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D.C. BOARD OF ZONING
2005 MAY -5 PM 3:53

BZA 16998

May 3, 2005

Jerrily R. Kress, FAIA
Director, Office of Zoning
Government of the District of Columbia
Board of Zoning Adjustment
441 4th Street, NW
Suite 210-S
Washington, DC 20001

Re: Bannum, Inc.'s Request for Stay of DCRA Action (2210 Adams Place, NE)

Dear Mrs. Kress:

I am in receipt of your May 4, 2005 regarding the above referenced matter. In your letter, you requested proof in writing that Bannum, Inc. has exhausted its administrative remedies with the DCRA.

On April 25, 2005, I sent a letter, which is attached, to DCRA on behalf of Bannum seeking a stay of the revocation of Bannum's Use and Occupancy Permit. Thereafter, both Michael Gordon and myself attempted to follow-up with Lisa Bell, counsel for DRCA. On April 29, 2005, Ms. Bell counsel, Lisa Bell, responded that DCRA would look into whether it would stay the matter itself and would contact the undersigned counsel. Ms. Bell never contacted with Mr. Gordon or myself, and no contact has been made to date. To avoid a revocation, on April 30, 2005, Bannum filed an action seeking injunctive relief in D.C. federal district court. During a telephone conference with The Honorable Judge Bates, DCRA counsel agreed to withhold action on the revocation until May 5, 2005. On May 3, 2005, in a scheduling conference with Judge Bates of the federal district court, Bannum's counsel were advised by D.C. counsel that DCRA intended to file a written response to Bannum's April 25, 2005 letter. The Court asked D.C. counsel whether DCRA might make the hearing scheduled for May 4, 2005 unnecessary, i.e. that DCRA would stay the revocation action itself. D.C. counsel indicated that no such action was currently contemplated and that the District would defend against Bannum's action on May 4, 2005.

BZA
Case No. 16998
Exhibit No. 104

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 104

Based on the foregoing, it is Bannum's position that it has requested a stay from DCRA and DCRA has of this date, failed to act on Bannum's requests. Do not hesitate to call with any further questions or concerns.

Very truly yours,

Shawn C. Whittaker

CC: Michael A. Gordon, Esq.
John D. Rich, Esq.

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April 25, 2005

Lisa A. Bell, Esquire
Department of Consumer and Regulatory Affairs
Office of General Counsel
941 North Capitol Street, N.E., Suite 9406
Washington, D.C. 20002

Re: 2210 Adams Place N.E.: Bannum's Request for a Stay of the Revocation

Dear Ms. Lee:

Bannum, Inc. presents the following letter in support of its position that Government should not revoke its Certificate of Occupancy ("CofO") for 2210 Adams Place, N.E. for use as a federal Community Corrections Center ("CCC"), a "temporary correctional institution" for a period not to exceed three years. See 11 DCMR §801.7(k) ("Section 801.7(k)"). Bannum believes, as did the District of Columbia Consumer and Regulatory Agency ("DCRA"), before and during the proceeding before the Board of Zoning Adjustments ("BZA"), that DCRA's zoning for this CCC was completely legal.

DCRA's notice of its intention to revoke the CofO, like the notice issued in April 2004, is based solely on the BZA order finding Bannum's building permit was improperly issued for lack of matter of right zoning. Attachment ("Att.") 1. There is no legal or factual basis for rescinding that notice, which revocation was properly stayed by DCRA's Administrative Law Judge on August 6, 2004. His basis for issuing a stay, that no action should be taken until the District of Columbia Court of Appeals decides the validity of the BZA decision, was a reasonable exercise of discretion that was not challenged. The restructuring did not vacate valid orders issued by ALJs and nothing has occurred which provides a valid basis to circumvent his ruling. All the briefs in that case were filed in early January 2005 and the matter should soon be set for oral argument with a decision to follow thereafter.

More importantly, staying the revocation of the CofO here is in the D.C. public's best interest. Bannum is currently housing over 80 persons who are being prepared to reenter D.C. society within 30 to 60 days. Bannum is assisting these persons in obtaining employment while in a corrective environment that will help them transition back to society. A closure will disrupt their transition without a gain to anyone. Indeed, Bannum and the citizen's who filed the BZA appeal of the building permit under appeal all agreed that a facility like Bannum's is beneficial to the District of Columbia. The citizen's

complaint was one of statutory interpretation regarding the particular location of the facility under the zoning laws, not any special or specific harm to the community.

