

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

**1350 E Street, SE
Square 1042, Lot 7006**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This Preliminary Statement is submitted by Atlas Doghouse (the “Applicant”) on behalf of FP Capitol Holdings LLC, the owner of Lot 7006 in Square 1042 (the “Property”), in support of its application for special exception approval to permit an animal boarding use on the Property, which is zoned MU-4. This application is filed pursuant to Subtitle X § 901.2 of the District of Columbia Zoning Regulations (Title 11, District of Columbia Municipal Regulations (“DCMR”).

Attached hereto are letters from the applicant and property owner authorizing Holland & Knight LLP to file and process the application. Upon the Office of Zoning’s acceptance of the application, the applicant will provide the requisite \$1,560.00 filing fee for the requested relief via credit card payment through IZIS.

Pursuant to 11-Y DCMR § 300.15, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or the “Board”) no fewer than 21 days prior to the public hearing for the application. In this statement and at the public hearing, the Applicant will provide testimony and evidence to satisfy its burden of proof to obtain the Board’s approval of the requested relief. The following is a preliminary statement demonstrating how the Applicant meets the burden of proof.

I. BACKGROUND

A. Description of the Site and Surrounding Area

The Property is a retail space consisting of approximately 4,590 square feet located at 1350 E Street, SE. It is part of the Beckert’s Park development located on the west side of 14th Street, SE, between D and E Streets. Beckert’s Park is a mixed use project that includes a Safeway grocery store, up to 8,000 square feet of neighborhood retail space, and a 325-unit apartment house. Immediately to the west of the Property are several row houses. Across E Street, to the south, is the Lockwood apartment building, as well as several row houses.

B. Zoning

The Property is zoned Mixed Use (MU)-4. One of the general purposes of the MU zones is to preserve and enhance existing commercial nodes and surroundings by providing a range of shopping and service opportunities. 11-G DCMR § 100.3(f) . More specifically, the MU-4 zone is intended to permit moderate-density mixed-use development; provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and be located in low- and moderate-density residential areas with access to main

roadways or rapid transit stops, and include office employment centers, shopping centers and moderate bulk mixed-use centers. 11-G DCMR § 400.3.

Pursuant to 11-U DCMR § 500.2, properties in the MU-4 zone are subject to the use permissions of MU-Use Group E. For MU-Use Group E, an animal boarding use that does not meet the conditions of 11-U DCMR § 512.1(b) is permitted as a special exception, subject to certain conditions. 11-U DCMR § 513.1(b).

C. Applicant and Proposed Use

Atlas Doghouse is a local business first established on December 17, 2017. It currently operates at 1375 H Street, NE, providing walking, daycare, boarding, pet sitting and training services for neighborhood dog owners. Atlas Doghouse has a unique, open-concept design that promotes social interaction and supervision for dogs in a cage-free environment. The governing philosophy of Atlas Doghouse is behaviorism, or the study of animals in their natural environment. This approach promotes a healthy and organic social environment with an emphasis on safety that keeps the dogs stimulated and happy for the duration of their stay.

Approval of the subject application would enable Atlas Doghouse to expand at a second location – i.e., the Property. As shown on the retail site plan submitted concurrently with this Preliminary Statement (the “Floor Plan”), the proposed animal boarding establishment would consist of approximately 4,590 square feet and would include a lobby area and five (5) play pens. Separate areas will be devoted to wash and waste. The proposed dog daycare center will not include any external yards or other exterior facilities for the keeping of animals.

II. SPECIAL EXCEPTION RELIEF

A. Relief Requested for Animal Boarding Use

Pursuant to 11-U DCMR § 513.1(b), the Applicant seeks special exception approval to permit the proposed animal boarding use at the MU-4 zoned Property. The Board is authorized to grant the special exception request pursuant to the criteria set forth in 11-X DCMR § 901.2 and satisfaction of the conditions set forth in 11-U DCMR § 513.1(b)(1)-(9).

B. Burden of Proof

Pursuant to D.C. Code § 6-641.07(g)(2) and 11-X DCMR § 901.2, the Board is authorized to grant a special exception where it finds the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, subject in each case to the special conditions specified. 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 requested relief 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 regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. 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.*

C. Justification for Requested Special Exception Relief

The proposed animal boarding use is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. The use is consistent with the objectives of the MU zones, which are intended to provide for mixed-use developments that permit a broad range of shopping and service opportunities. 11-G DCMR §§ 100.1 and 100.3(f). Additionally, the MU-4 zone is specifically intended to support “large segments of the District of Columbia outside of the central core[.]” 11-G DCMR § 400.3(b). Accordingly, the proposed dog daycare center aligns with these objectives and is an appropriate use at the Property.

