Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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April 17, 2003

MARY CAROLYN BROWN
202-862-5990
mcbrown@hklaw.com

VIA HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

D.C. OFFICE OF ZONING
2003 APR 17 PM 12:34

Re: BZA Appeal No. 16998
2210 Adams Place, N.E.

Dear Members of the Board:

On behalf of Bannum, Inc., lessee of the above-referenced property and a party to this proceeding, we are filing herewith a Motion to Dismiss the Appeal. In the alternative, we are also filing a Motion to Continue the Hearing and a Memorandum in Opposition to the Appeal.

Thank you for your consideration of these materials.

Very truly yours,

Carolyn Brown

Enclosures
cc: Donald M. Temple, Esq.
Bennett Rushkoff, Esq.
Regina James, Chair, ANC 5B

BZA
Case No. 16998
Exhibit No. 20

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 20A1

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of ANC 5B	)	
	)	BZA Appeal No. 16998
From the Decision of the Zoning Administrator Approving the Issuance of a Building Permit to Renovate the Existing Building at 2210 Adams Pl., N.E., for Use as a Temporary Correctional Institution in the CM-2 District	)	Hearing Date: April 22, 2003

RECEIVED
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MOTION TO CONTINUE OF BANNUM, INC.

Bannum, Inc. ("Bannum"), lessee of the property at 2210 Adams Place, N.E., which is the subject of the above-referenced appeal, hereby requests the Board of Zoning Adjustment ("Board" or "BZA") to continue the hearing in this matter scheduled for April 22, 2003. In support of this motion, Bannum hereby states as follows:

1. Pursuant to section 3112.10 of the Zoning Regulations, an appellant must file no later than fourteen days before the hearing "any additional statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other materials" that the appellant intends to offer into evidence at the hearing. Appellant ANC 5B failed to comply with this requirement, thereby prejudicing Bannum's ability to properly prepare for and defend against this appeal.

2. By letter dated April 11, 2003, Bannum specifically requested the ANC and its counsel to serve Holland & Knight LLP, on behalf of Bannum, any documents to be used in this proceeding. Despite this request, the ANC apparently submitted over 20 exhibits, including videotapes, without providing copies to Bannum's counsel. ANC's counsel failed to include these

tapes in its submission to the Board, as well. These are the same videotapes that ANC's counsel refused to produce to Bannum's counsel in a D.C. Superior Court proceeding on this same matter even after three separate requests. As a party under section 3199.1, Bannum is entitled to and must be served with all documents submitted in this BZA appeal case. The continued refusal of the ANC to provide these documents interferes with Bannum's right to a fair and impartial hearing and severely prejudices Bannum's ability to defend its interests in this matter.

WHEREFORE, Bannum respectfully requests the Board to direct the ANC to serve Bannum with all documents to be used in this appeal and to postpone this hearing to allow Bannum sufficient time to review these documents and prepare its defense in this matter.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____

Whayne S. Quin
Mary Carolyn Brown
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion to Continue were served this 17th day of April, 2003, by hand-delivery or first-class mail, postage pre-paid, to the following:

Mr. Donald Temple, Esq.
Temple Law Offices
1200 G Street, N.W.
Suite 370
Washington, D.C. 20001
Counsel for Appellant ANC 5B
(hand-delivery)

Mr. Bennett Rushkoff, Esq.
Civil Division
Office of Corporation Counsel
441 4th Street, N.W. Suite 540N
Washington, D.C. 20001
(hand-delivery)

Regina James, Chair
Advisory Neighborhood Commission 5B
1363 Adams Street, N.E.
Washington, D.C. 20018
(first-class mail)

By: Carolyn Brown
Mary Carolyn Brown

WAS1 #1175958 v1

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of ANC 5B	)	
	)	BZA Appeal No. 16998
From the Decision of the Zoning Administrator Approving the Issuance of a Building Permit to Renovate the Existing Building at 2210 Adams Pl., N.E., for Use as a Temporary Correctional Institution in the CM-2 District	)	

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MOTION TO DISMISS OF BANNUM, INC.

I.
INTRODUCTION

Bannum, Inc. ("Bannum"), the lessee of the property at 2210 Adams Place, N.E., and the proposed operator of the temporary correctional institution on leased property for a period not to exceed three (3) years, respectfully requests the Board of Zoning Adjustment ("Board" or "BZA") to dismiss this appeal for lack of jurisdiction. Bannum further requests that the Board consider and decide this jurisdictional motion at its April 22, 2003, public hearing.[1] As held by the D.C. Court of Appeals in *Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356 (D.C. 1975), disposition of jurisdictional issues promotes judicial expediency and may avoid the necessity to even reach the merits on the appeal.

This motion to dismiss for lack of jurisdiction is supported on four grounds:

1. Appellant ANC 5B has failed to meet the basic statutory and regulatory requirements for proceeding with this appeal;

---

1 Bannum has also filed a Motion for Postponement of the hearing because appellant has not filed required information as part of appellant's case -- making it impossible to know the full scope of appellant's arguments.

2. ANC 5B does not meet the requirements for aggrievement under the Zoning Enabling Act and Bard of Zoning Adjustment Regulations;

3. The appeal was not timely filed;

4. The appeal is barred under the equitable doctrines of laches and estoppel.

In accordance with the holding of the D.C. Court of Appeals in the Smith case, the Board must first address each of these jurisdictional objections before it may reach the merits of the appeal case and whether the proposed correctional center meets the matter of right provision of section 801.7(k) of the Zoning Regulations. *See Smith v. Board of Zoning Adjustment*, 342 A.2d 356, 359 n.8 (DCCA 1975).

II.
STATEMENT OF FACTS

A. Bannum and the Federal Bureau of Prison Contract

Founded in 1984, Bannum is a corporation in the business of providing correctional institution services for the Bureau of Prisons ("BOP") of the U.S. Department of Justice. It currently operates sixteen facilities in Florida, North Carolina, South Carolina, West Virginia, Georgia, Mississippi, Nevada and Texas.

The BOP awards contracts through a competitive bidding process which begins with a request for proposals ("RFP"). In March and April of 2000, the BOP issued two requests for proposals ("RFP") to operate community correctional centers in the District of Columbia. In formulating its proposal for the Washington, D.C., contract, Bannum had to locate a property that would be sufficient to house the program pursuant to BOP standards. Proof of the ability to use at least one proposed property for the program must be submitted as part of Bannum's final proposal. In responding to the RFP, Bannum immediately began consulting with real estate broker and zoning counsel to determine the most suitable location for such a facility, one which was readily available and appropriately zoned for such use. One of the properties identified for

potential lease was 2210 Adams Place, N.E., which is located in the CM-2 District, a heavy commercial/light industrial area.

Upon review of the District's Zoning Regulations, it was determined that a temporary correctional facility was permitted as a matter of right in the CM and M Districts on leased property for a period not to exceed three years. Section 801.7 provides that buildings may be occupied for the following purpose *without* the need for special approval from the Board:

> (k) temporary detention or correctional institution on leased property for a period not to exceed three (3) years.

11 DCMR 801.7(k) (2003).

B. Zoning Confirmation Letters

In compliance with the requirements of BOP contracts and in preparing its proposal with all due diligence, Bannum sought confirmation from the District's Zoning Administrator that a community correctional center, as contemplated under the BOP contract, was permitted as a matter of right in the CM-2 District, and at 2210 Adams Place, N.E., specifically. Through its zoning counsel, Bannum met with then- Zoning Administrator, Michael Johnson, and shared information on the proposed CCC. Upon reviewing the materials, the Zoning Administrator confirmed that the use was permitted as a matter of right in the CM-2 District at 2210 Adams Place, N.E., and countersigned a letter dated December 11, 2000, to verify this ruling. Bannum then submitted this zoning verification to the BOP as part of its proposal. A copy of the letter is attached as Exhibit A.

On or about December 12, 2000, the BOP conducted a "pre-site inspection" of Bannum's proposed Adams Place facility. The purpose of the inspection was to evaluate the property in accordance with BOP standards for the CCC contract. In furtherance of the lease agreement with 2210 Adams Place, Bannum accompanied the BOP on this inspection, as well as representatives of the property owner.

