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July 11, 2005

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The Hon Carol J Mitten,
Chairman, DC Zoning Commission,
441 4th Street, NW, Suite 210 South
Washington, DC 20001

Re: ZC No. 05-21: Agenda Item on July 11, 2005
Emergency Text Amendment & Setdown to permit Dog Boarding

Dear Chairman Mitten,

We, the undersigned group of dog boarding facility owners, appellants in Board of Zoning Adjustment (BZA) Appeal No 17092, and residents, are writing to you about the Office of Planning's (OP's) recommendation that the Zoning Commission at its hearing this evening (a) adopt an emergency text amendment, and (b) set down a text amendment for public hearing, to permit dog boarding.

While we welcome OP's speedy effort to clarify the regulatory environment with respect to dog boarding in DC and strongly support OP's request that the Zoning Commission set down this important issue for public hearing, we have very serious concerns about a few important aspects of the proposal on which the Commission is being asked to take emergency action We are aware that, should the Commission choose to set this matter down, we will have an opportunity to make written submissions and testify at a future date Thus, this letter sets out our concerns about OP's proposal and our requests to the Commission *only insofar as we have three concerns that relate directly to actions that the Commission may take at its hearing this evening, as follows*

1. Item 1(c) (the provision to allow the issuance of temporary Certificates of Occupancy, page 1 of OP's July 1 report), should be amended prior to emergency adoption.

OP indicates clearly in its report (see page 4, item xxx 3 and page 5, item 3) that the intention of its proposal is that special exceptions will only be approved in cases where a business is not located adjacent to a residence zone district However, *as currently drafted*, provision 1(c) would allow businesses located on lots abutting residential zones to obtain temporary Certificates of Occupancy and apply for special exceptions to conduct dog boarding It would be a senseless waste of the BZA's, businesses' and residents' resources to allow boarding facilities located on lots abutting residential zones to apply under this provision when they will not qualify and therefore will not be granted a special exception

It would certainly be an unconscionable waste of the time, effort and funds of everyone involved in BZA Appeal No 17092 (which is, after all, the foundation of this current law-making effort) if the proposed provision 1(c) resulted in the BZA having to re-hear essentially the same case it has already adjudicated in a comprehensive manner 4 hearings, 15 hours of testimony, 6 expert witnesses, over 100 exhibits and more than 550 pages of transcript Moreover, it would also be inequitable We believe that as currently drafted the proposed provision 1(c) *would* apply to the business located at the Q Street, NW, premises that were the subject of BZA Appeal No 17092, and would indeed inappropriately

(i) Allow issuance of a temporary Certificate of Occupancy to the business owner whose C of O was revoked as a result of the BZA's decision in Appeal No 17092, *and* allow the conduct of [redacted]arding operations at the premises contrary to the BZA's ruling in 17092, and

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(ii) Have the effect of requiring the BZA to re-hear large portions of the case that it heard in BZA 17092

As a result of the BZA's careful consideration of the issues associated with dog boarding in the context of Appeal No 17092, the BZA reached a simple but important conclusion (see page 7 of the BZA's Order dated October 15, 2004)

> *"that the zoning regulations do not intend a dog boarding use to be authorized as a matter of right, without restrictions, particularly if it is adjacent to a residential property "*

As currently drafted this provision would allow exactly that – an unrestricted dog boarding use adjacent to a residence zone district – to take place once again, *effectively* undoing for a period of many months and perhaps much longer the BZA's ruling in 17092 The unamended adoption of this provision by the Zoning Commission would result in a capricious altering of current DC law at the direct expense of residents who have already incurred heavy costs to correct an error by the Zoning Administrator Moreover, it would represent a grave injustice and an arbitrary use of the Zoning Commission's authority for such an undoing of a carefully considered BZA ruling to take place on the basis of merely a proposed "concept" for an emergency text amendment (for which implementation language has not been provided), on short notice and without public hearing

Provision 1(c) could go forward for adoption without these pernicious effects by means of a simple amendment that would make the proposed issuance of temporary Certificates of Occupancy more consistent with the proposed standards for the special exception process, as follows

> *"c A provision to allow the issuance of a temporary Certificate of Occupancy to businesses meeting the definition of Dog Boarding* ***and located on lots that do not abut residence zone districts****, but not meeting the criteria of section 721 7, to continue in operation for no more than 120 days during which time they may apply for a special exception "*

For the reasons set out above, we respectfully urge the Zoning Commission to amend the proposal contained in provision 1(c) by adding the words "and located on lots that do not abut residence zone districts" in any adoption of an emergency text amendment allowing issuance of temporary Certificates of Occupancy to conduct dog boarding.