The proposed use also is fully compatible with the Beckert’s Park development, and will not disturb the project’s residents or detract from the use and enjoyment of nearby retail – primarily as a result of the Applicant’s compliance with the conditions under 11-U DCMR § 513.1(b) (described below). Due to the configuration and design of the dog daycare center, animal waste activities, noise, and odor will not negatively impact the residents of Becker’s Park or their visitors. Moreover, the retail space designated for the proposed use ensures that any adverse impacts to neighboring row houses would be minimal. The two adjacent rights-of-way – e.g., Carry’s Way to the west and E Street, SE to the south – will effectively buffer the activities of the dog daycare center from nearby residents. For these reasons, the special exception will not tend to adversely affect neighboring property.

Furthermore, the proposed animal boarding use will comply with the applicable conditions enumerated under 11-U DCMR § 513.1(b)(1-9):

(1) The animal boarding use shall take place entirely within an enclosed building;

All proposed dog day care activities will take place entirely within the retail space at 1350 E Street, SE, as reflected in the Floor Plan.

(2) Buildings shall be designed and constructed to mitigate noise to limit negative impacts on adjacent properties, including residential units located in the same building as the use. Additional noise mitigation shall be required for existing buildings not originally built for the boarding of animals, including the use of acoustical tiles, caulking to seal penetrations made in floor slabs for pipes, and spray-on noise insulation;

The proposed dog daycare center will be designed and constructed to mitigate noise to limit negative impacts on the residential units located above. There will not be any other uses adjacent to the animal boarding establishment.

(3) The windows and doors of the space devoted to the animal boarding use shall be kept closed, and all doors facing a residential use shall be solid core;

The windows and doors of the proposed animal boarding space will be kept closed. The animal boarding use will not face any residential uses or units within the building.

- (4) No animals shall be permitted in an external yard on the premises;*

The dogs served by the dog daycare center will not be permitted in any outdoor areas or courtyards at Beckert's Park. They will be kept within the premises for the entirety of their stay, except for when they are on accompanied walks. The courtyards (shown on the Floor Plan) are provided for residential use only and are located above the ground floor.

- (5) Animal waste shall be placed in closed waste disposal containers and shall be collected by a waste disposal company at least weekly;*

Animal waste will be placed in closed waste disposal containers and will be collected by a waste disposal company at least weekly. As shown on the Floor Plan, the animal boarding establishment will include a separate service room for animal waste.

- (6) Odors shall be controlled by means of an air filtration system or an equivalently effective odor control system;*

The Applicant will utilize a filtration system or an equivalently effective odor control system that will utilize best practiced odor neutralizing technology.

- (7) Floor finish material, and wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor, shall be impervious and washable;*

The floor finish material, and wall finish materials measured a minimum of 48 inches from the floor, will be impervious and washable.

- (8) External yards or other exterior facilities for the keeping of animals shall not be permitted; and*

The proposed animal boarding use will not rely upon external yards or other exterior facilities for the keeping of animals.

- (9) The Board of Zoning Adjustment may impose additional requirements pertaining to the location of buildings or other structures, entrances and exits, buffers, banners, and fencing, soundproofing, odor control, waste storage and removal (including frequency), the species and/or number of animals, or other requirements, as the Board deems necessary to protect adjacent or nearby property[.]*

As discussed herein, the proposed use will not result in any objectionable conditions to residents or other tenants of the mixed use building or to neighboring properties. A variety of measures will be implemented to mitigate any effects due to noise, odor, and waste. Accordingly, the Applicant does not believe that additional requirements are necessary.

In light of the foregoing, the proposed animal boarding use satisfies the general special exception criteria under 11-X DCMR § 901.2 and the applicable conditions enumerated under 11-U DCMR § 513.1(b)(1)-(9).

III. COMMUNITY ENGAGEMENT

The Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 6B, the affected ANC pursuant to 11-Y DCMR § 101.8, and is under the jurisdiction of ANC 6B-06. As required under 11-Y DCMR § 300.8(1), the Applicant will apprise ANC 6B of this application and engage the ANC as the application moves forward.