Ultimately, based in large part upon the zoning verification from the District, the BOP awarded the contract to Bannum. As part of its final "due diligence" process, Bannum secured a second letter from the District to re-confirm that the proposed CCC was a permitted use under the existing zoning category. In Fall 2001, Bannum's zoning counsel met with then-Acting Zoning Administrator, Olutoye Bello, to discuss the CCC operations and verify that the proposed use constituted a temporary correctional institution as provided in section 801.7(k) of the regulations. The nature of the facility and the types of offenders to be referred to the CCC by BOP, as well as letters describing the proposed use, were discussed at length with Mr. Bello. Copies of the letters are attached as Exhibit B. Of particular concern to Mr. Bello was the fact that the CCC would only be permitted on a temporary basis for a period not to exceed three years. Based upon these discussions and this specific time limitation on the facility, Mr. Bello countersigned a letter dated November 21, 2001, confirming that the proposed CCC at 2210 Adams Place, N.E., was a matter or right use because it constituted a temporary correctional institution on leased property not to exceed three years. A copy of the letter is attached as Exhibit C.

C. Building Permits to Renovate Property

On December 12, 2002, the D.C. Building and Land Regulation Administration ("BLRA") issued Bannum Building Permit No. B425438 to change tenant warehouse space to a 150-bed community correctional facility. Because the permit failed to indicate that the use was temporary in nature, BLRA issued a revised permit, No. B448325, on January 17, 2003, to read "Temporary 150 Bed Community Corrections Center on Leased Property for a Period Not to Exceed (3) Years." Based on these two permits, Bannum proceeded with renovations on the facility costing approximately $500,000.00. Final building inspections are expected to be

completed within the next several days, which will allow the structure to be occupied for its proposed use.

As a result of inquiries from residents of Ward 5, the D.C. Department of Consumer and Regulatory Affairs and BLRA wrote two letters confirming the valid issuance of the building permits for the proposed use. Taken together with other government documents, Bannum has received six confirmations that its proposed use is lawful:

- Letter countersigned by Michael D. Johnson, Zoning Administrator, dated December 11, 2000;
- Letter countersigned by Olutoye Bello, Acting Zoning Administrator, dated November 21, 2001;
- Building Permit No. B425438 issued December 12, 2002, to Bannum to change tenant warehouse space to 150 bed community correction center at premises 2210 Adams Place, N.E.;
- Revised Building Permit No. B4483235 issued January 17, 2003, to revise Permit No. B425438 to read "temporary 150 Bed community corrections center on leased property for a period not to exceed (3) years";
- Letter from David A. Clark, Director, D.C. Department of Consumer and Regulatory Affairs, to Councilmember Vincent B. Orange, dated January 31, 2003; and
- Letter from Denzil Noble, Acting Administrator, Building and Land Regulation Administration, D.C. Department of Consumer and Regulatory Affairs, to Donald Temple, Esq., dated February 21, 2003.

D. Community Notification

Throughout this entire process, and in accordance with BOP requirements, Bannum has been in constant contact with community leaders regarding its intention to establish a CCC at 2210 Adams Place, N.E. Beginning with letters sent by certified mail on November 30, 2000, Bannum notified Mayor Anthony Williams, the Mayor's Chief of Staff, and the Chief of Police of the proposed correctional facility at Adams Place. Copies of these letters are attached as Exhibit B. In late 2001 and early 2002, Bannum's community liaison representative contacted

members of Ward 5 advisory neighborhood commissions to discuss the proposed CCC. On April 18, 2002, a community meeting was held to describe the nature of the correctional facility, its operations, its offenders, and the zoning confirmations allowing the facility as a matter of right. Although the site was located in ANC 5A in 2002, commissioners from ANC 5B attended the meeting, including its current chair, Ms. Regina James. Upon the redistricting of the Wards, 2210 Adams Place, N.E., is now located within ANC 5B.

Although Bannum fully explained the nature of the facility and that it was permitted as a matter of right in the CM District on a temporary basis pursuant to confirmations received from the Zoning Administrators, several residents of Ward 5 filed for a temporary restraining order, a preliminary injunction and a complaint in the Superior Court of the District of Columbia to revoke the building permit. By order issued March 11, 2003, Senior Judge Murphy denied the request for a temporary restraining order. After two days of hearings, Associate Judge Kravitz also denied the motion for a preliminary injunction by order dated April 8, 2003. A copy of the order is attached as Exhibit I.

III.
APPELLANT ANC 5B HAS FAILED TO MEET THE BASIC STATUTORY AND REGULATORY REQUIREMENTS FOR PROCEEDING WITH THIS APPEAL.

This appeal does not appear to have been authorized by ANC 5B. Pursuant to Section 1-309.10(d)(1) D.C. Official Code, all official actions of an ANC must be in writing after proper notice. There is no resolution in the record that indicates that this appeal has been duly authorized or that the required notice for such action was furnished. *See* 11 DCMR 3112.3 and 3112.4.

Appellant, ANC 5B has failed to file information required by 11 DCMR 3112.10. While a listing of various exhibits was filed, a number of items referenced were not. This provision is

mandatory and is an appropriate basis for dismissal of the appeal. *See also* 11 DCMR 3112.12. *See* Bannum Motion for Postponement, submitted separately herewith.

Finally, ANC 5B has not complied with the provisions of 11 DCMR 3115 regarding the requirement of a written report of the ANC within specifically enumerated items set forth under Section 3115.1(a) - (i).

A. Appellant ANC 5B Is Not An Aggrieved Party.

The ANC has failed to establish that it is an "aggrieved person" under the Zoning Enabling Act and the District of Columbia Zoning Regulations. Pursuant to section 3199.1 of the Zoning Regulations (the definition of "party"), the ANC is automatically a party in an appeal to the BZA. Nevertheless, the Zoning Enabling also establishes a basic threshold question of whether a party is "aggrieved." *See* D.C. Code §§6-641.07 and 3112.2. The Zoning Regulations do not explicitly define the criteria that should be used to determine whether a person is "aggrieved." However, in interpreting this requirement, the courts have consistently held that a person may only be considered to be "aggrieved" if that person demonstrates that he or she will be specially and adversely affected by the zoning-decision. In *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 923 (D.C. 1980), the Court stated that "[g]enerally, persons wishing to contest zoning determinations must demonstrate some damage—damage greater than that suffered by the general public—to satisfy the 'person aggrieved' requirement." *See also* Rathkopf, The Law of Planning and Zoning, §43.02, at 43-7; 4 Anderson's American Law of Zoning §27.18, at 542-51 (4th ed. 1997). To be "aggrieved," a person must demonstrate (1) a specific personal and legal interest in the subject matter of the decision as distinguished from the general interest of a member of the community as a whole, and (2) that the specific personal and legal interest has been specially and injuriously affected by the decision. *See*

Rathkopf §43.04 at 43-20.[2] *Cf. President & Directors of Georgetown College v. Diavatis*, 470 A.2d 1248 (D.C.1983)(statute which allows neighboring owner to sue to enjoin zoning violation does not entitle neighbor to relief without proof that the zoning violation has caused "special damage" to neighbor).

In this case, because of the location of the property, the nature of its surrounding uses under the CM-2 zone, the fact that there is no residential property in this particular area makes it clear that there cannot be the required "aggrievement".

B. Location of Facility.

The proposed use is solidly within the CM-2 zoning district. In fact, this particular neighborhood is surrounded by physical boundaries of railroad tracks and New York Avenue on the south, Bladensburg Road on the east, Queens Chapel Road on the north, and railroad tracks on the west. The nature of the uses in this particular isolated area are all commercial, light manufacturing or industrial. Even the closest residential neighborhood to the west is separated not only by the railroad tracks and a bridge across the tracks, but also an additional area of light manufacturing commercial usage and zoning. The aerial photograph matched with the zoning map for the area as Exhibits J and K readily show this separation and isolation.

In denying a preliminary injunction against Bannum for its proposed facility at this very site, Judge Kravitz stated that::

> The plaintiffs are understandably worried that an influx of pre-release inmates into their neighborhood might result in a decrease in their property values and an increase in the amount of crime in their community. Any group of concerned citizens likely would

---

2 Similar tests for determining party status have been adopted by the Zoning Commission for both the Zoning Commission and the Board of Zoning Adjustment. See section 3022.3(6) and 3106.3 of the Zoning Regulations.

Maryland uses essentially the same test for who is "aggrieved" by an agency decision. *See Maryland-National Capital Park and Planning Commission v. Smith*, 633 A.2d 855, 859-60 Md. (1993) (commission was not "aggrieved" for purposes of appeal).