Here, Bannum's facility is located in an isolated commercial manufacturing area and not a densely populated neighborhood. During the period that the matter has been under appeal, the facility has operated safely and efficiently as planned.

Given the harm to the public and immediate financial harm to Bannum and from a revocation of the CofO, and the Court's likely reversal of the BZA's order, we respectfully request DCRA postpone its ruling until the Court of Appeals decides the appeal. The grounds supporting Bannum's request for postponement or reversal of DCRA's notice of intent to revoke the CofO follows.

1. DCRA was Correct in Issuing the Building Permit and Certificate of Occupancy

The BZA's interpretation of the zoning regulations distorts their plain meaning, rules of statutory construction, and case law, and is in direct conflict with the DCRA's positions taken before and after the BZA decision was issued.

In 2000, and again in 2001, DCRA gave Bannum written confirmations that the federal Community Corrections Center at issue here was properly zoned and issued a building permit in a Commercial-Manufacturing ("C-M") under 11 DCMR §801.7(k) ("Section 801.7(k)") for 3 years as a "temporary detention or correctional institution on leased property for a period not to exceed three (3) years".

DCRA was on more than sufficient notice of the nature of the facility—a temporary correctional institution. By letters dated December 11, 2000 and November 26, 2001, Bannum, through counsel, advised DCRA:

> This office represents Bannum, Inc. ("Bannum"), a company that provides residential rehabilitation services to individuals referred by appropriate committing authorities. Bannum proposes to lease property in the C-M or M District for use a Community Corrections Center ("CCC") under a contract with the U.S. Department of Justice. Individuals are referred to the facility directly by the court system either to serve their entire sentence in confinement at the CCC or to complete their confinement at a CCC after a portion has been served as [sic] a federal institution.
>
> The property at 2210 Adams Place, N.E. is located in the C-M-2 District. Under Section 801.7(k) of the zoning regulations, a "[t]emporary detention or correctional institution on leased property for a period not to exceed three (3) years" is permitted as a matter of right in the C-M District. Accordingly, Bannum's proposed use of the property as a residential Community

Corrections Center can be established as a matter of right at the Adams Street location.

If you concur with our interpretation of this section of the zoning regulations, kindly indicate so by signing on the line provided below." Atts. 3-4.

At the time of the first DCRA decision confirming Bannum's zoning as a matter of right, in 2000, Bannum also notified the office of the D.C. Mayor, the Chief of Police, and the local Councilmen. Affidavit of David Lowry, Att. 5, ¶8, Att. 6. No objections were received and DCRA investigated the site. Bannum submitted a proposal to the BOP, based on the zoning indicated in the DCRA letters. Revised Declaration of David Lowry, Att. 7, ¶6-7.

The BOP awarded Bannum a contract which obligated Bannum to perform CCC services for a period of up to 3 years and subjected Bannum to breach damages if it failed to perform. Att. 7, ¶¶3, 5. To meet those contract requirements, Bannum then engaged an architect to begin design work and entering into the BOP contract at significant cost. Att. 5, ¶10, Att. 7, ¶4.

DCRA knew that it was approving a federal Community Corrections Center or CCC when it issued Bannum the building permit and the CofO. Att. 8. Indeed, DCRA was so certain of its interpretation of the plain meaning of this regulation as applied to a federal CCC that it rejected calls for a Stop Work Order, issued Bannum a revised building permit and the CofO after the BZA appeal was filed in May 2003. Atts. 5, 8-10. In March 2004, DCRA filed a motion for reconsideration and stay of the BZA order. DCRA's zoning determinations were correct.

A. Overview of the BZA Order

The D.C. Zoning regulation at issue, Section 801.7(k), allows matter-of-right zoning in a Commercial-Manufacturing ("C-M") Zone for a "temporary detention or correctional institution on leased property for a period not to exceed three (3) years". The BZA's rejection of DCRA's zoning is based on an unreasonable claim that Bannum's CCC is neither a "correctional institution" nor "temporary". Neither of the BZA's findings is supported by the plain language of the regulation, the legislative history, or common sense.

