

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :
   
:
   
TEXT AMENDMENTS TO : Case No.
   
11 DCMR (ZONING), : 14-10
   
CHAPTERS 7 & 8 :
   
-----:

Thursday,
   
October 23, 2014

Hearing Room 220 South
   
441 4<sup>th</sup> Street, N.W.
   
Washington, D.C.

The Public Hearing of Case No.
 14-10 by the District of Columbia Zoning
 Commission convened at 6:34 p.m. in the Jerrily
 R. Kress Memorial Hearing Room at 441 4<sup>th</sup>
 Street, N.W., Washington, D.C., 20001, Anthony
 J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- MARCIE COHEN, Vice Chair
- MICHAEL G. TURNBULL, FAIA,
- Commissioner (AOC)
- PETER MAY, Commissioner (NPS)
- ROBERT MILLER, Commissioner

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

HARRIET TREGONING, Director  
JENNIFER STEINGASSER, Deputy Director,  
Development Review & Historic  
Preservation

JOEL LAWSON  
STEPHEN MORDFIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALLISON MYERS, ESQ.

The transcript constitutes the  
minutes from the Public Hearing held on October  
23, 2014.

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P-R-O-C-E-E-D-I-N-G-S

6:34 p.m.

CHAIRMAN HOOD: Good evening, ladies and gentlemen. This is the Public Hearing of the Zoning Commission for the District of Columbia. Today's date is October 23rd, 2014.

My name is Anthony Hood and joining me are Vice Chair Cohen, Commissioner May and Commissioner Turnbull and a very happy birthday to Commissioner Miller.

We are also joined by the Office of Zoning staff, Ms. Sharon Schellin, the Office of Attorney General, Ms. Myers, Allison. From the Office of the Attorney General, Ms. Myers. The Office of Planning, Mr. Lawson and Mr. Mordfin.

This proceeding is being recorded by a Court Reporter and is also Webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room including a display of any signs or objects.

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1                   Notice of today's hearing was  
2 published in the D.C. Register and copies of  
3 that announcement are available to my left on  
4 the wall near the door.

5                   The hearing will be conducted in  
6 accordance with provisions of 11 DCMR 3021 as  
7 follows. Preliminary matters, presentation  
8 by the Office of Planning, reports of other  
9 Government agencies, reports of the ANC,  
10 organizations and persons in support,  
11 organizations and persons in opposition.

12                   The following time constraints will  
13 be maintained in this hearing. Office of  
14 Planning will have up to 60 minutes, if needed.  
15 I'm not sure. I don't think you need 60  
16 minutes. Organizations, five minutes,  
17 individuals three minutes. And the Commission  
18 intends to adhere to the time limits as strictly  
19 as possible in order to hear the case in a  
20 reasonable period of time.

21                   All persons appearing before the  
22 Commission are to fill out two witness cards.

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1 These cards are located to my left on the table  
2 near the door.

3 The decision of the Commission in this  
4 case must be based exclusively on the public  
5 record.

6 The staff will be available  
7 throughout the hearing to discuss procedural  
8 questions.

9 Please turn off all beepers and cell  
10 phones at this time so not to disrupt these  
11 proceedings.

12 At this time, the Commission will  
13 consider any preliminary matters.

14 SECRETARY SCHELLIN: No, sir, none.

15 CHAIRMAN HOOD: Okay. We will go  
16 straight to the Office of Planning, Mr.  
17 Mordfin.

18 MR. MORDFIN: Good evening Chairman  
19 and Members of the Commission. I'm Stephen  
20 Mordfin with the Office of Planning.

21

22 And in response to the questions, the

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1 Office of Planning assembled the text  
2 amendments for the animal uses within the  
3 Zoning Regulations. One was to rectify a  
4 problem that the Board of Zoning Adjustment had  
5 with locating animal boarding uses when only  
6 separated by a public alley. And due to what  
7 is written in Section 107.5 stating that the  
8 zoning line goes down the center line of an  
9 alley or a street that meant that even if there  
10 was an alley separating the residential uses in  
11 a residential zone across an alley they were  
12 still abutting. So, in response to that, the  
13 Office of Planning has changed the wording from  
14 an abutting residence zone to no portion of the  
15 animal boarding use shall be located within 25  
16 feet of a property in a residence district used  
17 for residential purposes. And what that would  
18 allow, would allow for the measurement to take  
19 place from the rear lot line of a residential  
20 property used residentially across an alley and  
21 then from there measure rather than it  
22 abutting, because we took out that word

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1 abutting because now abutting would no longer  
2 be an issue.

3           The Office of Planning also cleaned up  
4 much of the language that was contained within  
5 the animal uses to make it more consistent with  
6 what is written in other parts of the zoning  
7 regulations using similar type wording for the  
8 criteria that are contained in the animal uses  
9 included in that. And also separated out some  
10 of the uses such as animal waste and animal  
11 odor, separating them out in separate criteria  
12 because it was a little confusing with the way  
13 it was written.

14           Also eliminated the provision that  
15 allowed pre-existing animal uses to continue as  
16 it is no longer relevant from when we adopted  
17 these regulations in 2005. There was a comment  
18 that we were prohibiting domestic dogs from  
19 being boarded and we did strike that language  
20 out of the commercial uses. It was pointed out  
21 that we neglected to also strike that from the  
22 industrial uses. So, the intention was also to

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1 not prohibit the boarding of domestic animals  
2 anywhere. So, that was an error that we would  
3 also like to strike that provision also.

4 The provisions that we're changing  
5 are basically the same for each use, the pet  
6 shops and the grooming. We made it all  
7 relatively -- well, we did try to make it all  
8 consistent then also consistent with other  
9 regulations. We did not include specific  
10 criteria stating that you must when documenting  
11 that you will not adversely impact an adjoining  
12 residential use by having had it certified by  
13 some kind of professional organization because  
14 that's not typically what we do in the zoning  
15 regulations. But, of course, it would always  
16 be there should the Board determine in a  
17 specific case that it would be an appropriate  
18 thing to do.

19 We also made sure that you could also  
20 put these uses into a mixed building pursuant  
21 to the case that it was at 14th and Florida  
22 Avenue, Northwest, where what we're going to

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1 allow is that the use only go up to a certain  
2 point within the building and as long as the  
3 back wall of that use was at least 25 feet from  
4 the residential use and the residential  
5 district then it would be permitted within the  
6 building, even if that mixed use building went  
7 all the way to the rear property line and maybe  
8 even abutted a residential use on the other side  
9 as long as the use itself and the area that was  
10 part of that use was separated then it would  
11 fulfill that criteria.

12 The Office of Planning also responded  
13 to questions that the Commission had at the  
14 setdown. One had to do with state-of-the-art  
15 waste processors and I think that we had covered  
16 that in the existing regulations where we would  
17 acquire a qualified waste disposal company to  
18 collect and dispose of all animal waste. A  
19 second one was that as I already mentioned was  
20 prohibiting dogs from being boarded. The  
21 third one had to do with how a gasoline service  
22 station in the West End could be less than 25

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1 feet from a residential district and were less  
2 than 25 feet from a residential use. And in  
3 that case it's because it's in a mixed use  
4 building. And that building and that use,  
5 rather that use is more than 25 feet from a  
6 residential use and a residential zone but  
7 because it's a mixed use building the uses can  
8 be mixed in there similar to what would happen  
9 with the animal uses. You could live in the  
10 same building that might on the ground floor  
11 have a dog boarding establishment.

12 The same thing was also true of the  
13 bowling alley. We didn't find one in Dupont  
14 but there is one on Wisconsin Avenue and it's  
15 the same situation as with the gasoline  
16 station.

17 For our interpretations for how, I  
18 guess, how much has progressed in the care and  
19 feeding of animals I think that the proposed  
20 regulations would allow by special exception  
21 these uses within nonresidential districts and  
22 even within mixed use buildings provided that

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1 you took the care to make sure that the noise  
2 and the odors would not emanate from that use.  
3 So, I thought that we had covered that.

4 And the last one would be as I already  
5 mentioned with the noise attenuation and I  
6 think that that would be making this use  
7 different from all other uses in the zoning  
8 regulations and that it would be appropriate  
9 for the BZA to look at it on a case-by-case basis  
10 and if they find one where it would be  
11 important to then request that of the  
12 Applicant.