> share those worries. However, there is no evidence in the record to suggest that the plaintiffs' fears are based on anything more than a normal reaction to the opening of a halfway house nearby. The plaintiffs have not presented any evidence that property values have gone down or that crime rates have gone up in other communities in which halfway houses for pre-release felons have been allowed to operate. Nor have the plaintiffs mounted a serious challenge to the testimony presented by Bannum's executive director that the company runs its halfway houses with significant controls over the movement of its residents and under very tight monitoring by the United States Department of Justice.

See Black v. District of Columbia, Civil Action No. 03-1639, Order Denying Preliminary Injunction, April 8, 2003 (copy attached as Exhibit I.)

C. The Controlled Use of this Facility.

As will be described in detail by the executive director of Bannum, the fears and speculations of the appellants about the operation of the facility are unfounded by virtue of the strong supervision and control over offenders who have been selected for the program. Each offender is selected through a Bureau of Prisons screening. No sex offenders or murderers will be permitted. The test for Bannum's own acceptance is that they will not accept anyone who is likely to harm himself or the community. Each offender is under the continuing control of the Attorney General. There are strict requirements for signing in, signing out, check-ins when seeking a job and limited ability to move outside very specific routes to job and education. The inmates are not even allowed to randomly walk in search of a job, but rather must have a specific destination cleared by Bannum.

In addition to witnesses that may be called, the following documents collectively attached as Exhibit L, establish and confirm the "significant controls" and "very tight monitoring of its residents" as well as the impressive record of supervision by Bannum in its facilities:

(i) Excerpts from the Statement of Work (SOW); Community Corrections Center.

(ii) Rules and Regulations for Bannum's residents.

(iii) *Howard v. Ashcroft*, 2003 WL 1191098 (M.D.La.) -- *see* pp. 16-18 and footnote n.45.

An additional major acknowledgement by ANC Chairman Regina James is contained in her letter of January 25, 2001 supporting the same type of facility to be located at 1355-57 New York Avenue, N.E., Washington, DC, 20002 -- which is in close proximity to the subject property. *See* Exhibit P.

Finally, no evidence whatsoever has been offered by appellant to establish aggrievement. In fact, Bannum submits, the controls and supervision over the residents confined in the facility provide a safer environment than may exist otherwise in the community.

For all of these reasons, the appellant has not satisfied the aggrievement test under the Zoning Regulations. This is particularly pertinent since this use is only permitted on a temporary basis as a matter of right in the Commercial-Light Manufacturing and General Industry zoning districts under §801.7(k) and §821.1. Those zoning districts, as the Board is well aware, provide for the most intense, unrestricted uses in the zoning maps and regulations of the City.

IV.
THIS APPEAL WAS NOT TIMELY FILED.

Under Section 3112.2 of the Zoning Regulations, an appeal must be filed within 60 days from the date the appellant had notice or knowledge of the decision complained of, or reasonably should have known. In this case, the testimony of witnesses will show that ANC 5B was well aware, at the latest, by early 2002 that Bannum had received approvals to locate its community correctional facility at 2110 Adams Place, N.E.

Members of ANC 5A, 5B and 5C initiated in early 2002 a meeting to better understand the nature and status of the proposed temporary correctional facility. That meeting was held on April 18, 2002 with a full discussion of the facility and its matter of right location. Attending the meeting, not only was the previous ANC 5B Chairman, but the present ANC 5B Chairman as

well. Yet no appeal was filed until nine (9) months later, well after Bannum had entered into its lease, signed its contract with BOP and had undertaken reconstruction, conversion and alteration of the warehouse building to serve as the correctional facility.

Bannum also notes that under subsection (b)(1) of 3112.2 the appeal was required to be filed within ten (10) days of the properties being "under roof" when a building is reconstructed, converted or altered for a different use.

To further emphasize ANC 5B's knowledge, members of the ANC visited the Orlando facility which operates identically to the proposed facility at 2110 Adams Place, N.E. The nature of the facility was well known and, if desired, an appeal could have been made in the Spring of 2001, which might have been timely.

V.
APPELLANT IS BARRED FROM CHALLENGING THE PREVIOUS RULINGS UNDER THE DOCTRINES OF ESTOPPEL AND LACHES.

The applicability of the equitable doctrines of estoppel and laches is well established in District of Columbia zoning law. *See Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356 (DCCA 1975); *Lyke v. DC BZA*, 383 A.2d 7 (1978); *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, (DCCA 1980).

The elements of estoppel are that the claimant is required to prove: 1) that it acted in good faith; 2) on affirmative acts of the District; 3) made expensive and permanent improvements and reliance thereon; and 4) the equities are strongly in the claimant's favor. *See also District of Columbia v. Cahill*, 60 App. DC 342 (1931). Laches, on the other hand, is the equitable principal that there is an unreasonable delay in challenging an approval with resulting prejudice to the other party. With laches, the entire chain of events must be considered. *See Goto* at 925.

Based upon the facts of this case, including the actions of the District of Columbia and the inaction over an extended period of time by ANC 5B, Bannum requests that this appeal be dismissed on either estoppel or laches basis.

There is no question but that prior to proceeding with the contract with the Bureau of Prisons, the construction of the facilities, and all of the requirements that the contract places into effect, Bannum proceeded in absolute good faith in reliance upon the District of Columbia and its approvals, by the Zoning Administrator and Acting Zoning Administrator, as well as the subsequent building permits. It is also extremely clear, as will be confirmed by the testimony of the Executive Director of Bannum, that the extensive improvements were made to the property and that the equities favor Bannum. From the evidence and testimony, the Board will be able to see that Bannum relied upon the two rulings of the Zoning Administrator's office and entered into the contract with the Bureau of Prisons. That contract required certain physical surroundings for the correctional facility. Bannum undertook a lease of the property, the improvements to the building, and obligated itself to performance with expenses in excess of $450,000 in capital costs and ongoing operating costs in excess of $4,000 per day. Moreover, if Bannum is unable to perform, the contract valued in excess of $13 million will be lost and possible debarment from further construction of similar facilities could occur. *See* Affidavit of David Lowry, attached as Exhibit Q.

The equities favor Bannum in that as described in several court cases, including *Brawner Building, Inc. v. Shehyn,* 442 F.2d 847 (D.C.Cir. 1971) and in the litigation over this particular matter, the public interest is in favor of this type of facility. The Superior Court Judge Kravitz cited *Brawner Building, Inc.* when referencing a "halfway house" (which does not now exist in our Zoning Regulations):

> The halfway house bridges the gap between institutionalized custody and private life in the community. The benefits for its

> residents and society are manifold: individuals can support their families by the earnings from their jobs while living at the center and thereby retain and gain self-respect; they can become contributing members of society while finishing their sentences; they can gain training and a means of demonstrating their employment ability, thus earning community acceptance; and they can reestablish and maintain contacts with their families and the realities of life in a residential setting.

Then Judge Kravitz stated, "These benefits are of even greater importance now due to the recent federalization of the District's criminal justice system and the resultant incarceration of our convicted felons in federal prisons around the country."

Unfortunately, as stated in *Brawner*, "everybody wants them, but nobody wants them around them." *Brawner* at 852.

Importantly, it is the position of Bannum that the ANC itself is barred from going forward with this complaint on the basis of estoppel and laches. Additionally, the District of Columbia would be barred from revoking the previous approvals, or not approving a Certificate of Occupancy after Bannum, in good faith, has relied upon their approvals to their substantial detriment for a use that is well within the zoning maps and Zoning Regulations of the District of Columbia, with no adverse impact on the community.