2. The definition of Dog Boarding (Item A of the proposed text on page 3 of OP's July 1 report) should be comprehensively re-evaluated prior to final adoption.

OP's proposed definition of dog boarding excludes the *premises* of dog grooming establishments, pet shops, veterinary hospitals and also effectively animal shelters as they are usually not "commercial service establishments" We have serious reservations about the usefulness and practicality of this definition for the following reasons

- **Dog grooming establishments** also effectively provide substantial dog "daycare" services dogs are dropped off in the morning for grooming (which takes perhaps 1 hour) and are picked up 8 or 10 hours later (or even the next day) Thus dog grooming establishments create *similar* impacts and issues as dog boarding facilities and are effectively boarding dogs (and in most cases many dogs) for long periods of time Not to subject these establishments to the same or similar regulatory standards as dog boarding facilities would be both inequitable and a large potential loophole in the proposed regulations that would result in significant potential enforcement problems for DCRA

- **Pet shops and retail pet supply stores** also in many cases (including currently in DC) provide *non-accessory*[1] boarding services for dogs that are not on the premises for sale These boarding operations create similar impacts and need to be regulated on a similar basis to stand-alone boarding operations

- **Veterinary hospitals** in some cases (including currently in DC) provide *non-accessory*[1] boarding services for dogs that are not on the premises for treatment These boarding operations create similar impacts and need to be regulated on a similar basis to stand-alone boarding operations

- **Animal shelters**, which take in healthy dogs and cannot turn any animal away, are probably a more intensive use involving higher external impacts than commercial dog boarding operations (which can and do in most cases turn away dogs that have not been neutered or spayed as well as unruly or antisocial dogs)

Moreover, because OP's proposed definition of dog boarding excludes the *premises* of dog groomers, pet shops, etc , anyone conducting a dog boarding operation on premises with a Certificate of Occupancy that states "pet shop" or "dog grooming establishment" or similar would be explicitly *excluded* from needing to apply under proposed provision 1(c) for the issuance of a temporary Certificate of Occupancy to conduct dog boarding If the adopted definition of dog boarding excludes all activity at these other premises, then dog boarding would be able to take place legally and permanently at pet shops, dog grooming establishments, veterinary hospitals, etc -- *without being subject to the proposed dog boarding regulations* This approach would be highly inequitable to stand-alone dog boarding facilities and would encourage mixed use facilities in order to escape regulation

We believe that this situation should be corrected via an amendment to provision 1(c) in order to require facilities that offer or wish to offer dog boarding services irrespective of the definition of dog boarding, and other than those facilities specified in section 721 7 or those abutting a residential zone, to apply for a temporary Certificate of Occupancy and special exception in order to do so

OP's report does not provide any justification or rationale for the exclusion of dog boarding activities at pet shops, dog grooming establishments, etc from the definition of dog boarding If OP had sufficient time to give these issues full and proper consideration, the similarity of impacts between dog boarding and the same activity taking place at these establishments would be recognized OP's report also does not address the fact that *most other jurisdictions do not define dog boarding in the way proposed here.* We believe that the definition of dog boarding should be comprehensively re-evaluated by OP prior to the public hearing on the proposed text amendment We all share the objective of developing dog boarding regulations that are equitable, practical and robust to DC's evolving urban lifestyle, but if we fail to define dog boarding appropriately, we will fall short of that goal

Therefore, we respectfully urge the Zoning Commission to (a) amend provision 1(c) in order to require facilities that offer or wish to offer dog boarding services irrespective of the definition of dog boarding, and other than those facilities specified in section 721.7 and those abutting a residential zone, to apply for a temporary Certificate of Occupancy and a special exception in order to do so; and (b) to request OP to further examine the issue of whether dog boarding taking place at dog grooming establishments, pet shops, etc. should be included within the definition of dog boarding and to file a supplemental report on this issue as necessary prior to the proposed public hearing.