B. Bannum's Federal CCC is a "Correctional Institution"

DCRA correctly concluded that a federal CCC was a 'correctional institution". Federal law defines a federal CCC as an institution in which D.C. felons who BOP selects are transferred from higher security federal prisons around the country for confinement for the last 10% of their sentences. The intent is to enable the selected D.C. offenders to successfully reintegrate into D.C. society, but in a "correctional or penal" setting. See Federal Bureau of Prisons Program Statement No. 7310.02 (Oct. 19, 1993), Att. 11; 18 U.S.C. §3621(b), §3624; Bannum's BOP Contract Statement of Work, Att.

12; Howard v. Ashcroft, 248 F.Supp.2d 518, 538-41 (M.D. La. 2003); Memorandum Opinion for the Deputy Attorney General, "Bureau of Prisons Practice of Placing in Community Confinement Certain Offenders who have Received Sentences of Imprisonment" (December 13, 2002), ("BOP Policy Memorandum"), Att. 13.

In spite of this overwhelming proof showing that a federal Community Correction Center was plainly a "correctional institution," the BZA distorted the legislative history and found that Section 801.7(k) was merely intended to allow temporary high security or "lock down" prisons in C-M Zones to deal with a "one time," "short term" crisis resulting from overcrowded D.C. prisons in 1971. Since the DCRA's decisions were based on the ordinary meaning of the regulation, no further inquiry was necessary. Washkoviak v. Student Marketing Loan Association, 849 A.2d 37 (D.C. 2004). In any event, the legislative history fully supports DCRA's decisions finding of proper zoning for Bannum's CCC.

Nothing in the legislative history (or the final regulation) purports to restrict the "correctional facilities" in the regulation solely to high security prisons or states that this zoning was limited to addressing only a "one-time," "short term," "overflow" in D.C. prisons that existed in the 1971. The purpose of Section 801.7(k) was:

> "... 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 accommodate overflow population from the established institutions or as a temporary facility while they proceed with the process of budget, acquisition, and development of permanent facilities." (emphasis added). Att. 14.
>
> The Zoning Advisory Council further stated that:
>
> "...the Department of Corrections needs the flexibility provided by this amendment. By providing the installations in industrial areas, the impact on residential areas of the city will be minimized." (emphasis added). Id.

The Zoning Commission thus created matter-of-right zoning for correctional institutions in C-M Zones in leased facilities to provide "flexibility" in operating D.C. prisons by providing temporary 3-year zoning in areas which would minimize the impact on residential areas. In fact, given the time and cost to build a higher security prison, temporary zoning would indicate that the correctional facilities the Zoning Commission had in mind were those at lower levels of confinement. Thus, it would be illogical to interpret this zoning to be restricted to higher security prisons.

The BZA's illogic did not stop there. The BZA also "found" that offenders in a federal CCC are there because they "choose" to be there. This ignores the fact that whatever the offender's "choice", it is the BOP which decides who will be assigned to a CCC. Att. 11. The BZA's related statement that the "... purpose for being there [in the CCC] is not to be confined but to be freed ...." incorrectly focuses on only one goal of

this type of correctional facility—reintegration into D.C. society— and ignores the key attribute of "correction" in which these and other goals are to be met—confinement. Id. Actual "freedom" begins when confinement in the CCC ends.

Finally, the BZA's strange idea that Section 801.7(k) was a regulation to address a "one-time" problem in 1971 and was only there as a result of a Zoning Commission oversight has no basis in the legislative history at all. There is nothing "short term" about a regulation that has been in effect for 33 years.

Indeed, the need for "flexibility" envisioned by the Zoning Commission exists today. In 1997, the BOP assumed responsibility for D.C. prisons. See D.C. Stat. §24-1201 (1997). Since 2002, when Lorton Prison was closed, D.C. felons have been placed in federal correctional institutions around the United States. Att. 15, Tr. 294-95, 313-16. Thus, these offenders essentially are "overflow" inmates from non-existent D.C. prisons.