13 So, that concludes my presentation  
14 and I'll answer any questions.

15 Thank you.

16 CHAIRMAN HOOD: Okay. Thank you, Mr.  
17 Mordfin. I'm sure we have a few questions.

18 Who would like to start? Vice Chair  
19 Cohen?

20 VICE CHAIR COHEN: Thank you, Mr.  
21 Chairman, and thank you, Mr. Mordfin for  
22 addressing those issues.

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1           The bowling alley has not been there  
2           for quite awhile. I guess it's totally out of  
3           date on that one. I've been around a long time  
4           so I'm sorry about that, misleading you.

5           I do have a concern though and that is  
6           allowing the BZA to -- oh, now I can't find it.  
7           Excuse me for one minute.

8           Giving the BZA the flexibility to  
9           determine what type -- breed of dog would be  
10          acceptable. I mean, there are some dogs, you  
11          know, in a particular case, some dogs that are  
12          small are more frightening than big dogs. But  
13          you would always assume a bigger dog,  
14          especially certain breeds are, you know, very  
15          challenging. I don't think that that's an  
16          appropriate discussion or decision point for  
17          BZA. Because it really should left up the  
18          professionals. Some dogs are very yappy if  
19          they're small and bigger dogs may have a hoarser  
20          bark but I really don't believe that that is a  
21          determination that is a zoning determination.  
22          But I'll hear from my colleagues regarding

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1 that. And that was just my concern is that it  
2 needs to be professionalized more than, you  
3 know, a opinion of a Commissioner, the Board of  
4 Zoning Adjustment because I don't think they  
5 have enough experience with different breeds.

6 CHAIRMAN HOOD: Okay. Commissioner  
7 May.

8 COMMISSIONER MAY: Thanks.

9 So, a few questions or a few issues.  
10 One is the reference to HEPA filters as a way  
11 of doing air filtration. It's cited as an  
12 example under 735.4(e). My understanding of  
13 HEPA filtration is that it will not remove  
14 odors. It will remove particulates but it  
15 won't remove odors. So, I don't think you want  
16 to make that reference. Now, maybe I'm wrong.  
17 Maybe there are some odors it will remove but  
18 unless it's actually associated with  
19 particular matter, I mean, I was always told  
20 that what you have to do when there are odors  
21 is you have to put in scrubbers. And that's a  
22 more expensive technology. I wouldn't even

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1 reference that here. I just think the whole  
2 thing would be fixed by striking out the "for  
3 example" and just let it be demonstrated. Let  
4 it be on the Applicant to demonstrate that it  
5 meets the standards of odor control. Because  
6 you don't want somebody just saying, oh, you got  
7 a HEPA filter so, therefore, it's all taken care  
8 of.

9 Second one is there's a reference to  
10 pet shops. So, is pet shop defined as a place  
11 where pets are sold or, I mean, if you have a  
12 pet accessory store is that a different kind of  
13 retail use?

14 MR. MORDFIN: You could have a retail  
15 use where you sell pet accessories and no  
16 animals and that's permitted as a matter of  
17 right.

18 COMMISSIONER MAY: Right, and that's  
19 just treated as a different use entirely.

20 MR. MORDFIN: Correct.

21 COMMISSIONER MAY: Okay. I just  
22 wanted to make that clear because I wouldn't

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1 want to accidentally put restrictions on that.

2 And then the third thing is on 739.3  
3 the reference to -- this is for in the CM Zone,  
4 I think. It indicates the reference to  
5 external yards -- it may appear elsewhere but  
6 this is where I noticed it. 739.3(d) where it  
7 says that external yards or other external  
8 facilities for keeping of animals shall not be  
9 permitted unless the entire yard is located  
10 within 200 feet of an existing residential use  
11 or resident's district.

12 So, I think that should be a little bit  
13 more specific because if you had a fenced in  
14 area within a rear yard and that fenced in area  
15 is 200 feet away from the residential district  
16 I think it should be permitted and I think  
17 that's your intention. But the reference to  
18 the entire yard, someone might interpret as the  
19 entire rear yard has to 200 feet away because  
20 it happens to have that in it. So, I think just  
21 being a little bit more specific there would  
22 help deal with any ambiguity when a case comes

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1 up.

2 And as for Commissioner Cohen's  
3 reference to -- I see it in 735.5, the reference  
4 to the species and/or breed of animals. It's  
5 all sorts of different animals. It's not  
6 necessarily just dogs and different types of  
7 dogs. And I think that having some discretion  
8 about being able to say certain types of animals  
9 that might be permissible under the health  
10 regulations might not be permissible on a  
11 certain area, you know, may actually come up and  
12 it may be appropriate. I don't know what they  
13 might be. I mean, I don't know that  
14 necessarily --

15 VICE CHAIR COHEN: Llamas?

16 COMMISSIONER MAY: Llamas, I don't  
17 know. Snakes, you know, I don't know what you  
18 can buy in the District and what's good or bad  
19 but there may be some breeds that you don't  
20 necessarily want and it ought to be left to some  
21 discretion. I really doubt that the BZA is  
22 going to weigh in on whether, you know, a great

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1 dane is appropriate and a schnauzer is not.  
2 Maybe it would happen but I would be very  
3 surprised and I think it would be a hard case  
4 to make. I'm sure that the OAG wouldn't want  
5 to go to court to defend a decision like that.

6 CHAIRMAN HOOD: Okay. Any other  
7 questions? Mr. Turnbull?

8 COMMISSIONER TURNBULL: Thank you, Mr.  
9 Chair.

10 Just clarifying the 25 foot aspect.  
11 You're basically talking about the facility  
12 itself, nothing to do with the property line,  
13 the facility itself has to be 25 feet from a  
14 residential area.

15 MR. MORDFIN: Correct. Has to be 25  
16 feet from a residential use in a residential  
17 zone.

18 COMMISSIONER MAY: Okay. Qualified  
19 waste company. I'm assuming that would imply  
20 that they are licensed?

21 MR. MORDFIN: Yes, that would imply  
22 they were licensed.

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1           COMMISSIONER MAY: And I'm not sure  
2 whether we need to add that but I think we ought  
3 to make sure that qualified has a definition as  
4 being regulated by something, that there ought  
5 to be kind of a regulatory body that is  
6 reviewing who is a qualified waste company.  
7 Just a fine point but I just want to make sure  
8 that we have that covered.

9           MR. MORDFIN: Okay.

10           COMMISSIONER MAY: And those are my  
11 only points.

12           CHAIRMAN HOOD: Any other comments?

13           Mr. Mordfin, when we looked at this,  
14 to me I thought we were clarifying and I  
15 actually probably was the one that asked it.  
16 Might not have been the only one that we come  
17 here and clarify this for some of the cases that  
18 were in front of the BZA. And it seems to me  
19 and help me understand this because I'm not as  
20 well versed as the Vice Chair and others on pet  
21 grooming and dogs and all that. But let me just  
22 say this.

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1           It seems to me that we have really  
2           lessened the restrictions that this Commission  
3           had put in place in 2005, unless I'm not  
4           understanding it. I had a problem with the  
5           direction that we went in because I don't think  
6           that was the intention. I think the intention  
7           was to straighten out the issue whether we're  
8           talking about residential zone or residential  
9           resident's districts. I think that's what the  
10          clarification that this Commissioner was  
11          looking for. And it seems like we now just mark  
12          things out, strike things, I guess to fit the  
13          case. I think the case needs to fit the  
14          regulations. We're making it so we fit in  
15          these cases and I have a problem with that. So,  
16          explain to me, am I seeing that right or did I  
17          misunderstand that or where are we on this?

18  
19           MR. MORDFIN: Well, the reason for  
20          putting in the 25 feet instead of the abutting  
21          was that in light of reading Section 107.5 we  
22          realized that almost nowhere were you going to

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1 get a commercial zone that didn't back up on  
2 residential and because the zone line ran down  
3 the center of the alley then in almost every  
4 case you would be abutting and we thought that  
5 what that was going to do is prohibit the  
6 establishment of these uses practically  
7 everywhere. So, we didn't want to do that.  
8 So, to make it so that it was possible to put  
9 these uses into commercial districts even when  
10 they're residential uses behind them like might  
11 happen in neighborhood commercial shopping  
12 districts we changed it to the 25 feet from the  
13 rear lot -- measuring it from the rear lot line  
14 of that residential use to where that use could  
15 begin on the commercial lot. And if there's an  
16 alley there then actually it makes it not less  
17 stringent. I think it might make it more  
18 stringent because you might be further away  
19 whereas maybe you had a 10 or a 15 foot alley  
20 back there, then that's as far as you would be  
21 separated from the residential use. But if you  
22 do the 25 feet from their rear yard line then

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1 it's always going to be a minimum of 25 feet.