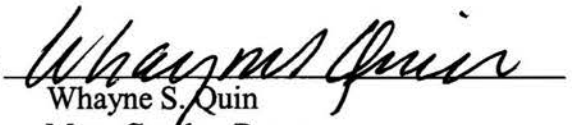
VI.
WITNESSES

Bannum may call the following witnesses in support of its Motion to Dismiss:

A. David Lowry
B. Hulon Willis
C. Rhonda Chappelle (prior Chairman of ANC 5B).

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 

Whayne S. Quin
Mary Carolyn Brown
2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion to Dismiss were served this 17th day of April, 2003, by hand-delivery or first-class mail, postage pre-paid, to the following:

Mr. Donald Temple, Esq.
Temple Law Offices
1200 G Street, N.W.
Suite 370
Washington, D.C. 20001
Counsel for Appellant ANC 5B
(hand-delivery)

Mr. Bennett Rushkoff, Esq.
Civil Division
Office of Corporation Counsel
441 4th Street, N.W. Suite 540N
Washington, D.C. 20001
(hand-delivery)

Regina James, Chair
Advisory Neighborhood Commission 5B
1363 Adams Street, N.E.
Washington, D.C. 20018
(first-class mail)

By: _____
Mary Carolyn Brown

WAS1 #1175448 v1

Law Offices
HOLLAND & KNIGHT LLP

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202

202-955-3000
FAX 202-955-5564
www.hklaw.com

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Washington, D.C.
West Palm Beach
Representative Offices:
Buenos Aires
Tel Aviv

December 11, 2000

MARY CAROLYN BROWN
202-862-5990

Internet Address:
mcbrown@hklaw.com

VIA HAND DELIVERY

Mr. Michael Johnson
Zoning Administrator
Building and Land Regulation
Administration
D.C. Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.W.
Washington, D.C. 20002

Re: 2210 Adams Place, N.E., Square 4259, Parcel 154/81

Dear Mr. Johnson:

This office represents Bannum, Inc. ("Bannum"), a company that provides residential rehabilitation services to individuals referred by appropriate committing authorities. Bannum proposes to lease the property at 2210 Adams Place, N.E. (Parcel 154/81 in Square 4259) for use as a residential Community Corrections Center under a contract with the U.S. Department of Justice. Individuals are referred to the facility either directly by the court system, under a conditional release from the parole commission or through a transfer from a federal institution in order to make the transition back into society.

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 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.

Thank you for your assistance with this matter.

Very truly yours,

Carolyn Brown

Carolyn Brown

I concur:

Michael D. Johnson 12/11/00

Michael Johnson Date
Zoning Administrator

WAS1 #895142 v1

Bannum, Inc.
5904 MacCorkle Ave., SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellew, Operations Director

March 12, 2001

Mr. Vincent Orange, Councilman Ward #5
District of Columbia
441 4th Street, NW, Room 702
Washington, DC 20001

Dear Mr. Orange: CERTIFIED MAIL

The United States Department of Justice has advertised a contract for a residential Community Corrections Center program to be located in the Washington, DC area. The contract estimates that 81 persons will reside at the facility and 19 persons will reside at their respective homes under our staff supervision. Bannum has submitted a proposal to the Department of Justice to locate this Federal program at 2210 Adams Place, NE, Washington, DC.

Bannum will provide housing and related services to those persons from Washington, DC and the immediate surrounding area that are returning to their homes, family, and friends. Our residents will go to work daily and return to the facility after work to sleep. Then, as long as they are honoring their agreement to qualify for the program, they can go visit their family and friends if they wish. They would then return to the facility on weekday evenings at their individual curfew time. Many residents would be allowed to check out on Friday and would not return again until their Sunday night curfew.

Bannum will monitor each resident's movement in the community by periodic on-site and telephone verification of their employment, educational pursuits, family visits, or other whereabouts. Bannum will assist the resident to find employment if they are not employed by making referrals to local employment agencies and local employers which have expressed interest in employing these residents.

Since this is a period of transition for these persons, Bannum simply assists them in re-establishing employment and family ties, locating suitable housing and preparing to function normally within the community to which they are returning. Bannum also makes referrals to local community agencies as appropriate.

Bannum's personnel monitor the program on a 24-hour basis, but there are no locks, bars, or other physical restraints. Bannum will employ a professional staff to include social workers to monitor and guide the residents through this period of transition.

If a resident violates his agreement to remain in the program by missing curfew, by unexcused absence from work, etc., or if the resident fails to return to the facility or decides to leave the facility without our permission, we cannot and will not stop them. In these cases we simply report the resident to the appropriate Federal authorities. Penalties include a return to incarceration.

Bannum's staff are not peace officers, are not permitted to carry weapons of any kind, and are not authorized to physically restrain any person. Bannum's staff do no wear uniforms or possess any other form of identification or powers than any other citizen of Washington, DC.

The type of offenders referred to our program will consist of the following:

a. **Transfers from Federal Institutions**: These BOP offenders have served a portion of their sentence in a federal institution and are completing the confinement portion in a CCC.

b. **Direct Court Commitments**: These BOP offenders have been designated to serve their entire terms of confinement in a CCC.

c. **Supervision Cases**: These offenders are referred to the BOP for placement in a CCC by a USPO or PSO due to conditional release supervision requirements. The Supervision requirements may be by order of a Federal Court, the U.S. Parole Commission, or Federal Pre-Trial Services. The BOP may pay for room and board (except for Pre-Trial cases) during the period of time spent in a CCC on conditional release. Some of these cases may also be referred to as "Community Confinement Cases" as described in the Sentencing Reform Act Guidelines.
   (1) **Probationers:** Offenders that are required to reside in and adhere to the program requirements of a CCC as a condition of probation for the time specified by the Court.
   (2) **Supervised Releases**: Offenders that are required to reside in and adhere to program requirements of a CCC as a condition of supervised release for the time specified by the Court.
   (3) **Parolees, Mandatory Releasees**: Offenders that have been paroled or mandatory released from a federal institution. The offenders must reside in, and adhere to program requirements of a CCC as a condition of their parole or mandatory release.

(4) **Pre-Trial Services**: An individual required by the Court to reside in and adhere to program requirements of a CCC as a condition of pre-trial release. The duration of residence will be specified by the pre-trial services official referring the case for placement. Pre-Trial status offenders are the sole responsibility of Pre-Trial Services/U.S. Courts.

For your review, we have attached the following:

1.) Bannum's role and mission statement.
2.) Introduction and objective of this contract.
3.) Scope of Work.
4.) Bannum's resident accountability practices.

We look forward to servicing Washington DC and working with you and other officials in establishing this program and ensuring its success.

If I can provide any additional information or be of any further assistance, please let me know.

Sincerely,

Cathy Bellew, Sr. Operations Director

cc: Bannum, Inc
cc: File

Bannum, Inc.
5904 MacCorkle Ave. SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467
Cathy Bellew, Operations Director

March 23, 2001

Michelle D. Aceto, Contracting Officer
Department of Justice
Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534

RE: RFP 200-0628-MA
Washington, DC Area Line Item One and Two

Dear Ms. Aceto:

Attached is a copy of an additional notification receipt to the local City Council representative for the district in which our proposed site is located.

Should you have questions concerning the contents herein, please contact me.

Sincerely,
cathy Bellew
Cathy Bellew, Operations Director

cc: Bannum, Inc.
cc: File

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

Is your RETURN ADDRESS completed on the reverse side?

3. Article Addressed to:
Mr. Vincent Orange
WARD #5
441 4th Street, NW Rm 702
Washington, DC 20001

4a. Article Number
7099 3400 0005 6102 8604

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
MAR 23 2001

8. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

PS Form 3811, December 1994 Domestic Return Receipt

Thank you for using Return Receipt Service.

Bannum, Inc.
5904 MacCorkle Ave., SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellew, Operations Director

April 10, 2001

The Honorable Anthony Williams
Washington, DC
441 Fourth Street, NW, 11th Floor
Washington, DC 20001

Dear: Mayor Williams CERTIFIED MAIL

The purpose of this letter is to inform you that Bannum has submitted an offer for community corrections center (CCC) or "halfway house", services for federal offenders releasing to the Washington DC area. This action is being taken in response to a request for proposal RFP 200-0593-MA issued by the Federal Bureau of Prisons (BOP). The BOP encourages full and open competition in the procurement of these services; consequently, other offerors may also be responding to this RFP.

As part of the CCC contracting process, the BOP requires that all offerors notify and seek input from the local law enforcement authority and two levels of locally elected government officials. This letter will serve as documentation of partial satisfaction of this requirement.

Bannum has submitted a proposal to the Federal Bureau of Prisons to locate this Federal program at 2210 Adams Place, NE. The proposed property is zoned warehouse and is currently being used for that purpose. Should the above listed property not be zoned for our proposed use, then Bannum will make application for all necessary permits and licenses. These necessary permits and licenses are anticipated to be obtained by July 1, 2001. Presently, the building will only require minor renovations to meet Federal Bureau of Prisons safety requirements by the contract performance date of October 1, 2001. These renovations are scheduled to be completed by October 1, 2001.

The total term of the proposed contract is five years. The estimated requirement specifies one hundred thirty beds for males and no beds for females at the beginning of the contract term, with no scheduled population increases through the five-year contract term. These numbers reflect the BOP's best estimates of bed space needs at this time. However, the proposed site will be able to accommodate up to two hundred and sixty offenders, and the BOP may exceed its original

estimates if there is an unanticipated need for additional bed space in this area. Performance is to begin on October 1, 2001 with contract award approximately 120 days prior to that date.

