BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of ANC 5B	)	
	)	BZA Appeal No. 16998
Re: 2210 Adams, Place, N.E.	)	

APPELLANT'S OPPOSITION TO DCRA AND BANNNUM"S
MOTIONS FOR RECONSIDERATION AND FOR STAYS OF THE BZA RULING

COMES NOW, Appellant, and respectfully opposes the Motions for Reconsideration and for a Stay filed by the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") and Bannum Inc. Grounds for this opposition follow below.

I. INTRODUCTION

The two (2) motions challenge the Board of Zoning Adjustment's ("BZA") determination that Bannum is not a Community Based Residential Facility ("CBRF") or Adult Rehabilitation Home ("ARH") and further that the facility is not intended to be a "temporary detention or correctional institution as that term is defined in Section 801.7(k). The record is sufficiently clear that Bannum's residents egress and ingress is relatively unrestricted and further, that Bannum's staff is prohibited from using force or means to directly restrict its residents from leaving the facility or to force them to return. The Board's finding on this particular issue is incontrovertible. The Board's ultimate finding is also substantially based on the factual record. However, Appellant urges the Board to revisit its analysis and reasoning to ensure the legal foundation of its decision. In so doing, the Board should determine that the facility at issue is a CBRF and an ARH under District of Columbia law

BZA
Case No. 16998
Exhibit No. 97

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 97

II. ARGUMENT

A. The Bannum Halfway House is not a "temporary correctional institution."

The Board is correct in its interpretation that Bannum's halfway house is not a "temporary correctional center" as that term is intended in 801.7(k). DCRA consistently ignore the legislative history and carries Bannum's argument, peculiarly even more aggressively than Bannum. The clear and simple reality is that the law and its legislative history is not as flexible as DCRA needs for it to be on this question.

The term "temporary correctional institution" must be defined by reference to its legislative history. As Appellant argued, reference is made to Case No. 71.33 relative to a text amendment clarifying the Zoning Board's intention of subparagraph (k). Specifically, the Board determined that any proposed use anticipated by this provision would be "temporary" in nature. In its final report the Zoning Advisory Council noted: the effect of this amendment would be to permit detention or correctional institutions on leased property in the industrial zones of the city. This would permit the Department of Corrections to lease private industrial property for the purpose of establishing correction facilities to accomodate oveflow population from the established institutions or as a temporary facility while they proceed with the process of budget, acquistion, and development of permanent facilities.

Not one iota of direct or indirect evidence was presented here to support so much as an innuendo that this halfway house is in any way related to prison or jail overcrowding. Simply stated, there is neither legal nor factual justification for Bannum and DCRA's veiled attempts to resurrect this antiquated and narrowly developed zoning provision, and both of these parties realize that.

Additional references to certain provisions of Bannum's lease, to the extent that the BZA has a copy of said lease, further reveal Bannum's disingenuousness. Close scrutiny of Bannum's proposal for this five (5) year contract juxtaposed with its three (3) year lease, and the litany of communications made to locally elected officials prior to opening its facility show factual inconsistencies and perhaps intentional misrepresentations that possibly mislead the District. In this respect, although the DCRA still defends Bannum's illegal actions, the BZA is correct. Bannum's actions constitute a "sham." Bannum knew the exact state of District of Columbia's zoning law was as it considered the location and operation of its 150 bed halfway house. The fact of its aggressive litigation history in similar situations wherein it has attempted to force its position upon governments and communities across the country is not irrelevant. BZA should note that Bannum is a sophisticated litigant and its credibility relative to its dealings with the District of Columbia Government remains an open question.

Lastly, the BZA's decision should factor in the public interest which is squarely at issue here. Were the BZA to allow halfway houses and/or CBRFs to operate under 801.7(k), it would open a proverbial Pandora's box, totally antithetical to the public's interest and the spirit of D.C. zoning regulations.

B. Bannum's facility is a CBRF.

The Board's decision and discussion on this issue should be revisited, and its ruling should be more carefully and logically articulated. The BZA decision is presently based on the fact that the facility should not be allowed because it is neither a temporary correctional institution nor a CBRF. While its logic on the former issue is irrefutable, the BZA should carefully reconsider its analysis on the CBRF question. It could thus minimize the possibility of reversible

error on appeal, we think, by making the following determinations, consistent with record herein and applicable law: 1) That Bannum's halfway house is a CBRF, that a CBRF of more than twenty (20) persons is generally prohibited in any district by D.C. zoning regulations and under D.C. zoning laws, Bannum is prohibited from locating this 150 bed halfway house in a CM-2 zone as a matter of law. Moreover, there has been no legal authority presented to this board which justifies Bannum's or DCRA's argument. This is why DCRA and Bannum only minimally discussed this issue in their motions.

The cogent and simple reason that Appellant submits here is consistent with applicable law and protects the public interest. For example, while the BZA decision refers generously to the term CBRF, it fails to define the term. The definition is instructive and legally significant. According to Title 11 DC Municipal Regulations Section 199, a CBRF is a "residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living." The facts presented in this case show that the halfway house is a residential facility, for persons with rehabilitation needs (albeit criminal rehabilitation). Further, all other halfway houses in this jurisdiction have been classified as CBRFs. How then can the Board legally distinguish this facility from other existing halfway houses in the District? Those facilities, all CBRFs, required zoning review and approval. Indeed, the court of appeal will go straight to this very issue and seek a rationale for your view, which can not be found in either law nor precedent. There is simply no basis in law or logic to classify the facility at issue other than as a CBRF.

As appellant have attempted to argue very forcefully, classification of the Bannum halfway house as a CBRF would still not allow it to locate its facility in a CM-2 zone. Applicable zoning regulations state: "If an establishment is a community based residential

facility as defined in this section, it shall not be deemed to constitute any other use permitted under the authority of these regulations." Hence, this classification locks Bannum into the existing zoning regulations' regulatory scheme and further preclude it from being considered another use as a matter of law, including a "temporary correctional institution." Therefore, Bannum would be barred from seeking any other use classification under the zoning laws and the BZA's analysis would be necessarily more narrow and defined: Is Bannum's operation of a 150 bed CBRF permissible as a matter of right in a CM 2 district? The answer is simply, "no."

As this Board properly noted, the zoning regulations provide a list of subcategories for this type of facility: adult rehabilitation home, community residence facility, emergency shelter, health care facility, substance abusers home, youth rehabilitation home and a youth residential care home. Bannum's facility clearly meets the definition of an ARH as that definition is stated at 11 DCMR Section 199.1. It provides residential care for one or more individuals 16 years or older who are charged by the United States attorney with a felony offense. As well, DCRA admits that Bannum's facility is an ARH home under 11 DCMR section 199.1. DCRA's admission as viewed by a reviewing court is significant, especially since it is the jurisdictional agency that makes these determinations. In this regard, the BZA ruling unnecessarily reaches the issue as to whether or not the facility is an ARH. The Board should assume that it is for purpose of argument and clarity and since the present regulations suggest that it is. Numerical capacity is the wrong legal basis for determining whether a facility, under the regulations, is or is not an ARH. Again, the BZA analysis is strained and likely to be problematic when reviewed by a higher court. Even if it Bannum's 150 bed halfway house were deemed a CBRF and Adult Rehabilitation Home, applicable zoning regulations would forbid Bannum from using it as a