2 CHAIRMAN HOOD: So the alley is not  
3 included in the footage? The alley is not  
4 included in the calculation?

5 MR. MORDFIN: The alley is included in  
6 the 25 feet.

7 CHAIRMAN HOOD: So, it's total  
8 distance 25 feet?

9 MR. MORDFIN: Total distance 25 feet.

10 CHAIRMAN HOOD: Which I think,  
11 honestly, I don't know if that's enough. We  
12 might want to look at 30 to 40 to 50. Okay. I  
13 mean, I'm just asking that we look at that.

14 The other thing is and I don't want to  
15 get into any specific cases -- so we still have  
16 a protection in for residential districts?  
17 The protection is still there?

18 MR. MORDFIN: Yes.

19 CHAIRMAN HOOD: Okay. And that goes  
20 both vertical as well as horizontal? Like if  
21 one wants to locate on like the second floor and  
22 nothing below and I'm just using a

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1 hypothetical. And there's a residential  
2 apartment or whatever on the next floor up.  
3 They would be protected?

4 MR. MORDFIN: Well, they would be  
5 protected because you have to address the noise  
6 and the odor within your space where you have  
7 your animal space. The 25 feet doesn't measure  
8 up. That's only for to the rear.

9 CHAIRMAN HOOD: Well, yes. I  
10 understand that but anybody can come in and make  
11 it sound good. You know, we can do this and we  
12 can do that and it goes into this and I've heard.  
13 But I tell you, that concerns me. I don't know  
14 where my other colleagues are but when you're  
15 on the receiving end of it it makes a  
16 difference. So, that's where I am with this.  
17 I don't know if the Office of Planning can look  
18 at this. I'm not sure if anybody else feels  
19 like I do with this. It just seems like we're  
20 making this fit those cases and that wasn't the  
21 intention of me asking this to come to this  
22 Commission.

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1           So, I would ask that we re-look at some  
2 of those things and make the case should fit the  
3 regulations. Or, you know, to a point. I may  
4 not have a problem with the distance but it's  
5 some of the other stuff that we have lessened  
6 and there is a reason that this Commission --  
7 I was here in 2005 that we did that.

8           MR. MORDFIN: Okay.

9           COMMISSIONER TURNBULL: But you raise  
10 a good question, Mr. Chair, about the 25 feet.  
11 It might be worth it to have OP look at this a  
12 little bit more and come up with the rationale  
13 for they really arrived at 25 feet.

14          CHAIRMAN HOOD: And I don't want  
15 anybody say that Anthony Hood is against dogs  
16 because I'm not. So, you know, it seems like  
17 every time I say something it gets tweeted or  
18 quoted or something. So, anyway, I'm just  
19 concerned in making sure that we balance this  
20 thing. That was the whole intent.

21                   Any other questions?

22                   Okay. Let's go to the witness list.

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1 William Licko, come forward. Leila Batties,  
2 Brock Benson, Martin Sullivan. I was going to  
3 say David Letterman but I know it's not David  
4 Letterman so David Liedman.

5 Okay. We're going to start with Mr.  
6 Licko and everybody here is a proponent of the  
7 regulations. So, we'll start to my left. You  
8 may begin.

9 MR. LICKO: My name is Bill Licko. I'm  
10 a Senior Director with UDR which has an  
11 ownership position in 52,000 apartment homes in  
12 22 markets across the U.S.

13 The company also has 1,500 apartment  
14 homes located in the District's boundaries.  
15 That's approximately six apartment  
16 communities.

17 I'm here to highlight two main points.  
18 One, as an owner of mixed use properties, UDR  
19 is pleased that the Zoning Commission has  
20 requested amendments to the zoning regulations  
21 that addresses the growing demand for dog  
22 daycare centers in urban areas and mixed use

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1 buildings, in particular.

2 Two, the primary concern about this  
3 use in a mixed use building is the noise impact  
4 on the residential units above. I want to talk  
5 about how we are able to fully mitigate noise  
6 impact through appropriate construction  
7 measures.

8 First of all, a little bit of  
9 background. There's a great need for  
10 pet-related services in urban locations  
11 nationally. And Washington, D.C. is no  
12 different. This text amendment will help to  
13 serve the residents who live in the areas with  
14 ground floor retail and residential above. It  
15 also has the indirect benefit of activating the  
16 ground floor of mixed use buildings.

17 Indoor dog play parks located at store  
18 front windows are appealing to the eye and  
19 create pedestrian friendly store fronts. Very  
20 few people can resist looking at puppies  
21 playing in the window.

22 Dogs are America's favorite pet with

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1 43.3 million households owning one and with the  
2 influx of populations in downtown areas,  
3 developers and planners are focusing on  
4 amenities that support the growing population.  
5 For example, many apartment communities are  
6 offering dog washes, dog parks and roof top dog  
7 walks. Our apartment communities are pet  
8 friendly and we estimate that 30 percent of our  
9 apartment homes have at least one dog. Many of  
10 these dogs are left in their apartments during  
11 the day while their owners are at work. Pet  
12 owners want their dogs to be cared for while  
13 they're at work. However, today's urbanites  
14 either don't want to use their cars or don't  
15 have cars to take their dogs to daycare  
16 facilities.

17 Due to this increased demand in pet  
18 services many urban residents are recognizing  
19 the need for dog daycare services. And the  
20 traditional kennel is no longer acceptable.

21 Daycares are now focusing on  
22 mitigating odors and noise and building their

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1 space so it is more inviting to the pet owner  
2 while paying particular attention to  
3 cleanliness. Recently, ULI Magazine, a  
4 magazine devoted to covering best practices  
5 across a broad spectrum of real estate topics  
6 featured a dog daycare facility located in a  
7 Class A luxury mixed use high rise in New York.  
8 The cover article highlighted urban resident  
9 demands for pet friendly accommodations and  
10 there's an exhibit that was handed out to you  
11 regarding that article.

12 When we do this we have care  
13 consideration that's given to the structure and  
14 design of each building. As I mentioned, we  
15 successfully tenanted and opened dog daycares  
16 in mixed use communities, apartments above the  
17 dog daycare in Seattle, Dallas and San Diego and  
18 we have done so without any noise or odor  
19 complaints. So, this can be done. It's done  
20 by taking specific noise attenuation measures  
21 recommended by acoustical engineers. I've  
22 also submitted an example showing

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1 illustrations of the build out precautions  
2 taken to insure any objectionable noises are  
3 mitigated.

4 In conclusion, this text amendment  
5 will create a clarified path to allow mixed use  
6 commercial space become occupied with a use  
7 that is desired by many in the District.

8 CHAIRMAN HOOD: Okay. Thank you.

9 Next?

10 MS. BATTIES: Good evening. I'm Leila  
11 Batties with the law firm of Holland & Knight.  
12 I actually represent UDR on the property at 2400  
13 14th Street.

14 I just want to emphasize a couple of  
15 things. One thing that Mr. Licko did not  
16 mention in his testimony. As the owner of both  
17 the retail space and the apartment house above  
18 they have a vested interest in making sure that  
19 noise is fully mitigated. They obviously  
20 don't want a situation where their tenants are  
21 disrupted by noise and then not inclined to stay  
22 in their building. So, their interest in

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1 making sure noise issues are addressed, they  
2 are very much vested in making sure that it's  
3 addressed.

4 The other thing I want to point out,  
5 Commissioner Hood or Chairman Hood, is that  
6 when the regulations were drafted in 2005 they  
7 did not contemplate dog daycare centers in  
8 mixed use buildings. So, that is one thing we  
9 welcome with the proposed amendments because  
10 they do address standards for dog daycare  
11 centers that are in mixed use buildings with  
12 residential above. So, we welcome those  
13 amendments.

14 And, finally, Commissioner May, I do  
15 believe when we had the case before the BZA the  
16 breed of dog actually did enter into the  
17 discussion because they talked about how  
18 certain dogs barked or the pitch of certain  
19 dog's barks so I don't want you to think that  
20 that clearly would not be a part of the  
21 discussion when it came to noise.

22 So, with those three things out of the

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1 way I'd just like to address a couple of things  
2 that relate to the amendments proposed.