The BOP has a long history of transferring inmates who are within a few months of release to a contractor-operated CCC for transitional programming. These inmates have often been removed from the community for an extended period of time. Sound correctional practice suggests that CCCs enhance public safety by offering offenders the opportunity to find employment, establish residence, and re-enter the community through a structured, supportive environment.

The BOP takes its responsibility for contract oversight very seriously. Contract language establishes requirements for inmate accountability, programming, life safety, staffing, inmate discipline, urine and alcohol surveillance, and a variety of other areas. These requirements are closely monitored by BOP staff, who provide training and conduct both scheduled and unannounced on-site inspections.

Federal offenders at the CCC will come from three sources: inmates who are transferred from a prison to the CCC for pre-release programming, inmates who are committed directly to the CCC to service short sentences, and offenders under the supervision of the U.S. Probation Office for whom residence at the CCC is a condition of supervision. Nationwide, the average CCC placement is three to four months in length, although longer placements are sometimes made.

Bannum will provide housing and related services to those persons from Washington, DC and the immediate surrounding area that are returning to their homes, family, and friends. Our residents will go to work daily and return to the facility after work to sleep. Then, as long as they are honoring their agreement to qualify for the program, they can go visit their family and friends if they wish. They would then return to the facility on weekday evenings at their individual curfew time. Many residents would be allowed to check out on Friday and would not return again until their Sunday night curfew.

Bannum will monitor each resident's movement in the community by periodic on-site and telephone verification of their employment, educational pursuits, family visits, or other whereabouts. Bannum will assist the resident to find employment if they are not employed by making referrals to local employment agencies and local employers which have expressed interest in employing these residents.

Since this is a period of transition for these persons, Bannum simply assists them in re-establishing employment and family ties, locating suitable housing and preparing to function normally within the community to which they are returning. Bannum also makes referrals to local community agencies as appropriate.

Bannum's personnel monitor the program on a 24-hour basis, but there are no locks, bars, or other physical restraints. Bannum will employ a professional staff to include social workers to monitor and guide the residents through this period of transition.

If a resident violates his agreement to remain in the program by missing curfew, by unexcused absence from work, etc., or if the resident fails to return to the facility or decides to leave the facility without our permission, we cannot and will not stop them. In these cases we simply report the resident to the appropriate Federal authorities. Penalties include a return to incarceration.

Bannum's staff are not peace officers, are not permitted to carry weapons of any kind, and are not authorized to physically restrain any person. Bannum's staff do no wear uniforms or possess any other form of identification or powers than any other citizen of Washington, DC.

For your review, we have attached Bannum's organization and program history and our role and mission statement.

We look forward to servicing Washington, DC and working with you and other Washington, DC officials in establishing this program and ensuring its success.

The BOP is currently evaluating all proposals that were submitted for this RFP. The BOP and Bannum invite you to express your support for or concerns about this proposed CCC facility. Comments may be directed to Michelle D. Aceto, Contracting Officer, Federal Bureau of Prisons, 320 First Street, NW, Washington, DC 20534. The phone number is (202) 307-3069. Please forward a copy of any correspondence to Bannum at our above listed address or fax number.

If I can provide any additional information or be of any further assistance, please let me know.

Sincerely,

Cathy Bellew

Cathy Bellew, Sr. Operations Director

cc: Bannum, Inc
cc: File

Bannum, Inc.
5904 MacCorkle Ave., SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellew, Operations Director

April 10, 2001

Charles Ramsey, Chief of Police
Washington, DC
300 Indiana Avenue, NW, 5th Floor
Washington, DC 20001

Dear Chief Ramsey: CERTIFIED MAIL

The purpose of this letter is to inform you that Bannum has submitted an offer for community corrections center (CCC) or "halfway house", services for federal offenders releasing to the Washington DC area. This action is being taken in response to a request for proposal RFP 200-0593-MA issued by the Federal Bureau of Prisons (BOP). The BOP encourages full and open competition in the procurement of these services; consequently, other offerors may also be responding to this RFP.

As part of the CCC contracting process, the BOP requires that all offerors notify and seek input from the local law enforcement authority and two levels of locally elected government officials. This letter will serve as documentation of partial satisfaction of this requirement.

Bannum has submitted a proposal to the Federal Bureau of Prisons to locate this Federal program at 2210 Adams Place, NE. The proposed property is zoned warehouse and is currently being used for that purpose. Should the above listed property not be zoned for our proposed use, then Bannum will make application for all necessary permits and licenses. These necessary permits and licenses are anticipated to be obtained by July 1, 2001. Presently, the building will only require minor renovations to meet Federal Bureau of Prisons safety requirements by the contract performance date of October 1, 2001. These renovations are scheduled to be completed by October 1, 2001.

The total term of the proposed contract is five years. The estimated requirement specifies one hundred thirty beds for males and no beds for females at the beginning of the contract term, with no scheduled population increases through the five-year contract term. These numbers reflect the BOP's best estimates of bed space needs at this time. However, the proposed site will be able to accommodate up to two hundred and sixty offenders, and the BOP may exceed its original

estimates if there is an unanticipated need for additional bed space in this area. Performance is to begin on October 1, 2001 with contract award approximately 120 days prior to that date.

The BOP has a long history of transferring inmates who are within a few months of release to a contractor-operated CCC for transitional programming. These inmates have often been removed from the community for an extended period of time. Sound correctional practice suggests that CCCs enhance public safety by offering offenders the opportunity to find employment, establish residence, and re-enter the community through a structured, supportive environment.

The BOP takes its responsibility for contract oversight very seriously. Contract language establishes requirements for inmate accountability, programming, life safety, staffing, inmate discipline, urine and alcohol surveillance, and a variety of other areas. These requirements are closely monitored by BOP staff, who provide training and conduct both scheduled and unannounced on-site inspections.

Federal offenders at the CCC will come from three sources: inmates who are transferred from a prison to the CCC for pre-release programming, inmates who are committed directly to the CCC to service short sentences, and offenders under the supervision of the U.S. Probation Office for whom residence at the CCC is a condition of supervision. Nationwide, the average CCC placement is three to four months in length, although longer placements are sometimes made.

Bannum will provide housing and related services to those persons from Washington, DC and the immediate surrounding area that are returning to their homes, family, and friends. Our residents will go to work daily and return to the facility after work to sleep. Then, as long as they are honoring their agreement to qualify for the program, they can go visit their family and friends if they wish. They would then return to the facility on weekday evenings at their individual curfew time. Many residents would be allowed to check out on Friday and would not return again until their Sunday night curfew.

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The BOP is currently evaluating all proposals that were submitted for this RFP. The BOP and Bannum invite you to express your support for or concerns about this proposed CCC facility. Comments may be directed to Michelle D. Aceto, Contracting Officer, Federal Bureau of Prisons, 320 First Street, NW, Washington, DC 20534. The phone number is (202) 307-3069. Please forward a copy of any correspondence to Bannum at our above listed address or fax number.

If I can provide any additional information or be of any further assistance, please let me know.

Sincerely,

Cathy Bellew

Cathy Bellew, Sr. Operations Director

cc: Bannum, Inc
cc: File

Bannum, Inc.
5904 MacCorkle Ave., SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellew, Operations Director

April 10, 2001

Mr. Vincent Orange, Councilman Ward #5
Washington, DC
441 4th Street, NW, Room 702
Washington, DC 20001

Dear Mr. Orange: CERTIFIED MAIL

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If I can provide any additional information or be of any further assistance, please let me know.

