Jemal's Hecht's LLC BZA Application for Petco Store, 1401 New York Avenue, NE

Dear Members of the Board:

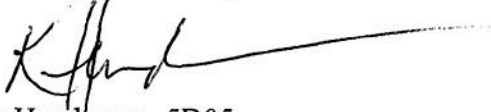
Please be advised that ANC 5D, at its regularly scheduled public meeting on June 10, 2014, at which a quorum was present, unanimously voted 5-0 to support the request of Jemal's Hecht's, LLC (the "Applicant") proposal for a Petco store on the property located at 1401 New York Avenue, NE.

We concluded that the proposed store will meet all of the special exception criteria for approval of animal boarding, pet grooming and pet shop uses. Specifically, the store and the uses within the store use will be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor or waste; the use will not abut a residential district; and no exterior facilities will be used for the keeping of animals. Further, all animal waste will be placed in closed waste disposal containers and the Applicant shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor will be controlled by means of an air filtration system or an equivalently effective odor control system.

We believe that a Petco store at the Property, in the Hecht Warehouse District, will be a benefit to the neighborhood and the District of Columbia, generally. Therefore, we recommend approval of the Applicant's BZA application seeking approval for animal boarding, pet grooming and pet shop uses.

Board of Zoning Adjustment
September 5, 2012
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Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'K. Henderson', with a long horizontal line extending to the right.

Kathy Henderson, 5D05
Chairperson, ANC 5D

Cc: Ms. Andrea Gourdine,
Douglas Development (via email)
Leila Batties, Esq., Holland & Knight (via email)