3 I think Mr. Mordfin mentioned this but  
4 we'd like to emphasize that we do want to  
5 confirm that the 25 foot spacing requirement,  
6 the measurement is actually taken from the  
7 exterior wall of the space that's actually  
8 utilized for the dog daycare center and not the  
9 property line. In the case of 2400 14th  
10 Street, the dog daycare center and all of the  
11 retail spaces in that building front along 14th  
12 Street which is a commercial corridor. The  
13 space only extends -- it extends east but not  
14 to the rear of the building. And so if you were  
15 to measure the use to -- measure the exterior  
16 wall of that use to the residential district as  
17 shown on this survey that we attached to my  
18 remarks. The exterior wall closest to the  
19 residential properties is actually 88 feet and  
20 even to the center line of the alley it's 78  
21 feet. So, we just wanted to clarify that  
22 because I think in some places in the

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1 regulations now it says that the use must be  
2 measured. Use cannot abut the residential  
3 district and then in some cases it says the  
4 property. So, there is a distinction the two.  
5 Well, we just want to confirm and I think Mr.  
6 Mordfin did confirm that it's the actual use in  
7 the exterior wall of that use that that is the  
8 measuring point.

9 The other thing that we wanted to  
10 address on the record is this provision that  
11 pertains to noise impact on the residential  
12 units in the same building. And this is really  
13 a result of the deliberations of the Board of  
14 Zoning Adjustment and our Case 18702. And I  
15 think it would be helpful in that case. I guess  
16 it would be helpful to the Applicant to really  
17 understand what would be deemed appropriate to  
18 adequate evidence that the use would produce no  
19 "objectionable" noise. We would propose that  
20 an Applicant would have to demonstrate that  
21 through the build out or design of that space  
22 they are able to mitigate the noise from the dog

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1 daycare center use such that the noise level in  
2 the apartment units above comply or are within  
3 the standards recommended by industry  
4 authority and in this case ASHRAE. But,  
5 essentially, we would propose that the  
6 Applicant would have to demonstrate that the  
7 noise levels in the apartment units above would  
8 be no worse with the dog daycare center use.  
9 And they are able to do that through appropriate  
10 construction measures.

11 That's it. Thank you.

12 CHAIRMAN HOOD: Thank you.

13 Next.

14 MR. SULLIVAN: Thank you and good  
15 evening, Mr. Chairman and Members of the  
16 Commission.

17 My name is Marty Sullivan with the law  
18 firm of Sullivan and Barros and I represent  
19 several doggie daycare operators. And I'm  
20 here on behalf of their interest and my own  
21 interest in drawing some more clarity on the  
22 daycare regulations.

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1           I wasn't sure whether to say I was a  
2           proponent or an opponent because I'm a  
3           proponent of the attempt to clarify,  
4           absolutely. But I think as currently written  
5           these proposed regulations do not clarify nor  
6           do they make it anymore certain or easier for  
7           a dog daycare to be realized. In fact, if the  
8           intention is to make it a lot more difficult  
9           then I think these regulations that's where  
10          they're going. So, I would like to make two  
11          suggestions, one very specific and one that's  
12          very general.

13                 Regarding the proposed 25 foot rule,  
14           I would suggest that the proposed language in  
15           735.2 match the language used for gas stations,  
16           bowling alleys and fast food establishments.  
17           And I have several reasons for this. First of  
18           all, this language that's already in other  
19           sections of the regs would match the intention  
20           of the originally adopted regulations as stated  
21           in the setdown report. It was stated that the  
22           intention was that an alley would constitute

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1       adequate separation.       So, that was the  
2       original intention.       And I didn't think that  
3       this action was meant to make that more  
4       difficult.       It was just meant to clarify that  
5       point.       And if that was the original intention  
6       then clarifying it would seem to be using the  
7       language that's used for gas stations and fast  
8       food establishments.

9               Secondly, the language that I'm  
10       proposing would be consistent with other  
11       concepts and language in the regs as the setdown  
12       report notes.       And I don't think the Zoning  
13       Commission actually believes that dog daycare  
14       is decidedly more adverse than a gas station or  
15       a bowling alley or a fast food establishment,  
16       especially, with a drive through.

17               I suspect that the Commission and the  
18       general population see dog daycare as less  
19       potentially adverse than those uses but  
20       certainly not more so.

21               The current we propose language on the  
22       other hand has two main effects, I think, or may

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1 have two main effects. The proposed language  
2 will make it almost impossible to bring a  
3 special exception case in any location in which  
4 this type of business is viable.

5 This business survives mostly on the  
6 commuter corridors not in the middle of the  
7 downtown business district and almost every  
8 potential property that was brought to me by my  
9 clients over the last couple of years is  
10 separated only by an alley from the residential  
11 zone. And none of those alleys are 25 feet  
12 wide.

13  
14 Second, the proposed language leads  
15 to a lot of confusion and ambiguity in  
16 discussions with Mr. Mordfin and you've had  
17 discussion here tonight that the 25 feet will  
18 be from the rear property line to the use so the  
19 Zoning Administrator has to determine where  
20 that use is every time. What if there is a  
21 building there but you don't use the building  
22 as in the case of View 14? What if you just have

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1 dead space and I've talked to Mr. Mordfin about  
2 that and he said, yes, if you have dead space  
3 then that won't be part of the use. What if I  
4 take the waste out through the dead space?  
5 What if you can't inspect the dead space? It  
6 leads to a lot of confusion on every single  
7 case. So, I don't understand why we wouldn't  
8 just use the same language that's used for gas  
9 stations because it's very clear and it allows  
10 for the possibility of going for a special  
11 exception and let's remember that. You still  
12 have the BZA back drop o this. And the BZA has  
13 shown that they are not shy about denying these  
14 applications. So, I don't think that there's  
15 any fear that there won't be adequate review for  
16 when there's just an alley separating it.

17 Okay. That's all I have about the 25  
18 foot rule. My general suggestion would be that  
19 there is some greater type of matter of right  
20 option, whether it be a little easier in the CM  
21 zone or whether it be easier with some  
22 conditions in a higher commercial district.

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1 My clients' biggest problem is that they can't  
2 rent a space because when they go get a space  
3 the landlord finds out that they have to wait  
4 six months and then bear the risk of maybe this  
5 will or will not get approved. And so the  
6 normal process is they call me after looking and  
7 looking and looking and finding a lot of stuff  
8 in C1 that they can't touch saying, can I do this  
9 and I yes it looks pretty good. And then they  
10 go to the landlord and they say, no, the  
11 landlord won't do it. So, the only option for  
12 that is buying a property and I have a client  
13 that actually did that and then got denied.  
14 So, it's very difficult. You notice there  
15 haven't been new ones established recently and  
16 I don't think these regulations are going to  
17 make it any easier to establish them.

18 Thank you.

19 CHAIRMAN HOOD: Thank you.

20 Next.

21 MR. BENSON: Hello, my name is Brock  
22 Benson.

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1 CHAIRMAN HOOD: Turn your mic on and  
2 speak into your mic.

3 MR. BENSON: Hello. My name is Brock  
4 Benson. I'm the CEO of Planet Pet. I'm just  
5 going to read this.

6 I really appreciate you guys --

7 CHAIRMAN HOOD: Can you turn your mic  
8 towards you.

9 MR. BENSON: Is that better? Okay.

10 Like I said, my name is Brock Benson.  
11 I'm the CEO of Plant Pet, LLC, in Adams Morgan.  
12 I really appreciate you guys calling this  
13 zoning meeting on dog care and related  
14 businesses.

15 The current state of the regulations  
16 and how they've been interpreted by the BZA has  
17 made it virtually impossible to establishment  
18 a new location anywhere in the city. I'm about  
19 to lose my business. We've been in business  
20 since 1999 because I cannot find a new location,  
21 cannot find a landlord willing to sit by and  
22 hope I get approved.

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1           My struggle to relocate my business  
2 began in January of this year. We were  
3 informed that we needed to find a new location.  
4 The landlord is redeveloping the property.  
5 Throughout the year every day our realtor, Mike  
6 Marcey, would look to find properties so we  
7 could relocate. Every viable property we  
8 looked at that fit our requirements had many  
9 obstacles when the building owners consider our  
10 use, location, rental price, where the property  
11 fit those stringent zoning regulations, then if  
12 we believed that it fit the parameters we also  
13 knew that there was the possibility that we  
14 would get denied.

15           The zoning rules are not black and  
16 white. They are very gray. The regulations  
17 of not occupying a building that was occupied  
18 by residents, I understand that.