Sincerely,

Cathy Bellew

Cathy Bellew, Sr. Operations Director

cc: Bannum, Inc
cc: File

CERTIFIED MAIL

7000 1670 0007 6479 9317

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage	$ .78
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 4.18

Postmark Here

Sent To: Mark Williams
Street, Apt. No.; or PO Box No.: 441 Fourth St. NW 11th Floor
City, State, ZIP+4: Washington, DC 20001

PS Form 3800, May 2000 — See Reverse for Instructions

CERTIFIED MAIL

7000 1670 0007 6479 9300

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage	$ .78
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 4.18

Postmark Here

Sent To: Chief Ramsey
Street, Apt. No.; or PO Box No.: 300 Indiana Ave NW 5th Floor
City, State, ZIP+4: Washington, DC 20001

PS Form 3800, May 2000 — See Reverse for Instructions

CERTIFIED MAIL

7000 1670 0007 6479 9294

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage	$ .78
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 4.18

Postmark Here

Sent To: MM Orange Council Rep Ward #5
Street, Apt. No.; or PO Box No.: 441 4th Street, NW Rm 702
City, State, ZIP+4: Washington, DC 20001

PS Form 3800, May 2000 — See Reverse for Instructions

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

A. Received by (Please Print Clearly): Lauren S. B. Date of Delivery: 4/16/01
C. Signature: X Lauren S. ☐ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No

1. Article Addressed to:
MAYOR WILLIAMS
441 Fourth Street, NW 11th Floor
Washington DC 20001

3. Service Type: ☑ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label) 7000 1670 0007 6479 9317

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mr Vincent Orange,
Council Rep. Ward #5
441 4th St., NW Room 702
Washington, DC 20001

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
C. Signature: X ☐ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No

WASHINGTON DC APR 18 2001

3. Service Type: ☑ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label) 7000 1670 0007 6479 9294

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
■ Complete items 1 and/or 2 for additional services.
■ Complete items 3, 4a, and 4b.
■ Print your name and address on the reverse of this form so that we can return this card to you.
■ Attach this form to the front of the mailpiece, or on the back if space does not permit.
■ Write "Return Receipt Requested" on the mailpiece below the article number.
■ The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:
Mr. Vincent Orange
Ward #5
441 4th Street, NW Rm 702
Washington, DC 20001

4a. Article Number: 7099 3400 0005 6102 8604
4b. Service Type: ☐ Registered ☑ Certified ☐ Express Mail ☐ Insured ☐ Return Receipt for Merchandise ☐ COD
7. Date of Delivery: MAR 22 2001 WASHINGTON DC
5. Received By: (Print Name)
8. Addressee's Address (Only if requested and fee is paid)
6. Signature: (Addressee or Agent) X

Thank you for using Return Receipt Service.

PS Form 3811, December 1994 Domestic Return Receipt

Bannum, Inc.
5904 MacCorkle Ave. SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellew, Operations Director

April 23, 2001

Michelle D. Aceto, Contracting Officer
Department of Justice
Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534

By Fax/Mail

RE: RFP 200-0604-MA
Washington, DC

Dear Ms. Aceto:

As requested, a copy of the amended public official notification letters and two proof of receipts are attached for your review. Mr. Lowry is forwarding the Amendment Standard Form 30 with blocks 8, 15a, B and C completed under separate cover. The third proof of receipt will be forwarded to your office once received by the US Postal Service.

Should you have questions concerning the contents herein, please contact me.

Sincerely,

Cathy Bellew, Operations Director

cc: Bannum, Inc.
cc: File

Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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International Offices:
Buenos Aires*
Mexico City
Rio de Janeiro
São Paulo
Tel Aviv*
Tokyo

*Representative Offices

November 26, 2001

MARY CAROLYN BROWN
202-862-5990

Internet Address:
mcbrown@hklaw.com

VIA HAND DELIVERY

Mr. Olutoye Bello
Acting Zoning Administrator
Building and Land Regulation
Administration
D.C. Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.W.
Washington, D.C. 20002

Re: Temporary Correctional Facilities

Dear Mr. Bello:

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 as 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 a federal institution.

Under section 801.7(k) of the D.C. Zoning Regulations, a "[t]emporary detention or correctional institution on leased property for period not to exceed three (3) years" is permitted as a matter of right in the C-M District, and by extension, in the M District. Accordingly, Bannum's proposed use of the property as a residential Community Corrections Center can be established as a matter of right in the C-M and M Districts for a period not to exceed three years.

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

Thank you for your assistance with this matter.

Very truly yours,

Carolyn Brown

Carolyn Brown

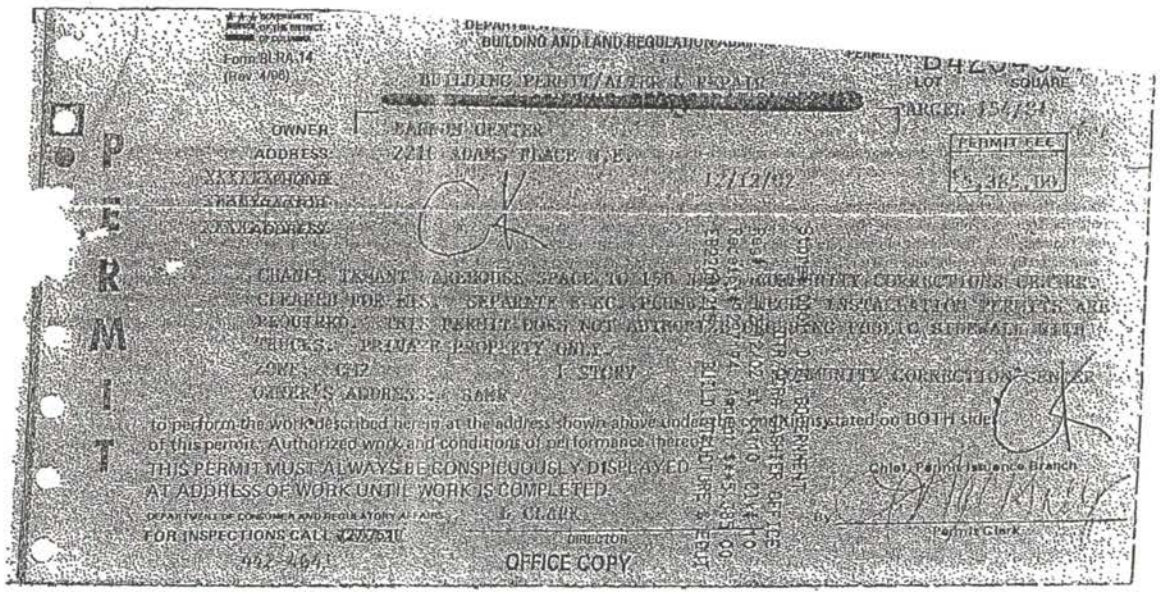
I concur:

11/20/01

Olutoye Bello Date
Acting Zoning Administrator

WAS1 #1035851 v1

01/09/03 13:32 FAX 2027277561 BLRA/PPD 003



PERMIT

Form BLRA-14
(Rev. 4/98)

BUILDING AND LAND REGULATION

BUILDING PERMIT/ALTER & REPAIR

LOT SQUARE

TARGET 154/24

OWNER: PARKIN CENTER

ADDRESS: 2210 ADAMS PLACE N.E.

PERMIT FEE $5,465.00

1/12/02

CHANGE TENANT WAREHOUSE SPACE TO 160 BED CORRECTIONAL CORRECTIONS OFFICERS CLEARED FOR USE. SEPARATE E-SIG APPROVALS FOR EACH INSTALLATION PERMITS ARE REQUIRED. THIS PERMIT DOES NOT AUTHORIZE BOARDING UP TO SIDEWALK WITH TRUCKS. PRIMARY PROPERTY ONLY.

ZONE: C-2 1 STORY

OWNER'S ADDRESS: SAME

to perform the work described herein at the address shown above under the conditions stated on BOTH sides of this permit. Authorized work and conditions of performance thereof.

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT ADDRESS OF WORK UNTIL WORK IS COMPLETED.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

FOR INSPECTIONS CALL 727-7610

442-4641

E. CLAUR
DIRECTOR

OFFICE COPY

Chief, Permit Assistance Branch

By

Permit Clerk

PERMIT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Form BLRA-15
(Rev. 9/30/91

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT PERMIT NO. B448325

Date 1/17/03 (Type) MISC. Lot PARCEL 154/81 Square

Address of work 2210 ADAMS PLACE N.E.

Permission is hereby granted to (Owner) TOTAL PERMIT FEE $

RAMUM CENTER FILING FEE $

to construct/alter/repair/demolish/use/occupy the work described herein at the address shown above in strict accordance with the conditions stated on BOTH sides of this permit. NO. DATE

Authorized work and conditions of performance thereof. FEE PAYABLE $ 25.00

FOR INSPECTIONS CALL XXXXX 442-4641

REV. BLDG PERMIT B425438 ISSUED 1/12/02 INCL. TO READ "3 YR TEMPORARY USE". TEMPORARY 150 BED COMMUNITY CORRECTIONS CENTER ON LEASED PROPERTY FOR A PERIOD NOT TO EXCEED (3) YEARS.

Builder— Value $ No. of Bldgs.

