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May 5, 2005

Jerrily R. Kress, FAIA
Director, Office of Zoning
Government of the District of Columbia
Board of Zoning Adjustment
441 4th Street, N.W.
Washington, DC 20001

Re: Bannum, Inc.'s Request for Stay of DCRA Action

Dear Mrs. Kress:

I am writing to request that the Board of Zoning Adjudication ("BZA") rule as expeditiously as possible in denying Bannum's Inc.'s ("Bannum") request for a stay of the DCRA action to revoke Bannum's Certificate of Occupancy ("COO") permit. On May 4, 2005 the D.C. Court of Appeals once again denied Bannum's motion to stay. The court found that Bannum "failed to show either a likelihood of success on the merits of its claim or the existence of any irreparable harm." (See attached Order.)

Bannum acted illegally and possibly fraudulently in its representations to the D.C. government which led to its approval of permits. As such, there is no question that the COO is also illegal since it is necessarily based upon the issuance of legal permits in the first instance. The local government should not sanction such illegal conduct.

Pursuant to D.C. Code Section 6-641.09, it is unlawful to erect, construct, reconstruct, convert or alter any building or structure unless the plans related thereto conform with existing zoning regulations. The BZA has determined that the permits and Bannum's intended use violate D.C. zoning laws. According to applicable law, the Mayor of the District of Columbia "*shall* enforce" zoning laws and regulations. D.C. Code 6-641.10.

In addition, the District of Columbia Code, §6-641.02 provides that existing zoning regulations "shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein." Allowing the placement of

BZA
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Exhibit No. 106

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District of Columbia
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EXHIBIT NO. 106

an improperly zoned halfway house within the affected community's district undermines the primary principle of the regulations by fundamentally changing the character of the community, a change that is irreparable in nature. Invariably, Bannum should be required, as all other similar institutions, to properly secure zoning and to respect the rights of the citizens of the District of Columbia and its laws.

Bannum has now operated illegally for over two (2) years and in so doing has made over $5 million dollars while violating D.C. zoning laws. The public interest is hardly served by the allowance of fraudulent actions upon the government and the abuse of the civil litigation process to further advance illegal objectives.

The BZA's opinion and the District of Columbia courts' subsequent denials of Bannum's injunctions are on point in this case. They appropriately reflect this jurisdiction's views against Bannum's deliberate and strategic manipulation of D.C. zoning regulations, knowing all along that its actual intention in employing section 801(k) of the zoning laws was to remain for a period longer than the regulation allowed. To this end, BZA by a 4-1 decision, concluded that Bannum's action constituted a "sham" and that Bannum intentionally deceived the D.C. government. In so doing, it was able to secure illegal authorization to build a 150 bed halfway house in a prohibited zone and then to place the affected community in an untenable defensive legal post.

Further, based upon arguments similar to those raised by Bannum, the BZA has refused a prior request for a stay.

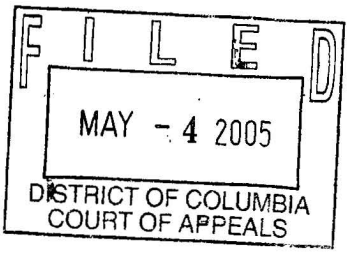
As a point of law, the DCRA should have revoked Bannum's permit immediately after the BZA issued its opinion, particularly given the extensive due process which it accorded to Bannum. My prayer upon BZA is that Bannum simply be required to follow D.C. zoning laws. On behalf of ANC Commissioner Jones, we therefore urge the Board of Zoning Adjustment to deny its request.

Respectfully submitted,

Donald M. Temple, Esq.

cc: Shawn C. Whittaker
Andrew J. Saindon

District of Columbia
Court of Appeals



No. 04-AA-345

BANNUM, INC.,

Petitioner,

v.

DISTRICT OF COLUMBIA, BD. OF ZONING ADJUSTMENT,

Respondent,

and

REGINA JAMES,

Intervenor.

BEFORE: Terry and Glickman, Associate Judges, and Steadman, Senior Judge.

ORDER

On consideration of the petitioner's motion to stay, and respondent's opposition, it is

ORDERED that petitioner's motion to stay is denied. This court lacks jurisdiction to stay revocation of the order in question since no petition for review of that decision has been filed and the matter is currently and properly before the respondent. *See* D.C. Code § 6-641.07 (f) (2001); 11 D.C.M.R. § 3200.2 (2003). In addition, petitioner advances the same arguments for stay which this court has previously rejected; it has not shown either a likelihood of success on the merits of its claims or the existence of any irreparable harm. *See Barry v. Washington Post, Co.*, 529 A.2d 319, 321 (D.C. 1987).

PER CURIAM

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