19           Now, the 25 foot rule. The proposed  
20 25 foot rule is kind of going in the wrong  
21 direction. That would make it more difficult  
22 to establish a location. It makes it more

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1       uncertain whether or not the property can even  
2       apply for a special exception. The regulation  
3       should at least match the language of the  
4       restriction for a gas station or bowling alley.  
5       Not only would this be consistent with the  
6       sections of the regs but it would be in line with  
7       the original intention of the dog daycare  
8       regulations.

9               I haven't really seen a 25 foot alley  
10       unless I'm way over in the industrial area.  
11       Everybody that has a dog is on 14th Street, Shaw  
12       and there are no 25 foot alleys. The  
13       regulations say that dogs must be kept inside.  
14       There is no effective difference between 15  
15       feet and 25 feet as long as there is an alley  
16       between them.

17               We are currently located at 1711  
18       Florida Avenue and the residents across the  
19       street from us we've operated complaint free  
20       for four years now, five years. And our  
21       neighbors love us. I'm sure that D.C. doesn't  
22       want 28 citizens currently employed in D.C. to

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1 go on unemployment or food stamps or any other  
2 government program because the dog daycare  
3 regulations are too difficult and too  
4 uncertain.

5 As far as noise and odors are  
6 concerned, please, I invite all of you to come  
7 down and visit our facility. You're not  
8 hearing any barking. You don't smell  
9 anything. You can even go down in our kitchen.  
10 The dogs are separated by an open door. You're  
11 not going to smell anything. You're not even  
12 going to hear barking. We don't need fancy  
13 walls and all that stuff. It's my employees  
14 that keep the dogs quiet. You don't need  
15 special things. It's the employees that we  
16 employ. They know how to handle the dogs.  
17 They keep them quiet. If they make a mess, they  
18 clean it up. You don't need anything special.

19 If it wasn't for our signage you  
20 wouldn't even know that the doggie daycare is  
21 there because we take every precaution to be a  
22 good neighbor. We go as far as to pick up

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1 feces, dog feces out in front on the street even  
2 if it's not our dogs. We walk them around the  
3 neighborhood and we clean it up.

4 Under the proposed regulations you'll  
5 end up with a couple of dog daycares, seven,  
6 ten, I don't know that are already established.  
7 They won't be able to handle the demand that you  
8 guys are going to get. They're going to be  
9 turning clients away. Then some D.C.  
10 residents will take it into their hands and, you  
11 know, go to unlicensed underground dog walkers.  
12 People are going to keep them in their  
13 apartments. You're going to have five dogs in  
14 somebody's apartment because they got nothing  
15 to do with their dog while they're at work.

16 In closing, I ask that you think about  
17 the small businesses like us that are trying to  
18 make a living in this wonderful city of ours and  
19 our clients that rely and take care of their  
20 pets while they work. Please amend the  
21 proposed regulations to clarify that the  
22 separation by an alley is sufficient as

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1 originally intended. Anything else will be a  
2 lethal blow to a dog daycare use in the city.

3 Thank you.

4 CHAIRMAN HOOD: Okay. Thank you.

5 Next.

6 MR. LIEDMAN: Hi. My name is David  
7 Liedman. I've been the owner of City Dogs  
8 daycare in D.C. since 2004 when I bought it from  
9 the previous owner who had opened it up in 1999.  
10 And I would say I echo all the sentiments of the  
11 other folks up here. Just a quick little  
12 background.

13 I bought the business in 2004 and  
14 since that time the business has been going  
15 well, very busy. As Brock said, you know, from  
16 time to time we have declined taking new  
17 clients. I have also opened a restaurant and  
18 obtained an ABC license and I would like to say  
19 that that was not an easy process but I actually  
20 had a little more certainty to it than the dog  
21 boarding zoning process. There's an  
22 arbitration process and it's, you know, the

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1 city has a lot of experience granting alcohol  
2 licenses and so while there were no guarantees  
3 that we were going to get it, you know, we  
4 generally knew how to negotiate with the  
5 neighbors, meet their concerns and go through  
6 an arbitration before ABRA and I do think that  
7 this process could benefit, you know, by adding  
8 some certainty to the process.

9           Additionally, as Mr. Sullivan had  
10 said, we had bought a building in 2013 and  
11 basically the zoning process took quite  
12 sometime before we actually got the results and  
13 so we did purchase the building and despite  
14 having the -- it was either unanimous or near  
15 unanimous support of the ANC, we got denied in  
16 front of the BZA and unfortunately by that time  
17 I think it was about five months later we had  
18 already gone through the settlement of the  
19 building so we have opened a personal training  
20 gym in the space. So, you know, we had to do  
21 something. And, you know, I sit in the gym each  
22 day and, you know, there's people jumping up and

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1 down upstairs. We have group workouts with  
2 personal trainers and there's, you know,  
3 weights being dropped. There's aerobic  
4 classes with loud music and lots of energy and  
5 I do think that it's ironic that it is probably  
6 more impactful on the neighbors than the dog  
7 daycare would have been. But I'm sitting at  
8 the desk in the office in the gym and it  
9 certainly seems to be more noise than there is  
10 in a daycare.

11 And, you know, as Marty said we have  
12 still been looking for a second dog daycare  
13 location as basically we're operating very  
14 close to capacity all the time and from time to  
15 time we decline new clients. And the proposal  
16 would eliminate, you know, basically every  
17 location that we've looked at with the 25 foot  
18 rule and so I think that adding in the phrase,  
19 "unless separated from the resident district by  
20 a street or alley" would go a long way in adding  
21 some certainty to the process and actually  
22 allowing some dog daycares to be in the city.

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1           Another point that I had was there is  
2           a conflict on the outdoor spaces part.  
3           735.4(c) and 735.6, this was addressed with the  
4           Wagtime case, 18474. The BZA made a decision  
5           based on 735.6 and the discussions basically  
6           were that it was not reasonable to require that  
7           no animals be permitted on an external yard, you  
8           know, for various reasons, ingress, egress for  
9           dog walking, short trips out to the bathroom or,  
10          you know, whatever the reason may be. And that  
11          they made the decision on the other section that  
12          said external yards or exterior facilities for  
13          the keeping of animals should not be permitted  
14          and the BZA focused on the term "kept" and they  
15          thought that this was a more reasonable  
16          perspective to take on the outdoor spaces that  
17          dogs could be temporarily outside but just not  
18          kept. And so I would propose that you remove  
19          735.4(c) and leave in 735.6.

20  
21                  Finally, the objectionable noise  
22          requirement is too vague. I think Ms.

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1 Batties described it pretty eloquently. We  
2 had a noise engineer and I believe there was a  
3 noise engineer in the View 14 case number 18702  
4 giving some detailed drawings and explanations  
5 of how the noise is mitigated. 735.3 states  
6 that the animal use shall take place entirely  
7 within an enclosed and sound proof building in  
8 such a way so as to produce no noise or odor  
9 objectionable to nearby properties. This  
10 would be writing before it was the new proposal  
11 which takes out the sound proof part and still  
12 leaves in the objectionable part. I would  
13 propose that this is a huge gray area. As you  
14 know, as Brock said there's lots of gray areas  
15 in all of this and the sound engineers had their  
16 own way of describing what was objectionable  
17 and appropriately sound proofed and they --  
18 they said there is no such thing as 100 percent  
19 sound proof, that some small amount of noise can  
20 escape in a building. But they focused on  
21 mitigating the noise so that it measured in  
22 relation to the ambient noise level or the

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1 background noise. So, a sound proof structure  
2 mitigates the noise to the level of ambient  
3 noise as measured in the environment. So, if  
4 you were on a, you know, busy street such as our  
5 building that we had purchased. It's on  
6 Pennsylvania Avenue in Southeast. There are a  
7 total of eight lanes on the road so there is,  
8 you know, thousands upon thousands of cars per  
9 day, a bus stop. There's a Department of  
10 Transportation depot, a food truck warehouse.  
11 It's not a quiet area and I feel that that wasn't  
12 really taken into account in the decision. It  
13 was the fact that, you know, one bark could  
14 potentially be slightly heard, you know,  
15 despite the fact that there's much louder  
16 noises in the area.

17 So, I recommend to change that to "The  
18 animal boarding use shall meet existing noise  
19 regulations for commercial districts and the  
20 animal boarding use shall produce no noise in  
21 excess of the ambient noise level measured 25  
22 feet from the animal boarding use."

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1 That's everything I have. Thank you.