BOP requires the flexibility that the Zoning Commission had the foresight to allow in order to productively reintegrate D.C. prisoners from "overflow" federal facilities around the country back into the D.C. community until permanent D.C. correctional facilities, including CCCs, can be acquired, something which BOP has been unable to do. Att. 5, ¶9; Att. 7, ¶8.

Contrary to the BZA's claims, the Zoning Commission was fully familiar in 1971 with facilities similar to a CCC called "community correctional centers" when Section 801.7(k) was enacted. These facilities were also considered "penal institutions" under prior D.C. law. See Brawner Building, Inc. v. Sheyn, 442 A.2d 847, 850 (1971); Armstead v. United States, 310 A.2d 255 (D.C. 1973).

In sum, DCRA's interpretation of Section 801.7(k) as providing proper zoning for Bannum's CCC was the only reasonable interpretation of that regulation. The BZA's finding that Bannum's federal CCC was not a "correctional institution" is wrong.

B. Bannum's Zoning for this CCC is "Temporary"

The BZA also effectively wrote a new requirement into Section 801.7(k) -- that the applicant must "intend" for the facility to be temporary. The regulations flatly contradict BZA's attempt to legislate a new zoning requirement.

Section 801.7(k) was amended to include the terms "temporary ... for a period not to exceed three years" to clarify that permanent zoning for a correctional facility in a C-M Zone was not a matter of right. Att. 14. If the need for the correctional facility continued, a variance would be necessary. That is the obvious difference between "permanent" and "temporary" zoning. It has nothing whatsoever to do with the applicant's "intent".

Indeed, the BZA's new requirement would repeal an applicant's regulatory right to seek a variance under 31 DCMR §3103 in violation of canons of regulatory

construction against implied repeals of regulations. See generally Morton v. Mancari, 417 U.S. 535, 547-50 (1974).

The BZA's supposed "evidence" of Bannum's alleged "intent" proves only that Bannum's zoning was in full compliance with the regulations. Bannum's BOP contract is optional after the second year. Att. 16, Tr. 309. If a variance for the CCC was not obtained, the BOP could not exercise Bannum's options because Bannum's proposal, incorporated into the contract, was premised on 3-year temporary zoning. See United States Steel Corporation, ASBCA No. 29111, 85-1 BCA ¶17,761. Att. 7, ¶3.

Bannum's lease, which the BZA distorted as a "sham", also is totally consistent with zoning for the temporary correctional facility in leased facilities envisioned in Section 801.7(k). Because the zoning was temporary, Bannum reserved the right to cancel the lease without penalty if Bannum was unable to obtain a variance from the D.C. government. Att. 17. Bannum did nothing remotely improper; it was simply exercising sound business judgment.

Moreover, nothing in the BOP contract or Bannum's lease could possibly control whether this CCC would become a permanent correctional facility at 2210 Adams Place N.E. That was a determination solely for the D.C. Government, as recognized in the lease. Id.

D. Whether a Federal CCC is a Community Based Residential Facility Does Not Change the Result—Bannum's Zoning at 22210 Adams Place N.E. was Proper

Before the BZA, ANC 5B contended that a CCC was a "halfway house" or a "Community Based Residence Facility" or CBRF (specifically an "adult rehabilitation home"). DCRA also believed that Bannum's CCC was a type of CBRF, a conclusion with which Bannum disagreed.

However, DCRA parted company with ANC 5-B's argument that under the definition of a CBRF in Section 199.1, a CCC is not permitted as a matter of right in a C-M Zone, claiming that a CBRFs cannot constitute "any other use permitted under the authority of these regulations". As discussed below, whether Bannum's CCC is a CBRF does not matter. DCRA's conclusion that Bannum's zoning was proper was correct.

1. Bannum's CCC is not a CBRF under Section 1.99

A CBRF is defined in Section 199.1 as:

"a residential facility for persons who have a common need for treatment, rehabilitation, treatment, assistance or supervision of their daily living. This definition includes but is not limited to facilities ... formerly known as convalescent or nursing home, halfway house or social service center, philanthropic or eleemosynary institution or personal care home. 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... All community-based-residential facilities shall be included in one (1) or more of the following subcategories: ...." (emphasis added).

