BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

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| Appeal by Wagtime, LLC of the Zoning Administrator's March 2, 2005, Notice of Revocation of Certificate of Occupancy No. CO69395, authorizing Wagtime, LLC to use the premises 1412 Q Street, NW, (Square 0209, Lot 0878) for 24-Hour Dog Boarding and Grooming) and Accessory Retail Sales. | ) BZA No. 17325 |

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**INTERVENORS' OPPOSITION TO WAGTIME'S REQUEST FOR A POSTPONEMENT**

Introduction

Intervenors Stephanie Mencimer, Erik Wemple, John Weaver, Forrest Smith, Gary Ridley, Mark Rabbage, and Mid-City Development Company, hereby file this opposition to the motion to postpone the hearing on the above-captioned appeal filed by Appellant Wagtime, LLC (Wagtime). Wagtime argues that a postponement is appropriate because Wagtime may withdraw its appeal if the Zoning Commission adopts a new regulation to "accommodate uses such as dog boarding." However, the prospect that the Zoning Commission may, in the future, adopt new zoning regulations, is of no relevance here, for the following reasons:

As noted in Intervenors' motion to dismiss, as well as the memorandum filed by the D.C. Department of Consumer and Regulatory Affairs ("DCRA") in support of the Intervenors' motion to dismiss, Wagtime's appeal is frivolous. It is an untimely, collateral attack on this Board's final decision in Appeal No. 17092, and is barred by 11 DCMR § 3126.11. Further, the argument raised in the appeal alleging that dog boarding is not, in fact, Wagtime's principal use is irrelevant, since what is relevant is the fact that the now-revoked certificate of occupancy, on its face authorized 24-hour dog boarding as a principal use. Instead, Wagtime has filed this



BZA
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Exhibit No. 25

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EXHIBIT NO. 25

frivolous appeal for the sole purpose of creating a cloud over the revocation of its certificate of occupancy in the hopes of forestalling enforcement action against its continued, now completely illegal use of the premises for dog boarding.

The July 11 Zoning Commission hearing referred to by WagTime's request for a postponement is merely a "set-down" hearing. Realistically, there is very little possibility that any regulations explicitly regulating dog boarding will be effective for another year. Nor is there any guaranty or even likelihood that the new regulations, if and when they are adopted, would allow Wagtime's dog boarding operations at 1412 Q Street, N.W. Allowing a postponement based on such attenuated possibilities of future changes in the law would create a precedent that encourages postponement requests from applicants, appellants, and opponents, based on similarly flimsy contingencies.

It is poor policy to allow open-ended postponement of a frivolous appeal, filed solely for the purposes of attempting to forestall enforcement of a final BZA decision, based on the flimsiest of contingent possibilities that future changes in the law might persuade the filer to withdraw the frivolous appeal. Granting such a postponement will send the message to property owners and businesses that operate outside of the law and without valid certificates of occupancy that they can ignore DCRA enforcement actions with impunity. This blatant disregard for the rule of law and for the enforcement authority of the District of Columbia government should not be rewarded. See BZA Decision in Application No. 13766 of Dolores Conrad (Dec. 3, 1982) ("This Board does not treat lightly the apparent indifference of the Applicant to the Board's orders.") It will also send mixed signals to the DCRA regarding enforcement of zoning orders, and undermine the public interest in strong enforcement of zoning decisions.

Moreover, a continuance would place a further unacceptable burden on the neighboring residents who have already borne the burden of the Zoning Administrator's original error for the past two years. A continuance would merely further extend this process and result in the cost of the further delays being borne by the community instead of by Wagtime.

Finally, Wagtime itself has supplied a new reason why this postpone request should be denied (and this appeal dismissed). As indicated by Wagtime in the Dupont Current newspaper article of June 22, 2005 (attached), Wagtime has opened new premises on 9th Street. As a result this appeal is also moot, and there is no reason or need to delay the disposition of an appeal concerning Wagtime's former premises at 1412 Q St

Conclusion

For the foregoing reasons Wagtime's postponement request should be rejected.