2 CHAIRMAN HOOD: Okay. All right.

3 And just to note, you know, we are a  
4 very kind Commission because the five minutes  
5 have been up.

6 MR. LIEDMAN: I'm sorry.

7 CHAIRMAN HOOD: Okay. All right.

8 Let me open it up, colleagues. Any  
9 questions.

10 Commissioner May, would have any  
11 questions?

12 COMMISSIONER MAY: Sure. So, with Ms.  
13 Batties, you made the argument that as the owner  
14 -- UDR, I guess, is the owner of the building  
15 they have an invested interest in keeping  
16 things quiet for the apartment owners as well.  
17 So, what if it's a condominium and, you know,  
18 it's a commercial space and there's a  
19 condominium on top, you know, it's not to  
20 dissimilar from it being, you know, in a  
21 residents district next door. So, I mean, I  
22 appreciate the argument you're making but

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1 it's not always applicable.

2 MS. BATTIES: That's correct, but I'm  
3 going to let the property owner answer that  
4 question.

5 MR. LICKO: Yes, in that case usually  
6 there's -- well, there's always in a condo  
7 there's declarations. There's covenants.  
8 And so that would be addressed in the covenants.

9 COMMISSIONER MAY: So, what sound  
10 level might be transmitted between levels.

11 MR. LICKO: Yes, we have other  
12 properties where we don't own the retail below  
13 and that's a concern. In fact, I just wrote up  
14 a four-page memo to our board regarding that  
15 concern. And the answer is the declarations in  
16 those condos always govern the uses. And many  
17 of our uses we have specific guidelines of what  
18 can and can't be used.

19 COMMISSIONER MAY: Okay. So, you just  
20 mentioned a case. You just wrote a four-page  
21 memo on the subject relating to the fact that  
22 you don't own the retail below of some of your

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1 apartments, right, so what was that about? Was  
2 it about objectionable noise conditions coming  
3 from the space below?

4 MR. LICKO: It was about  
5 complications. When we do that what kind of  
6 complications do we come across and how do we  
7 mitigate risks.

8 COMMISSIONER MAY: I see.

9 MR. LICKO: It wasn't specific to --

10 COMMISSIONER MAY: Wasn't specific to  
11 a particular issue?

12 MR. LICKO: No.

13 COMMISSIONER MAY: Okay. So, also,  
14 Ms. Batties, in the BZA case where the subject  
15 of the breed came up, I mean, did it just sort  
16 of come up in discussion or was there actually  
17 -- was anybody entertaining the idea that  
18 certain breeds should be allowed and certain  
19 breeds should not?

20 MS. BATTIES: And I believe it was in  
21 the deliberation of the board they talked about  
22 dogs within the apartment buildings being able

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1 to hear dogs in the dog daycare center in that  
2 kitchen. Maybe certain breeds of dogs having  
3 a higher pitch than others. And so that was the  
4 context of the conversation and how that came  
5 up.

6 I didn't bring it up in my comments  
7 tonight and we didn't really address it in the  
8 BZA case, but there was an argument made that  
9 we may have not mitigated the noise impact  
10 because dogs can hear at a higher frequency than  
11 humans. And I think the response to that is  
12 that dogs hear dogs in other apartment units  
13 also. So, it's not necessarily the use that  
14 would cause other dogs in the buildings to bark.  
15 They may bark when they hear dogs anywhere in  
16 the building including other apartment units.  
17 So, that was the nature of the discussion when  
18 it talked about breeds and the type of barking.

19 COMMISSIONER MAY: I guess maybe now  
20 I'm coming around to Commissioner Cohen's point  
21 of view on breeds, not because they're -- not  
22 so much because of the expertise issue, it's

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1 just seems really far-fetched that anybody  
2 could make the argument about one breed versus  
3 another when, you know, dogs are much like  
4 humans. Some breeds have a tendency to bark  
5 particularly loudly maybe not the type of dog  
6 who barks very much just because of the way they  
7 were raised or, you know, what their owner is  
8 like or any number of other conditions. So, I  
9 agree it's kind of silly to differentiate on the  
10 basis of breed. Now about species, I think we  
11 need to keep the species language in there but  
12 not the breed.

13 Mr. Benson, you have essentially the  
14 same argument that Mr. Sullivan raised having  
15 to do with the alley being sufficient  
16 separation and the way you made that argument  
17 it was not clear to me that you understood that  
18 the 25 feet is the 25 feet between the -- say  
19 just the dog daycare use and then residential  
20 property.

21 MR. BENSON: Okay.

22 COMMISSIONER MAY: So, it could be the

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1 alley plus it could be the loading dock space.  
2 But then there's a dog daycare beyond that.  
3 So, so long as the end of that use for dog  
4 daycare is separated by 25 feet.

5 MR. BENSON: Okay.

6 COMMISSIONER MAY: So, I mean, does  
7 that change your perspective at all?

8 MR. BENSON: I guess it kind of  
9 clarifies it, but it's not really useful. It's  
10 -- I mean, every building I've looked at alley  
11 way is behind them in some of the residential  
12 where there's, you know, businesses and then  
13 residences along the other street. They still  
14 have maybe 10 feet of alley, a walkway --

15 COMMISSIONER MAY: Right. But, I  
16 mean, is it possible that there might be 15 feet  
17 from the back wall of the building that you're  
18 in and your actual use? Or is it always going  
19 to be -- I mean, everything you looked at was  
20 it always street front to alley, a straight  
21 slice through the building?

22 MR. BENSON: Like behind the building.

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1                   COMMISSIONER MAY: Yes, well, not  
2 behind the building. I mean, the building may  
3 be fronting right on the alley.

4                   MR. BENSON: Right.

5                   COMMISSIONER MAY: And then on the  
6 street front you have your daycare use, right?  
7 So, is there anything between your use? Is it  
8 possible for there to be anything between your  
9 use which fronts on the street and the back wall  
10 of the building?

11                  MR. BENSON: Yes, it's possible but if  
12 you have a daycare you know you can't walk  
13 through them or beside them unless you have a  
14 wall to walk around them or you're going to have  
15 noise problems.

16                  COMMISSIONER MAY: Right. I mean I  
17 think that's one of the reasons why the gasoline  
18 station rule doesn't completely apply because  
19 if the boarding use, whatever it is actually  
20 abuts the alley itself --

21                  MR. BENSON: Right.

22                  COMMISSIONER MAY: -- and you open

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1 the door there's a potential for that noise to  
2 --

3 MR. BENSON: Right.

4 COMMISSIONER MAY: For any noise that  
5 might be inside to come out. And I understand  
6 there are no dogs making noise in your facility.  
7 But that's why the rule is there, I think,  
8 because of that potential to give at least some  
9 greater separation.

10 MR. BENSON: Yes, I mean, we could --  
11 I mean, you could put a buffer there but it's  
12 --

13 COMMISSIONER MAY: I mean if you're  
14 going to have two sets of doors that are, you  
15 know, 10 feet away.

16 MR. BENSON: Right, I mean, I guess  
17 that would kind of help, I guess, but mostly I'd  
18 look to, you know, have dogs in a lower level  
19 like basement level so there's not that problem  
20 of noise or people walking by that they don't  
21 know.

22 COMMISSIONER MAY: Right.

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1 MR. BENSON: And, I mean, there really  
2 is no noise in our daycare because my handlers  
3 know how to keep dogs quiet because if they're  
4 barking --

5 COMMISSIONER MAY: I understand. And  
6 I appreciate that but the fact that your  
7 handlers are so good doesn't necessarily mean  
8 that all handlers will be so good.

9 MR. BENSON: That's correct.

10 COMMISSIONER MAY: Or that the BZA  
11 could require that.

12 MR. BENSON: Right.

13 COMMISSIONER MAY: That's not the sort  
14 of condition they can require. The only thing  
15 they can require is that there be layers of  
16 sound proofing and things like that.

17 MR. BENSON: Okay.

18 COMMISSIONER MAY: What I'm trying to  
19 get at is whether functionally it's even  
20 possible. You raise the issue that we can pass  
21 this rule and it would not result in any  
22 additional dog daycare uses in the city because

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1 it's just too hard a requirement to meet at 25  
2 feet. I mean, granted even if it's not as hard  
3 as the old rule, it's still too hard to meet.  
4 So, I mean, my real question is whether the  
5 spaces that you were looking at were ever -- I  
6 mean, were they all kind of front of the  
7 building going all the way through to the back  
8 alley? That's the kind of space that's  
9 available.