Thus, by the explicit terms of the regulation, if a facility does not fall within one of the defined subcategories-- the facility is not a CBRF. The only CBRF category that could apply to a CCC is an "adult rehabilitation home":

> (1) **Adult rehabilitation home**—a facility providing residential care for one (1) or more persons sixteen (16) years of age or older who are charged by the United States Attorney with a felony offense, or any individual twenty-one (21) years or older, under pre-trial detention or sentenced court orders ..." (emphasis added).

Under current BOP policy, no federal CCC residents are merely being "charged" or in "pre-trial detention" and only a few probation violators are there under "sentenced court orders" See 18 U.S.C. §§3621(b), 3624; BOP Policy Memorandum, Att. 13. Offenders in a CCC are all assigned by BOP. Id. In accordance with this policy, almost all of Bannum's CCC residents all are convicted felons assigned by the BOP. Att. 7, ¶7. Therefore, under Section 199.1, a federal CCC does not meet the definition of an "adult rehabilitation home".

The fact that on rare occasions, an offender or probation violator could be sentenced to a federal CCC directly by a court, these possibilities cannot control the true nature of the facility for purposes of assigning a regulatory definition, as the BZA purported to do. Id.

> 2. Even if a CCC was a CBRF, Matter of Right Zoning Exists for a Temporary CCC on Leased Premises

Even assuming for the sake of argument that a CCC was a type of "adult rehabilitation home", as ANC-5B and the DCRA contended before the BZA, a CCC still would not be "banned" in a C-M Zone as a matter of right. As DCRA correctly explained, the disallowance of use of a CBRF for any "other use permitted by authority of these regulations" under Section 199.1 prohibits only uses other than as a CBRF. That means, for example, that a CBRF could not also be used as a hotel under 11 DCMR §801.6. Indeed, if a CCC were a CBRF, ANC 5-B's interpretation of "any other use" of a CBRF would repeal Section 801.7(k), a violation of canons of regulatory construction. See Mancari, supra.

Another canon of construction supports DCRA's interpretation of this clause—regulations are to be read in harmony. Speyer v. Barry, 588 F.2d 1147 (D.C. 1991). Thus, even assuming for the sake of argument that a CCC was an "adult rehabilitation home" and a CBRF, as the DCRA recognized, a temporary CCC at a leased facility is a distinct type of CBRF under Section 199.1, a "correctional institution" that is permitted as a matter of right in C-M Zones for CBRF uses under Section 801.7(k).

Even if the Section 801.7(k) and Section 199.1 were in irreconcilable conflict, the specific temporary leased use defined in Section 801.7(k) would govern over the general definitional regulation of an "adult rehabilitation home", which only addresses "permanent" facilities which can be owned. See Mancari, supra, 417 U.S. at pp. 550-51 ("a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment"); see also Goodwin v. District of Columbia Board of Education, 343 A.2d 63 (D.C. 1975) (specific pre-existing regulation permitting closed door hearing was retained in spite of passage of general regulation requiring public hearings.)

3. The Zoning Regulations Allow Large Correctional Facilities

The BZA rejected ANC 5B's argument that Bannum's CCC was a CBRF because the 150-person capacity at the Bannum CCC supposedly was too large to be an "adult rehabilitation home," which "home" was required to be "family-sized".

The BZA argued that its conclusion that a CCC was not permitted in a C-M Zone was supported by the general "ban" on CBRFs in C-M zones. This distorts the legislative history of the 1981 CBRF regulation, which states:

> "3. Smaller facilities, approximating the size of and characteristics of families, should be encouraged to lessen impact, increase compatibility and provide true alternatives to institutional settings." Att. 14, p 4. (emphasis added).
>
> However, the BZA ignored the Zoning Commission's following paragraph:
>
> "4. The size and density of such facilities should be generally consistent with the size and density permitted in various zone districts contained in the Regulations." Id.

Thus, as DCRA pointed out, while the Zoning Commission "encouraged" smaller facilities, it expressly recognized that an area's size and density were the key factors that would determine the size of a CBRF in a particular zone. Since the population density of C and C-M Zones is smaller than residential zones, one would expect that larger CBRFs could be located there.

