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June 27, 2006

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

ZONING COMMISSION
District of Columbia

CASE NO. 05-21A FAXEXHIBIT NO. 9

Re: ZC No. 05-21A: Agenda Item on June 29, 2006
Pet Grooming, Pet Shops, Veterinary Hospitals, Animal Shelters – Text Amendment

Dear Chairwoman 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 proposed text amendment published in the DC Register (DCR) on May 5, 2006 concerning pet grooming, pet shops, veterinary hospitals and animal shelters (hereafter "the proposal").

We strongly support the proposal to introduce a special exception procedure for animal grooming facilities, pet shops, veterinary hospitals and animal shelters in the Commercial and Industrial Zone Districts. In addition, we support the proposal's general focus on these facilities (1) not being permitted to create adverse conditions for adjacent properties; (2) not being permitted to abut existing residential uses or Residence Zones; and (3) not being permitted (with the exception of animal shelters in certain restricted circumstances) to keep animals in exterior yards.

We believe that adoption of the proposed regulations is essential in order to ensure that animal facilities and their zoning characteristics are treated in a fair and comprehensive manner in DC's Zoning Regulations. Nonetheless, we have a few minor comments and suggestions regarding how the proposal could potentially be made more consistent across uses, as follows:

1. Consistency of Definitions for Animal Boarding and Animal Grooming

The definition contained in the recently adopted proposed rulemaking for Animal Boarding (ZC No. 05-21) states that "... Any pet grooming establishment that permits ten or more animals on the premises at a time... is considered an animal boarding use" (emphasis added). At present, the proposed definition (ZC No. 05-21A) for animal grooming states "... A pet grooming establishment is considered an animal boarding use if more than ten animals are on the premises at a time ..." (emphasis added). The expressions "ten or more" and "more than ten" are not equivalent to each other, and we recommend that the definition for animal grooming in the current proposal be changed to read "ten or more" in order to make it fully consistent with the already adopted definition for animal boarding.

2. Consistency of Permitted Accessory Uses and Non-permitted Animal Boarding Use Across Grooming Facilities, Pet Shops, Veterinary Hospitals and Animal Shelters

As currently drafted the proposal:

-- For pet grooming: alludes in the definition (§ 199.1) to the idea that grooming facilities are not permitted to board animals overnight without actually stating so; (appropriately) permits (§ 737.5) the

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sale of pet supplies as a non-accessory use; and does not state (anywhere in § 737) that animal boarding is not permitted as an accessory use to grooming;

-- For **pet shops**: makes no reference to animal boarding in the definition (§ 199.1); makes no reference (anywhere in § 738) to permitted accessory uses (unlike § 739.5 of the proposal, which explicitly states that veterinary hospitals may offer grooming services as an accessory use. Arguably grooming could be considered a similarly appropriate accessory use for pet shops as for veterinary hospitals); makes no reference (anywhere in § 738) to the incidental overnight boarding of pets that are for sale being permitted as an accessory use (unlike § 739.5 which explicitly allows the incidental overnight care of animals by veterinary hospitals as an accessory use); and does not state (anywhere in § 738) that non-incidental animal boarding (e.g. boarding of animals that are not for sale) is not permitted as an accessory use to pet shops;

-- For **veterinary hospitals**: states in the definition (§ 199.1) that veterinary hospitals may not be used as animal boarding facilities; states in the definition (§ 199.1) that veterinary hospitals may provide overnight care for animals (as an incidental accessory use, although this is not explicitly stated); explicitly states (in § 739.5) that pet grooming, the sale of pet supplies and incidental boarding of animals necessary for convalescence are permitted as accessory uses; and does not state (anywhere in § 739) that non-incidental animal boarding is not permitted (although it does deal with this in the definition, as noted above);

-- For **animal shelters**: makes no reference to animal boarding (for a fee) in the definition (§ 199.1); and states (in § 740.5) that animal shelters are prohibited from engaging in animal boarding or grooming activities for a fee.