10 MR. BENSON: Yes. And we would go from  
11 the store front --

12 COMMISSIONER MAY: Right.

13 MR. BENSON: -- all the way to the  
14 back and then the back would be 10, 15 feet from  
15 the residents or --

16 COMMISSIONER MAY: Right.

17 MR. BENSON: -- something that --

18 COMMISSIONER MAY: No building so deep  
19 that your retail space it's not short, you know,  
20 it's not somewhere in the middle of the  
21 building?

22 MR. BENSON: The retail space?

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1 COMMISSIONER MAY: Your space.

2 MR. BENSON: Our space, because we do  
3 retail and dog --

4 COMMISSIONER MAY: I understand. I'm  
5 sorry that I confused the wording. The  
6 boarding use --

7 MR. BENSON: Okay. The boarding use.

8 COMMISSIONER MAY: -- that go -- is  
9 there ever a circumstance where the boarding  
10 use might go from the front of the building to  
11 say it's 50 feet into the building but the  
12 building is actually 100 feet deep?

13 MR. BENSON: I haven't seen one yet.

14 COMMISSIONER MAY: Okay. And you've  
15 looked at a lot of space?

16 MR. BENSON: Yes, I have.

17 COMMISSIONER MAY: Because you've been  
18 shopping around.

19 MR. BENSON: For a year.

20 COMMISSIONER MAY: Right. And were  
21 you able to find places where they were on lower  
22 levels, the dog -- where the dogs actually were?

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1           MR. BENSON: Yes, in the basement  
2 levels. Most of them -- some of them there  
3 weren't too much for basement but, I mean, the  
4 walls are two foot thick because they're all  
5 D.C. walls.

6           COMMISSIONER MAY: Okay.

7           MR. BENSON: So --

8           COMMISSIONER MAY: I mean, it does  
9 raise the question at least for me about whether  
10 space in a basement might be treated  
11 differently. Much like, you know, we don't,  
12 according to Mr. Mordfin, the rule that we're  
13 describing is 25 feet measured horizontally.  
14 It's not measured vertically.

15          MR. BENSON: Right.

16          COMMISSIONER MAY: Right. So, if  
17 it's, you know, if you're in a basement space  
18 you kind of have to assume that you're going  
19 vertically --

20          MR. BENSON: Right.

21          COMMISSIONER MAY: -- and then  
22 measuring horizontally. So, that might be

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1 something where we need to get a little more  
2 clarity because, I mean, one would think that  
3 a basement use might not be as --

4 MR. BENSON: Yes, I mean, there were  
5 some spaces that had a very tiny basement or a  
6 really unusable basement --

7 COMMISSIONER MAY: Right.

8 MR. BENSON: -- and we would have to  
9 use the main level and it would go all the way  
10 to the back.

11 COMMISSIONER MAY: Right. Okay.

12 So, yes, and for me it sort of raises  
13 the question of what 25 feet actually buys us  
14 and, I mean, that does -- the question is, is  
15 25 feet enough or 50 feet enough. I don't know.  
16 I mean, the one case that I was familiar with  
17 from the BZA, 25 feet would have been fine. It  
18 would have allowed that use to occur. In fact,  
19 50 feet would have allowed that use to occur.  
20 But it could not occur because the commercial  
21 property abutted a residential zone which is  
22 the current rule. So, that one had to be denied

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1 but under the new regulations that one would  
2 have been approved.

3 That's all for my questions.

4 CHAIRMAN HOOD: Okay. Any other  
5 questions up here?

6 Vice Chair Cohen.

7 VICE CHAIR COHEN: I just wanted to  
8 ask. Do we have your testimony, Mr. Liedman,  
9 because it would be very helpful to have.

10 MR. LIEDMAN: No, but can I bring it up?

11 CHAIRMAN HOOD: Okay. Any other  
12 questions?

13 Commissioner Miller.

14 COMMISSIONER MILLER: I'm not sure I  
15 have a question, Mr. Chairman, but I found the  
16 testimony compelling and I would have to be  
17 convinced why we wouldn't want to make thee  
18 further clarifications. We're going to hear  
19 OP's response to -- I think the existing rule  
20 for gas stations, the language for gas  
21 stations, fast food establishment and bowling  
22 alleys, I think that would work here because now

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1       you have -- you're going to have to go through  
2       a special exception process if there's  
3       objectionable noise, if there's objectionable  
4       odor and the conditions can be imposed by the  
5       BZA to deal with those. If there aren't any  
6       conditions to mitigate it then it can be denied.

7                So, I would be personally at this  
8       point in favor of going with some or at least  
9       hearing OP's response to, if not tonight at some  
10      point, to the testimony that we heard here from  
11      Ms. Batties, from UDR, and from Mr. Sullivan and  
12      the other business owners.

13               Those are just my comments. I'm not  
14      necessarily asking for a response right now  
15      from OP but that's where I am at the moment.

16               CHAIRMAN HOOD: Okay. Mr. Turnbull,  
17      do you have anything?

18               COMMISSIONER TURNBULL: Thank you, Mr.  
19      Chair.

20               I appreciate all the comments that we  
21      heard from everyone on the panel tonight. I  
22      think we still have some questions ourselves

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1 about this and as Commissioner Miller said. At  
2 the same time, we're still very concerned. I  
3 mean, as much as Mr. Benson's got a great staff,  
4 it's hard to write into regulations that the  
5 great staff will take care of the noise from the  
6 dogs. So, I think we still need regulations  
7 that are going to govern some of this.

8 But I think I would, again, as  
9 Commissioner Miller had said, you know, throw  
10 it back to OP to have another look at this. I  
11 mean, I'm a little concerned about having a 10  
12 foot alley only separating but depending upon  
13 -- again, maybe it's a way of -- maybe it's a  
14 case-by-case basis also that we're really  
15 looking at. And I don't want to leave it too  
16 flexible and at the same time we need to give  
17 people the opportunity to know that they're  
18 going into some place and that they either are  
19 able --- they're going to be able to operate a  
20 facility or they're not. So, from that  
21 standpoint I think we maybe need a little bit  
22 more analysis from OP as to what the existing

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1 conditions are out there and what kind of  
2 flexibility or maybe no flexibility. I mean,  
3 is 25 feet the actual limit or is it going back  
4 to the old regulations regarding gas stations?  
5 Is that sufficient? And I think, I guess, we  
6 need to look at these different zones and really  
7 see what's the governing factor. So, yes, I  
8 would ask OP to again maybe take another look  
9 at this and come back to us with either some  
10 options or whatever.

11 CHAIRMAN HOOD: Okay. I would  
12 associate myself actually with you, Mr.  
13 Sullivan. The whole thing was to clarify and  
14 I'm not sure we are getting there. I've heard  
15 some good testimony, but, again, there are some  
16 concerns and I'm trying to understand exactly  
17 what are we trying to achieve.

18 I think somebody said when you walk  
19 past the front and you could see all these  
20 puppies playing I think you said, Mr. Licko, you  
21 said that, right. I was sitting there thinking  
22 and that was very relaxing just sitting here

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1 thinking about it. I will be frankly honest.  
2 Maybe I need to walk past some and look at some  
3 puppies so I can settle down and the stress  
4 won't be there.

5 But also, Mr. Benson, what you  
6 mentioned, I think is very important and,  
7 again, as my colleagues have already said, we  
8 can't legislate that. But I see two  
9 differences. Now, I'm not saying that your  
10 trainers can't do what his trainers do. I'm  
11 not going to get into that. But he said all the  
12 stuff that some of the things that we were  
13 saying we need all this sound proof and all this  
14 odor resistant. His place doesn't have that  
15 but he's able to operate. Am I quoting you  
16 correctly?

17 MR. BENSON: Yes, we --

18 CHAIRMAN HOOD: You want to turn your  
19 mic on. Because I don't want to misquote you.

20 MR. BENSON: Yes, we have sound proof  
21 but like this.

22 CHAIRMAN HOOD: Oh, you do have.

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1 Okay.