The 1981 regulatory changes to implement the CBRF definitions confirm this intent. Matter-of-right zoning for all types of CBRFs was permitted in Commercial ("C") C-3, C-4, and C-5 Zones, see 11 DCMR §731.5, §751.2, and §761 without any limitation on the number of residents. These C Zones, like C-M Zones, have lower population densities. Thus, locating larger CBRFs in C zones under the above regulations to lessen impact on residential areas is fully consistent with the Zoning Commission's retention under Section 801.7(k) of matter-of-right zoning for temporary correctional institutions in leased facilities in C-M Zones without any limit on size. Att. 14. Retention of this regulation by the Zoning Commission was not accident.

Thus, regardless of whether Bannum's CCC is a "temporary correctional institution" or a type of CBRF "adult rehabilitation home," DCRA properly issued Bannum's building permit and CofO under Section 801.7(k).

Indeed, BZA's attempt to avoid DCRA's conclusion that Bannum's federal CCC was properly zoned based on the number of residents would create havoc. As written, the BZA's order would prohibit larger-sized CBRFs (and federal CCCs) anywhere in D.C., effectively repealing 11 DCMR §731.5, §751.2, and §761. All existing CCCs would be non-conforming uses since there is no provision in the regulations introducing Section 199.1 to "grandfather" existing CBRFs if they did not meet the new CBRF definitions. Att. 14, p. 8.

Moreover, if Bannum is correct that a CCC does not fall within the CBRF definitions in Section 199.1, the BZA's order would prohibit a federal CCC in any D.C. zone. The BZA's effective rewriting of the D.C. Zoning laws would therefore not only interfere with the BOP's "flexibility" in administering the D.C. prison system and placement of D.C. felons in CCCs in D.C. but it would illegally preempt the BOP from fulfilling its statutory mission under 18 U.S.C. §§3621(b) and 3624.

This means that based on the BZA decision, no zoning would exist as a matter of right for any federal CCC in D.C., whether large or small. The BZA's decision will therefore subject D.C. to lawsuits in federal court because the decision will undermine the BOP's statutory mission and indeed, will illegally interfere and preempt those federal statutes, a Constitutional violation. See Crystal Bay Marina v. Sweeden, 939 F.Supp. 839 (N.D. Okla. 1996) (local zoning regulations held to illegally preempt federal statutes).

II. DCRA is Estopped from Revoking the Certificate of Occupancy

The BZA's decision rejected the application of estoppel and laches against ANC 5-B that filed the appeal against DCRA's issuance of the building permit that allowed Bannum to begin renovation of the facility for use as a federal CCC. Att. 1, pp. 11-12. However, because the ANC did not appeal DCRA's issuance of the CofO, the BZA did not address whether DCRA is estopped from revoking the CofO. The equities compel the applicable of this doctrine here.

To meet the elements of estoppel, Bannum was required to show that in good faith reliance on affirmative acts of a municipal corporation, here DCRA, Bannum made expensive and permanent improvements to a property; and that the equities strongly favor retention of that use. See Saah v. District of Columbia Bd. of Zoning Adjustment, 433 A.2d 1114, 1116 (D.C.1981). Bannum met these legal tests.

Bannum, in good faith, twice sought written DCRA confirmation that Bannum's proposed use of a structure as a federal "community corrections center" was allowed under D.C. zoning law as matter-of-right in a C-M Zone. Atts. 3-4. Each time, DCRA confirmed that its zoning at 2210 Adams Place N.E. was proper.

Two years after this confirmation was received, and after Bannum had expended hundreds of thousands of dollars in reliance on these DCRA actions, there were objections from D.C. Councilmen and from the ANC. Att. 5, ¶10. In spite of these objections and requests, DCRA refused to issue a Stop Work Order on Bannum's construction, and took the extraordinary step of issuing Bannum a revised building permit and a CofO after the BZA appeal was filed. Atts. 5, 8-10. DCRA defended the zoning for the building permit to the BZA and sought a motion for reconsideration and stay of the BZA order.

A contractor dealing with the District should be able to rely on actions of authorized Government officials that reasonably induce the contractor to incur financial obligations and subject it to harsh penalties. This exactly fits Bannum's situation now.

If Bannum's CofO is revoked, Bannum will face the loss of an investment in this CCC of approximately $758,000. Further, Bannum would lose its key personnel who manage the facility and likely lose its BOP contract and revenues of $12,000 per day. If terminated for non-performance by the BOP, Bannum would be subject to breach damages, negative past performance ratings which could result in the loss of future contracts from BOP, its only customer, and could face debarment and suspension. Att. 7, ¶5.