Respectfully submitted,

Andrea J. Dougherty

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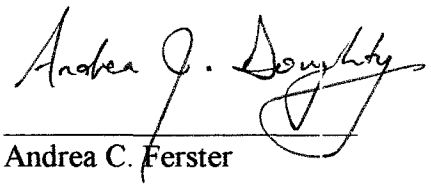
CERTIFICATE OF SERVICE

I hereby certify that, on June 27, 2005, a copy of the foregoing Opposition to Wagtime's Postponement Request was served by mail on, or as otherwise indicated:

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# THE DUPONT CURRENT

## WagTime awaits city regs amid continued protests

By JULIE WESTFALL
Current Staff Writer

Battling neighbors Stephanie Mencimer, who lives in the 1400 block of Q Street, and Lisa Schreiber, who owns a dog day-care center next door, agree on only one thing: The District has done nothing to help them.

"They won't enforce the noise regulations," said Mencimer. "They'll do nothing about the waste. We've spent a small fortune going through the proper channels to win ... only the city hasn't enforced their rulings."

And WagTime owner Schreiber said she's shocked at the ineffectiveness of the city's bureaucracy.

"There are so many levels you have to go through," she said. "And by the time you get to the top level, you're broke. It's a fight to open a business here, and I don't see how people can do it."

A lawyer for the dog-care business WagTime will ask for a continuance when its case comes before the D.C. Board of Zoning Adjustment June 28 so Schreiber

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## APPEAL

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can wait until the city decides how it will regulate dog-boarding businesses.

The embattled establishment is appealing the revocation of its Certificate of Occupancy to board dogs overnight at the Q Street facility. Schreiber said her certificate is still valid to have a day care. WagTime is operating only its grooming business and boutique on Q Street.

But a lawyer for neighbors battling the business said Schreiber does not have a certificate and is operating illegally. An e-mail acting zoning administrator Corey Buffo sent to Mencimer Monday also said WagTime's certificate was revoked and that it does not have a new one.

A month ago, WagTime opened a second location on 9th Street NW, where Schreiber said she was welcomed into the Shaw neighborhood. She said she won a Certificate of Occupancy that allows her to board dogs overnight there, only after a long struggle with the city officials, who initially denied her overnight rights.

"How can they say we can't board when there are no regulations that say we can't?" Schreiber asked.

The city moved to write regulations after WagTime's predicament came to its attention. The Office of Planning will recommend rules to the Zoning Commission on July 11.

The neighbors' lawyer, Andrea Ferster, said WagTime is appealing the case both to the Board of Zoning Adjustment and to the D.C. Court of Appeals, though it has twice missed brief-filing deadlines, so it is unclear whether the court will accept the appeal. Either way, she said, it does not matter for WagTime what boarding regulations the city writes.

"WagTime is playing the delay game," she said. "Even if the city enacts zoning regulations in extra-record-breaking time, WagTime still has to apply for a new Certificate of Occupancy under the new regulations."

WagTime initially received a six-month permit with conditions, including a cap of 20 dogs at a time. Then the Department of Consumer and Regulatory Affairs issued a permanent certificate with no conditions.

Furious neighbors appealed the Certificate of Occupancy to the Board of Zoning Adjustment, which ruled that the city zoning administrator made a mistake by allowing WagTime to open next door to a row of houses, even though it was on commercially zoned property. The board sent the case back to the zoning administrator, who decided to allow day care, but not overnight boarding, Schreiber said.

"The board found that boarding as a principle use is improper at this location. I don't think it's a principle use at this location," said Ed Donohue, WagTime's zoning lawyer.

Alexander Padro, president of Shaw Main Streets and a Shaw advisory neighborhood commissioner, said WagTime is a welcome addition to the commercial block on 9th Street.

"A dog-care facility has been one of the types of businesses that people would like to see in the neighborhood," he said, pointing out that the 9th Street block is entirely a commercial zone, unlike the block on Q Street.

Schreiber is now involved in a civil suit with her next-door neighbors on Q Street, Washington City Paper editor Eric Wemple and his wife, Mencimer, who are among those fighting to kick the business off the street.

"If it were me, I wouldn't want to be next to a dog day care either, but that's not the issue. The issue is that this is a commercially zoned property," Schreiber said.

Mencimer said she would not mind if another kind of business were in that spot, but the noise and mess that she said are created by the dog business are just too much.

"They are profiting from our misery," she said. "I have a son who is 18 months old who hasn't been able to take a decent nap since he was born."

Schreiber calls her neighbors' complaints largely frivolous, saying the noise and smell complaints are not valid.

"We moved for them, and it wasn't enough," she said.