Width of Bldgs. Length Height No. of Stories 1

Zone CM2 To be occupied as COMMUNITY CORRECTIONS CENTER

Height of terrace above grade Projections:

Address of owner SAME AS ABOVE

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D CLARK 32301

DIRECTOR

Chief, Permit Issuance Branch

Permit Clerk

3 YEAR TEMPORARY USE

01/21/03 12:01 [illegible] 4 $25.00
BUILD. STRUCTURE & EQUI
3045
BRE 1 1 5
DC GOVERNMENT
CITY DEPT CASHIER OFFICE
001

PRE-FILE NUMBERS		ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER	
C. No.:	O.G. No.:	CM-2			By:
No.:	S.L. No.:	Ward No.:	Receipt No.:	Date:	Receipt No.:

★ ★ ★ GOVERNMENT OF THE DISTRICT OF COLUMBIA

BLRA-33 (Rev. 10/91)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION; PERMIT PROCESSING DIVISION (727-7050)

APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY

(PRINT IN INK OR TYPE; DO NOT WRITE IN SHADED AREAS OR ON PAGE 4)

ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

RANCE TO FILE Date

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 27

1. Address of Proposed Work:	Suite No.:	2. ~~Lot~~ PARCEL	3. Square:	4. Application Date:
2210 Adams Place NE		154/81		1-8-03

5. Owner of Building or Property:	6. Address: (include Zip)	7. Phone:
Bannum Center	2210 Adams Place NE WDC	Work: Home:
Agent for Owner: (if applicable)	**9. Address: (include Zip)**	**10. Phone:**
Catherine Harrison, Esq.	10614 Brookes Reserve Rd Upper Marlboro, MD 20772	Work: 301 627-8718 Home:

Type of Proposed Work (check all applicable boxes):

- ☐ New Building
- ☐ Addition
- ☐ Alteration and Repair
- ☐ Raze Building
- ☐ Retaining Wall
- ☐ Fence
- ☐ Shed
- ☐ Awning
- ☐ Garage
- ☐ Sign
- ☒ Other (Specify) change to building permit # 425438

Description of Proposed Work:

Change tenant warehouse space to 150 bed community corrections center.

Pldg Permit # B425438 issued 1/12/02 incl. to read 3yr temporary use

Existing Use(s) of Building or Property:	14. Ex. No. of Stories of Bldg.:	15. Ex. No. of Dwelling Units:	Official Use Only: Miscellaneous FEE $ 25.00
warehouse	1	0	
Proposed Use(s) of Building or Property:	**17. Prop. No. of Stories of Bldg.:**	**18. Prop. No. of Dwelling Units:**	By: Date: 1/17/03
3 year temporary use community corrections center	1	0	

19. Starting Date of Work:	20. Completion Date of Work:	21. Method of Removing Construction Debris:	22. Does the proposed work involve disturbing the earth or razing a building?
ASAP		☐ Pick-up Truck ☐ Dumpster ☐ Other (specify):	☐ Yes, answer q. 23 ☒ No, SKIP q. 23-27

23. Is the area of disturbed earth more than 50 sq. ft.?	24. Soil Erosion Control Methods:	25. Area of Offsite Drainage:	26. No. of Footings or Columns:	27. Size of Footings of Columns:
☐ Yes, answer q. 24-25 ☐ No, SKIP q. 24-25		sq. ft.		sq. ft.

ALWAYS SIGN THE APPLICATION ON PAGE 3 (SECTION I).

Complete Section B if the proposed work is **new building, addition or alteration.** (Page 2)
Complete Section C if the proposed work is **razing a building.** (Page 2)
Complete Section D if the proposed work is a **retaining wall.** (Page 2)
Complete Section E if the proposed work is a **fence.** (Page 3)
Complete Section F if the proposed work is a **shed/garage.** (Page 3)
Complete Section G if the proposed work is an **awning.** (Page 3)
Complete Section H if the proposed work is a **sign.** (Page 3)

OFFICIAL USE ONLY

	R	P	H	A	
M					
P					
E					W: ☐ Yes ☐ No
F					PLANS:
S					☐ Nor ☐ Sm ☐ Lrg

17 wd-375

(E) FENCE (COMPLETE ITEMS 94 THRU 102)

The fence will not obstruct any accessible parking required by D.C. Zoning Regulations

94. Material and type:	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land *

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

98. Signature of Adjoining Owner:	99. Phone: Work Home	OFFICIAL USE ONLY: FEE $	By:	Date:
100. Address of Adjoining Owner:	101. Lot:	102. Square:		

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

103. Number:	104. Length: ft.	105. Width: ft.	106. Area: sq. ft.	107. Height: ft.	108. Volume: cu. ft.	109. Estimated Cost of Work: $	OFFICIAL USE ONLY: FEE $ By: Date:
110. Material of Roof:	111. Material of Sides:	112. Wall thickness:: ☐ External ( ) inches ☐ Party ( ) inches				113. Color:	

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

114. Number:	115. Color:	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line ____ in. Beyond pt. of attachm. ____ in.	118. Height of lowest part of awning: (a) ____ ft above sidewalk (b) ____ ft above parking (c) ____ ft above grade	OFFICIAL USE ONLY: FEE $ By: Date:

119. Material of Frame:	120. Material of Covering:	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123. Over side-walk cafe? ☐ Yes ☐ No

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

124. Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	126. Type: ☐ Incandes. ☐ Fluoresc. ☐ Neon	127. Power ____ VA	128. Electrical Contractor: Lic. No.:

129. Address of Electrical Contractor (include Zip)	130. Signature of Licensed Electrician:	131. Phone:	132. License No.

133. Height relative to building and ground: (a) ___ ft ___ in above sidewalk (b) ___ ft ___ in above roof (c) ___ ft ___ in is bldg height (d) ___ ft ___ in above projection or window (e) ___ ft ___ in from roof to sign's bottom	134. Material of Sign:	135. Type of Sign:	136. Color:
	137. Width: ft.	138. Length: ft.	139. Area of Sign: sq. ft.	140. Width of Business Frontage: ft.

141. C.A.F.O. Number for Building:	142. Sign Contractor Lic. No.	OFFICIAL USE ONLY: Sign FEE $	Elect. FEE $	Total FEE $
143. Sign Contractor's Address:	144. Phone:	By: Date:	By: Date:	BY: Date:

(I) APPLICANT'S SIGNATURE:

A. OWNER: I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner: _____ Address: _____ Date: _____

B. AGENT: I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: Catherine Harrison Address: 10616 Brookes Reserve Rd Upper Marlboro, MD 20772 Date: 1-8-03

151

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 28 THRU 60)

28. Architect's Name:	29. Lic. No.:	30. Architect's Address: *(include Zip)*	31. Phone:
32. Engineer's Name:	33. Lic. No.:	34. Engineer's Address: *(include Zip)*	35. Phone:
36. Building Contractor's Name:	36A. Lic. No.:	37. Contractor's Address:	38. Phone:

39. Type of Construction	40. Fire Suppression:	41. Booster Pump:	42. Total Lot Area:	43. Breakdown of Lot Area (= 100%):
☐ Masonry ☐ Steel ☐ Wood ☐ Other: ☐ Concrete	☐ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☐ None ☐ Other: _____	☐ New ☐ Existing ☐ None	sq. ft.	a. Building: ____ % b. Paved Area: ____ % c. Greenery: ____ %

44. Present Gross Floor Area of Bldg.:	45. Proposed Gross Floor Area of Bldg:	46. Floors involved in this permit:	47. Projection beyond building line?
sq. ft.	sq. ft.	☐ All ☐ Floors _____	☐ Yes, answer q. 48-52 ☐ No, SKIP q. 48-52

48. Number and type of projection:	49. Distance of projection:	50. Width of projection:	51. Width of building frontage: ft. 52. Signature of Owner (projection only):

53. Water or Sewer Excavation?	54. Driveway Construction?	55. Sheeting/Shoring Necessary?	56. Elevators involved?	57. No. and type of elev.:	58. Plans Certified by Engineer?
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes, answer q. 57 ☐ No, SKIP q. 57		☐ Yes, cert. is attached ☐ No

59. Estimated Cost of Work:
(a) New/Add.: $ _____
(b) Alt/Rep.: $ _____
Total: $

60. Volume of New Bldg. or Addition: _____ cubic ft.

OFFICIAL USE ONLY

Alter/Repair FEE	New Const. FEE	Filing Fee	TOTAL PERMIT FEE
$	$	$	$
By: / Date:	By: / Date:	By: / Date:	By: / Date:

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

61. Raze Contractor's Name:	62. Contractor's Address: *(include Zip)*	63. Phone:

64. Insurance Company:	65. Policy or Certif. No.:	66. Expir. Date:	67. Raze Method:

68. Building Material:	69. Raze Entire Building?	70. Building Condemned?	70A. Building Vacant?	71. Public Space Vault?	72. Disconnect Water and/or Sewer?	73. Size of Water Connection:
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	in.