These equities strongly favor Bannum and legally estop DCRA from revoking the CofO even if the BZA decision, which is patently erroneous as a matter of law, were correct. Saah, supra. In addition, there would be other adverse consequences

III. Other Adverse Impacts of Revocation of Bannum's CofO

Because D.C. had not yet built correctional facilities to replace Lorton, D.C. offenders have been sent to whatever federal correctional facility is available around the United States, often imposing a hardship on their families. If the CofO is revoked, 90 D.C. offenders that currently reside in Bannum's federal CCC will have to be reassigned by the BOP to whatever CCC facilities are available in D.C.

Even if the current Bannum residents can be transferred to D.C. CCCs now, potentially thousands of new D.C. prisoners who would become eligible for transfer to a CCC from a higher security prison around the U.S. will not have available CCC facilities in D.C.

The District of Columbia and the returning D.C. offenders will suffer the consequence. The selected felons who the BOP selects as qualified for reintegration into the society (but in a correctional environment in which their movements are closely monitored) are required to find employment within 15 days of being assigned to a CCC. Att. 12. Thus, when their sentence is over, they will already be gainfully employed. This has been shown to reduce recidivism.

Therefore, revocation of the CofO would adversely the public safety by releasing prisoners onto the streets without the benefit of CCC services for successful reintegration into D.C. society. The need for Bannum's CCC continues to exist. Att. 7, ¶8.

In contrast, neither the ANC 5-B nor the public will be harmed by allowing Bannum to continue to operate its facility. It is in close to an ideal location to minimize the impact on residential neighborhoods. The 2210 Adams Place, NE facility is surrounded by railroad tracks and arteries that isolate it. Even to the west of the railroad tracks, there is more industrial zoning before you reach a residential area. Att. 18. Bannum has been operating this CCC for more than a year without any incident adversely affecting anyone in ANC 5-B.

The BZA's statement that Bannum's facility could "destabilize adjacent residential neighborhoods" has absolutely no basis in the record before the BZA. As Superior Court Judge Kravitz held in twice denying ANC 5B's and other plaintiffs' motions to preliminarily enjoin the operation of Bannum's CCC, before and after the BZA decision:

> "None of the plaintiffs is an immediate neighbor of the Adams Place property, and the plaintiffs have not established, either individually or as a group, that the operation of the facility would have any negative impact specific to them." Att. 19.

Conclusion

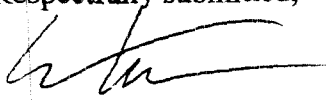
DCRA's temporary zoning of Bannum's federal CCC at 2210 Adams Place N.E. was correct based on the plain language of the zoning regulations at issue. The BZA's strained and illogical interpretations of the legislative history to reach the opposite result must and will be rejected as a matter of law and equity.

Bannum has acted as a responsible business throughout this process. Before taking any steps with the BOP, Bannum hired local counsel to present its position to authorized DCRA administrators who concurred in writing that temporary zoning was available at 2210 Adams Place N.E. DCRA defended its administrators' decisions at the BZA and sought reconsideration and a stay. DCRA officials knew what a correctional institution was when they issued this CofO and knew of the other federal CCCs in D.C.

Bannum has been open and candid with DCRA and deserves to be allowed to continue to operate its CCC and provide services to returning offenders. Retention of Bannum's facility will also serve the best interests of the D.C. Community as a whole.

Bannum respectfully requests that DCRA affirm the actions of its administrators and withdraw its intended revocation and/or hold that the equitable doctrine of estoppel prevents DCRA from revoking the CofO for the remaining 2 years of its zoning there. Alternatively, given the adverse impact on Bannum and on the BOP's mission, which Bannum respectfully requests that DCRA postpone its revocation proceeding, or suspend issuance of any order revoking the CofO, until the Court of Appeals has decided whether the BZA's order is final and effective, whether to grant Bannum's Motion for Stay, and/or whether the BZA order on which the intended revocation is based decision is reversed.

Respectfully submitted,



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Shawn Whittaker
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