

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18474-A of Wagtime LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the MU-Use Group E requirements of Subtitle U § 513.1(a), to establish an animal care and boarding use in the MU-4 Zone at premises 1232 9th Street N.W. (Square 368, Lot 911).

HEARING DATE: November 2, 2016

DECISION DATES: November 2 and November 16, 2016

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. The ANC submitted a report, dated October 19, 2016, indicating that at a regularly scheduled, properly noticed public meeting on October 5, 2016, at which a quorum was present, the ANC voted 5-0-2 to support the application. (Exhibit 33.)

The Office of Planning ("OP") submitted a timely report dated October 21, 2016, recommending approval of the application, subject to three conditions carried forward from the Board's prior Order No. 18474, which granted relief to establish this use. (Exhibit 34.) The Board adopted the three conditions recommended by OP. The District Department of Transportation ("DDOT") submitted a timely report dated October 6, 2016, indicating that it had no objection to the application. (Exhibit 31.)

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Board of Zoning Adjustment
District of Columbia
CASE NO.18474A
EXHIBIT NO.37

BZA APPLICATION NO. 18474-A
PAGE NO. 2

Michael Hickey, an owner of the adjacent building, testified in opposition to the application and submitted additional materials to the record. (Exhibit 35.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the MU-Use Group E requirements of Subtitle U § 513.1(a), to establish an animal care and boarding use in the MU-4 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 513.1(a), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7, AND WITH THE FOLLOWING CONDITIONS:**

1. No animal shall be permitted on the outdoor deck between the hours of 6:00 p.m. and 9:00 a.m.
2. No more than five animals shall be permitted on the outdoor deck at any one time, and no dog shall be allowed on the deck for a period greater than 30 minutes per day.
3. An employee of the applicant shall remain on the outdoor deck at all times when an animal is present.

VOTE:¹ **4-0-1** (Frederick L. Hill, Jeffrey L. Hinkle, Anita Butani D'Souza, and Peter G. May (by absentee vote) to APPROVE; and one Board seat vacant.)

¹ The vote reflected in this Order was taken on November 16, 2016 when the Board, on its own motion, reopened the record to revisit its decision from November 2, 2016. On November 2, 2016, the Board voted 4-0-1 to approve the application with four conditions. In revisiting its decision on November 16, 2016, the Board determined that one originally-adopted condition was outside of the Board's jurisdiction, and therefore, eliminated that condition from the Order. No other aspect of the Board's approval was changed.

BZA APPLICATION NO. 18474-A
PAGE NO. 3

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BAYDIN

Director, Office of Zoning

FINAL DATE OF ORDER: November 17, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

BZA APPLICATION NO. 18474-A
PAGE NO. 4

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.