We believe that the above approach contained in the proposal would result in Zoning Regulations that are haphazard in their treatment of incidental (accessory) and non-incidental (non-accessory) uses across these establishments (pet shops, animal shelters, veterinary hospitals, and grooming facilities). We suggest the following changes to the proposal in an attempt to introduce greater consistency:

(i) **Definitions (§ 199.1)**: we suggest that the new regulations should not address accessory and non-accessory uses in the definitions section, with the sole exception that the current statement in the pet grooming definition that *"A pet grooming establishment is considered an animal boarding use if more than ten ten or more animals are on the premises at a time, or the overnight stay of animals is permitted"* should be retained in order for the proposed pet grooming definition and the already adopted animal boarding definition to be fully consistent with each other. Thus, we recommend that the proposed definition for veterinary hospitals be amended as follows: *"An establishment used by a licensed veterinarian for the practice of veterinary medicine, and not as an animal boarding establishment, but which may also provide overnight care for animals."*

(ii) **§§ 737-740**: we suggest that the issues of accessory and non-accessory uses be dealt with consistently and comprehensively in the text of the proposed regulations (rather than in the definition section), as follows:

-- **Pet Grooming (amend § 737.5)**: *"The sale of pet supplies is permitted as an accessory use, but overnight boarding of animals is not permitted as an accessory use."*

-- **Pet Shop (add a new § 738.5)**: *"Pet grooming and incidental overnight boarding on the premises of pets that are for sale by the store are permitted as accessory uses, but overnight boarding of other animals is not permitted as an accessory use."*

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-- **Veterinary Hospital (amend § 739.5):** *"Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses, but overnight boarding of other animals is not permitted as an accessory use."*

-- **Animal Shelter (retain § 740.5 unchanged):** *"Animal shelters shall not engage in boarding or grooming of animals that are sheltered for a fee."*

3. Enforceability of Current Proposal and of Suggested Amendments:

We believe that it is critical from a signaling and enforcement perspective that the new regulations for pet grooming and pet shops should **explicitly state** (as we propose in the revised §§ 737.5 and 738.5 outlined above) that these establishments are prohibited from conducting animal boarding activities. As currently drafted the proposal does not achieve this: the proposal merely notes (§ 199.1) that a grooming establishment will be considered to be a boarding establishment if the overnight stay of animals is permitted. While we support this language being retained in the definition section for grooming establishments (so that this definition remains consistent with the definition already adopted for animal boarding establishments), we believe that both the clarity and the enforceability by the Zoning Administrator of the new regulations would be significantly enhanced by explicitly stating in §§ 737 and 738 (as suggested above) that boarding is not a permitted accessory use for these establishments.

Also from an enforcement perspective, it would add clarity if the term "overnight" was explained in the regulations. One option would be to utilize the definition of "nighttime" that is used by the DC municipal noise regulations (20 DCMR 2799.1 Definitions): ***"Nighttime – the hours from 9:00pm to 7:00am"***. For example, everywhere that the term overnight appears in the regulations (§ 199.1 and the proposed §§737.5, 738.5 and 739.5 that we suggest above), the following could be added: ***"... overnight (between the hours of 9:00pm and 7:00am) ..."***. This change would significantly enhance the Zoning Administrator's ability to enforce the principle that grooming and other establishments are not permitted to conduct animal boarding activities. At a minimum we believe that this change should be made to the definition of animal grooming in §199.1.

4. BZA's Ability to Impose Additional Requirements:

We believe that -- as a matter of best practice in the case of special exception uses -- the regulations for pet grooming (§ 737), pet shops (§ 738), veterinary hospitals (§ 739) and animal shelters (§ 740) should each include a provision allowing the BZA to impose additional requirements. The Zoning Regulations cannot anticipate every situation that may arise in respect of these facilities in the future and adding such a provision would make it clear that the BZA has the authority to respond appropriately to the circumstances of each case. For example: ***"The Board may impose additional requirements as it deems necessary to protect adjacent or nearby property."***

We thank the Commission for the opportunity to comment on these issues and thank Commissioners for their time and effort on this matter.

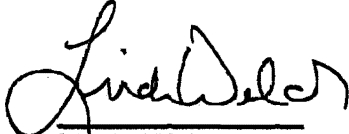
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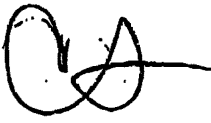
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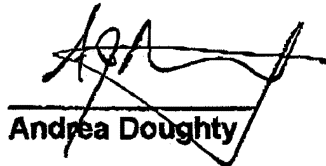

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Date: 6/28/06

Re: ZC 05-21A – Agenda Item on June 29

Please see the attached letter regarding ZC Case No. 05-21A.