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[1] By "non-accessory" we mean "not as an accessory use to its principal use" The boarding overnight of sick or injured dogs in a veterinary hospital, and the boarding overnight in a pet shop of puppies that are for sale in that pet shop, are *accessory uses* that are entirely subordinate and incidental to the principal uses of the veterinary hospital and the pet shop Dog boarding as a *non-accessory use* would be the offering by these facilities of separate boarding services for dogs that are neither on the premises for treatment (veterinary hospital) nor for sale (pet shop)

3. Provision 721.7(c) (no internal or external expansion without a special exception, page 4 of OP's July 1 report) should be narrowed prior to final adoption.

The proposed prohibition on internal expansion without a special exception would *seriously* disadvantage one long-standing dog boarding facility, which is located on a lot that has a small structure (and thus a small internal dog boarding capacity) but a very large outdoor yard and thus outdoor dog boarding capacity

Because this facility operates the only outdoor dog exercise yard in DC (which OP is proposing, appropriately, to grandfather under the new regulations), and because the proposed new regulations would (appropriately) not permit the establishment of new outdoor yards, we believe that it would be to everyone's advantage to allow this specific facility owner to expand the indoor premises without needing to apply for a special exception to do so It would be unfortunate if the requirement for a special exception prevented an expansion of the indoor premises from taking place

For this reason, we respectfully urge the Zoning Commission to ask OP to examine the feasibility of a provision that would allow a facility with an existing exterior yard to expand internally without requiring BZA approval as a special exception.

Finally, we appreciate OP's efforts in developing its proposed emergency and setdown text amendments While we have serious concerns about specific aspects of the proposals, we firmly believe that OP's proposed approach to dealing with dog boarding in DC is broadly on the appropriate regulatory path In particular, we applaud the appropriate recommendation of a special exception process for this use in the C zones and we applaud the appropriate emphasis on the provisions of

- No objectionable noise, odor or waste conditions,
- No abutting a residence zone,
- No new outdoor uses, and
- The immediate grandfathering of dog boarding facilities holding existing unrevoked Certificates of Occupancy that specify "Dog Day Care Center" or "Dog Care Center"

The conditioned special exception process proposed by OP for dog boarding in DC is consistent with the approach that has been taken by numerous other jurisdictions and we wish to thank the Office of Planning for its speedy work on these elements of its proposal

We also thank the Zoning Commission for its time and effort on this matter and look forward to your deliberations

Sincerely

Andrea Doughty

1417 Q Street, NW
Washington, DC 20009
Tel 202 319 1151

Bonn Macy

1445 Q Street, NW
Washington, DC 20009
Tel 202 328.3047

On behalf of the **Appellants in BZA Appeal No. 17092**

Chris Stone

President, **City Dogs**
1832 18th Street, NW
Washington, DC 20009
Tel 202 234 9247

Rebecca Bisgyer

President, **Dog-ma**
821 Virginia Avenue, SE
Washington, DC 20003
202 543 7805

Linda Welch

President, **Dogs by Day**
1724 14th Street, NW
Washington, DC 20009
Tel 202 986 6301

Joan D. Ferraris

On behalf of **Q Street Association**
1440 Q Street, NW
Washington, DC 20009
Tel 202 797 8371

cc Zoning Commissioners
Ms Ellen McCarthy, Director, Office of Planning
Ms Jennifer Steingasser, Deputy Director, Office of Planning
Mr Stephen Mordfin, Case Manager 05-21, Office of Planning
Mr Corey Buffo, Acting Zoning Administrator, DCRA
Mr Alan Bergstein, Chief Counsel, Land Use Division, Office of the Attorney General