2 MR. BENSON: It's an old Verizon  
3 building. I mean, it's big, it's echoes but--

4 CHAIRMAN HOOD: Okay.

5 MR. SULLIVAN: I did that case. It was  
6 naturally no windows.

7 CHAIRMAN HOOD: Okay.

8 MR. BENSON: It's completely enclosed.

9 MR. SULLIVAN: It's a natural building  
10 for this. It's a good space.

11 CHAIRMAN HOOD: Okay. So, I guess my  
12 point is we need to find a way to balance and  
13 achieve it because yours is one way and somebody  
14 else may be another way. I'm not saying yours.  
15 But somebody else's may be a different way, but  
16 we need to try to find some way to achieve it.  
17 And also make sure that we have the necessary  
18 protections in place for others who may not  
19 necessarily desire all that. So, I think  
20 that's what we were trying to achieve because  
21 of the case that I sat on, I felt we needed to  
22 clarify. But it goes back to Mr. Sullivan's

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1 point for me. I'm not sure we clarified. But  
2 I think the testimony and the comments I've  
3 heard here tonight from my colleagues give the  
4 Office of Planning another shot at it and I  
5 think hopefully we'll come back with something  
6 that will work for -- at least be balanced.

7 Ms. Batties.

8 MS. BATTIES: Chairman Hood, if I may.  
9 The regulations as they are written right now  
10 and this is just Section 735. An animal  
11 boarding use may be permitted. The  
12 regulations don't say the property cannot abut.  
13 I mean, the way they're written now it's my  
14 understanding that the intent if you took that  
15 language on its face at least in the case of the  
16 View 14 project, the use at least when you  
17 measure vertically does not abut a residential  
18 district because the use does not -- I'm sorry.

19 UNIDENTIFIED PERSON: Measured  
20 horizontally.

21 MS. BATTIES: I mean, horizontally,  
22 the use does not extend to the property line.

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1 The use ends, I don't know, 50 feet into the  
2 building. So, I mean, I think the regulations  
3 as written are self explanatory and very clear  
4 on what the intention was.

5 CHAIRMAN HOOD: But my issue with that  
6 was what I stated earlier. Did we write the  
7 regulation because of the cases or were the  
8 cases part have to conform to the regulations?  
9 That's my issue. I think with all the  
10 testimony I've heard, I think that was a good  
11 point that my colleagues had mentioned. With  
12 all the testimony I heard hopefully we can come  
13 back with something that does exactly what we  
14 were trying to achieve from my standpoint.

15 MS. BATTIES: I'm saying that's the  
16 current regulation.

17 CHAIRMAN HOOD: Clarified.

18 MS. BATTIES: The current regulations  
19 say use. They don't say property.

20 CHAIRMAN HOOD: So, again, so it goes  
21 to my statement. We need to clarify and make  
22 sure we all understand. That's all I'm saying.

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1 MS. BATTIES: Okay.

2 MR. SULLIVAN: Can I just add to that?  
3 Most of the dog daycare uses are not of the View  
4 14 variety in a big mixed use building with a  
5 loading dock. Most of them are commercial row  
6 properties where the building goes all the way  
7 to the back and there is no rear yard and they're  
8 small properties. They're mom and pop shops.  
9 So, the 25 foot does kind of knock out a lot of  
10 buildings.

11 CHAIRMAN HOOD: Okay. So, in that  
12 case, let me ask. Do we need two sets of  
13 regulations?

14 MR. SULLIVAN: No, I don't think we do  
15 because it's all special exception anyway.  
16 It's not matter of right. So, if you get a case  
17 where the building is back here but the dogs are  
18 downstairs the BZA would be likely to approve  
19 something like that or if there was two feet of  
20 concrete but the building went all the way back,  
21 the BZA could approve. And then it's up to the  
22 owner not to open the door. Because I think if

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1 the door opens and the dogs are barking there's  
2 no difference between 10 feet or 60 feet at that  
3 point. It's you're not operating it the way  
4 the BZA conditioned it.

5 MS. BATTIES: I think the issue is what  
6 constitutes abutting. Really, that's it. Is  
7 the use separated from a residential district  
8 if there's an alley in between and I think it's  
9 that interpretation or application that --

10 COMMISSIONER MAY: But that's -- I  
11 mean, that's just the finer point of the  
12 regulation.

13 MS. BATTIES: Right.

14 COMMISSIONER MAY: I think the point is  
15 that we don't want to have objectionable noise  
16 transmission from the daycare use to the  
17 residential district. And anybody who has  
18 lived with a barking dog next door and, you  
19 know, that's not well controlled by their  
20 neighbor understands completely how disruptive  
21 that can be particularly, you know, the 6:00 in  
22 the morning dog barking or 5:00 in the morning

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1 dog barking when you get it. I know you get up  
2 pretty early, Mr. Hood. And I think what we're  
3 trying to get to is how do we incorporate those  
4 necessary protections and I think Mr. Sullivan  
5 made the correct point. It doesn't matter if  
6 it's 10 point or it's 60 point -- I mean, 10 feet  
7 or 60 feet if there's a dog barking in the open  
8 air because you're going to hear it 60 feet  
9 away. You're going to hear it 100 feet away  
10 because that's just the nature of sound. But  
11 if they're inside of an old Verizon building,  
12 you know, that's made of concrete you're not  
13 going to hear it because it's naturally  
14 resistant to the transmission of sound. So, I  
15 mean, I think that's what we're trying to get  
16 to is the right combination of circumstances.  
17 And I am becoming convinced, too, that it's not  
18 a matter of how many feet away it is.

19 MR. BORGSTROM: Okay. Vice Chair  
20 Cohen.

21 VICE CHAIR COHEN: Thank you, Mr.  
22 Chairman.

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1           I'd just like to say that although  
2 Washington, D.C. is very unique there are many  
3 cities that are very dog friendly and they have  
4 these types of facilities. And, obviously,  
5 dogs whether they live in Boston, Portland or  
6 Seattle, you know, create the same type of  
7 conditions and I would also look into what other  
8 cities have done because there are, again -- I  
9 had mentioned earlier, it's a \$56 billion  
10 business that is out there in dogs and people  
11 have them and they want them and some people  
12 need them and we need to accommodate that. I  
13 mean, it's important business as well. It's a  
14 small business opportunity. So, I think we  
15 need to be a little bit more flexible in some  
16 cases while protecting again adjacent  
17 neighborhoods that may experience some outrage  
18 by neighbors if they continue to heard dog  
19 barking or feel that there's not competent  
20 management. So, we have to consider those  
21 issues as well.

22           CHAIRMAN HOOD: Okay. I think we are

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1 in a good place. I think we need to move kind  
2 of fast on this because as far as I'm concerned  
3 this has been tarrying too long. I don't know  
4 what we can do to expedite, what we need to do.  
5 I think the Office of Planning has heard our  
6 comments and the testimony we've heard here  
7 this evening and let's try to move on this as  
8 fast as possible because, you know, from what  
9 I'm hearing, we don't want people to have to go  
10 to Ward 9 and 10 and live and do business. We  
11 want to make sure that we are able to retain some  
12 of those businesses here in the city so we need  
13 to move as fast as we can on that.

14 But I will say this to you though,  
15 Commissioner May. You know, I wasn't going to  
16 leave that. When they bark at 6:00 in the  
17 morning, somebody is breaking into your car you  
18 will appreciate it, trust me. Okay.

19 Do we have anything else?

20 VICE CHAIR COHEN: The dog will protect  
21 you from that.

22 COMMISSIONER MAY: What car? What are

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1 you talking about?

2 CHAIRMAN HOOD: Oh, that's right. Or  
3 taking your bike.

4 COMMISSIONER MAY: And then my alarm is  
5 going off in the garage.

6 CHAIRMAN HOOD: Okay. Anything else?

7 Ms. Schellin, do we need any dates or  
8 anything?

9 SECRETARY SCHELLIN: Since the record  
10 will close this evening except for the  
11 supplemental report from the Office of Planning  
12 if we could just set a date for them.

13 If November 10th will work for the  
14 Office of Planning then we can put this on for  
15 the November 24th meeting. Would that work for  
16 OP?

17 Or, actually, I can give you an extra  
18 week. November 17th, is that better? Okay.  
19 November 17th then 3:00 p.m. and then we'll put  
20 it on for the 24th.

21 CHAIRMAN HOOD: Okay. And, again, if  
22 we could just take into context all the

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1 testimony we heard, all the comments and let's  
2 see if we can come back with a good resolve.  
3 Okay.

4 SECRETARY SCHELLIN: And the record is  
5 closed --

6 CHAIRMAN HOOD: The record is closed.

7 SECRETARY SCHELLIN: -- for everyone  
8 else. Thank you.

9 CHAIRMAN HOOD: Okay. Anything else,  
10 Ms. Schellin?

11 SECRETARY SCHELLIN: No.

12 CHAIRMAN HOOD: Okay. So, with that,  
13 this hearing is adjourned.

14 (Whereupon, the above-entitled  
15 matter went off the record at 7:49 p.m.)

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