74. Plumber's Name:	75. Lic. No	76. Length: ft.	77. Width: ft.	78. Height: ft.	79. Volume: cu. ft.	80. Party Wall? ☐ Yes ☐ No

81. Asbestos in the Building? ☐ No ☐ Yes, Location _____

82. Raze Contractor Signature:

83. Owner's Signature:

OFFICIAL USE ONLY

FEE	By:	Date:
$		

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

The retaining wall will not obstruct any accessible parking required by D.C. Zoning Regulations

84. Cost of Work:	85. Material:	86. Height: ft.	87. Color:	88. Location:
$				☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application.

89. Signature of Adjoining Owner:	90. Phone: Work / Home	
91. Address of Adjoining Owner:	92. Lot:	93. Square:

OFFICIAL USE ONLY

FEE	By:	Date:
$		

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

- ☐ 1. Fine Arts by: _____ Date: _____
- ☐ 2. Historic by: Woodin & Chang Date: _____
- ☐ 3. PADC by: _____ Date: _____
- ☐ 4. Cap. Gateway by: _____ Date: _____
- ☐ 5. W.H./ Obs. Precinct by: _____ Date: _____
- ☐ 6. Flood Control by: _____ Date: _____
- ☐ 7. WMATA by: _____ Date: _____
- ☐ 8. Condem. by: _____ Date: _____
- ☐ 9. RLA by: _____ Date: _____
- ☐ 10. Rental Accom. by: _____ Date: _____
- ☐ 11. Chinatown Distr. by: _____ Date: _____
- ☐ 12. Utility Clearance by: _____ Date: _____
- ☐ 13. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- ☐ 1. Zoning by: _____ Date: _____
- ☐ 2. DPW — Permit and Records Division
  Access to Parking Street ☐ Street ☐ Alley
  Cleared by: _____ Date: _____
- ☐ 3. DPW - Consumer Engineer
  Cleared by: _____ Date: _____
- ☐ 4. ERA - Erosion Control
  Cleared by: _____ Date: _____

Restrictions of the Permit: TEMPORARY 150 BED COMMUNITY CORRECTIONS CENTER ON LEASED PROPERTY FOR A PERIOD NOT TO EXCEED 3 (THREE) YEARS.

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICE OR OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639

C. PLANS AND APPLICATION APPROVAL

- ☑ 1. Information Counter by: USD Date: 1/6/03
- ☐ 2. Information Center by: _____ Date: _____
  - ☐ (a) ABC Board by: _____ Date: _____
  - ☐ (b) Noise Control by: _____ Date: _____
  - ☐ (c) Industrial Safety by: _____ Date: _____
  - ☐ (d) Vector Control by: _____ Date: _____
  - ☐ (e) D.C. Animal by: _____ Date: _____
  - ☐ (f) Police Dept. by: _____ Date: _____
- ☑ 3. Zoning by: FAYE O. Date: 1/17/03
  Zoning Update by: _____ Date: _____
- ☐ 4. DPW - Permit and Records Division/Deposit #
  Sidewalk Deposit $_____ Driveway Deposit $_____
  by: _____ Date: _____
- ☐ 5. Water/Sewer Design Branch
  Consumer Eng. by: _____ Date: _____
- ☐ 6. Environmental Regulation Administration
  - ☐ Environmental Policy Review
    Control No.: _____
    by: _____ Date: _____
  - ☐ Erosion Control by: _____ Date: _____
  - ☐ Storm Water Mgmt. by: _____ Date: _____
    Plan No. _____
- ☐ 7. Mechanical Eng. Review by: _____ Date: _____
- ☐ 8. Plumbing Eng. Review by: _____ Date: _____
- ☐ 9. Electrical Eng. Review by: _____ Date: _____
- ☐ 10. Health Plan Review
  - ☐ (a) Food Plan Review by: _____ Date: _____
  - ☐ (b) Medical X-ray Plan Rev.
    by: _____ Date: _____
- ☐ 11. D.C. Fire Dept. (Fire Prevention Plan Review Section)
  by: _____ Date: _____
- ☐ 12. Elevator Plan Rev. Sec. by: _____ Date: _____
- ☐ 13. Plumbing Insp. Rev. by: _____ Date: _____
- ☐ 14. Construction Insp. Branch (Field Check)
  by: _____ Date: _____
- ☑ 15. Historic Pres. Div. by: FILE COPY Date: 1/17/03
- ☐ 16. Structural Eng. by: _____ Date: _____
- ☐ 17. Permit and Certificate Issuance Counter
  By _____ Date _____
- ☑ 18. O.C. By: WA Date: 1/17/03

ZONING

C of O Number _____ Date _____
Existing Use(s) _____

- ☐ New bldg.
- ☐ P.O.D.
- ☐ File in room 329

Job No.:	BZA Case No.:	PUD Order No.:

DPW — PUBLIC SPACE

Street Name: _____
Street Width: _____
Road Width: _____
Sidewalk Width: _____
Parking: _____
Restrictions: _____

Contacts with City Officials and the Community

Bannum Inc. personnel have made the following contacts regarding the placement of its CCC program at 2210 Adams Place, N.E., Washington, DC:

11/30/00 Notified Mayor Williams, Chief of Staff Omer and Police Chief Ramsey

12/11/00 Obtained zoning approval from Michael Johnson, Zoning Administrator

3/12/01 Notified Councilman Orange

4/10/01 Notified Mayor Williams, Councilman Orange and Police Chief Ramsey

10/31/01 Met with Wholistic services

11/26/01 Obtained zoning approval from Olutoye Bello, Acting Zoning Administrator

4/18/02 Met with area senior citizens at Model Cities Wellness Center after issuance of a public announcement

4/18/02 Met with ANC leaders (3) and Mr. Jenkins representing the Mayor at Washington Center for Aging Services-BOP representatives were in attendance

4/18/02 Met with PTA and parents at Langdon Elementary School after issuance of a public announcement-BOP representatives were in attendance

4/18/02 Met with the general community at Harbor Light Center after issuance of a public announcement-BOP representatives were in attendance

4/19/02 Met with area business owners at Washington Center for Aging Services

6/11/02 Transported ANC leaders Chappelle and Bowser to Orlando, Florida to review Bannum's program operations

10/05/02 Advertised in the Washington Post for all positions

10/06/02 Advertised in the Washington Post for all positions

1/02/03 Attempted to meet with Councilman Orange

1/02/03 Met with Councilman Orange's Legislative Assistant

1/02/03 Attempted to meet with Councilmember Patterson, Chairperson, Committee on the Judiciary

1/03/03 Met with three persons representing the Bryant Street Homeowners Association

1/21/03 Met with "Citizens For A Safe Ward 5" after issuance of a public announcement-BOP representatives were in attendance

2/11/03 BOP representatives met with "Citizens For A Safe Ward 5"

Notes:

Met with Councilman Orange's Chief of Staff (date not available)

Met with Rhonda Chappelle, ANC leader of Ward 5 on two separate occasions (dates not available)

A Community Organizer with the D.C. Prisoners' Legal Services Project, Inc. was assigned in February, 2001 to assist Bannum in obtaining community support.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

RECEIVED
2003 FEB -4 PM 3:34
COUNCILMEMBER ORANGE

Office of the Director

January 31, 2003

The Honorable Vincent B. Orange, Sr.
Ward 5 Councilmember
Council of the District of Columbia
1350 Pennsylvania Avenue NW
Washington DC 20004

Ref: . 2210 Adams Street NE

Dear Councilmember Orange:

This is in response to your letter dated January 15, 2003, in which you asked that a stop work order be placed on construction taking place at the referenced address.

The intended use, a 150-bed community corrections center, is institutional. The property is located in a C-M-2 zone, which permits such a use.

The building permit that was issued for this property (#B425438) does not have a three-year expiration date. However, pursuant to DCMR 11, 801.7 (k), a..."temporary detention or correctional institution on leased property" is limited to a period of use not to exceed three years in a C-M zone, unless a special exception has been approved by the Board of Zoning Adjustment. DCRA will ensure that the certificate of occupancy for this property, when issued, specifically limits the use of this property as a correctional institution to three years, as stated in the zoning regulations.

Do not hesitate to contact me if you have additional questions.

Sincerely,

David A. Clark
Director

cc: Theresa Lewis
Denzil Noble
Robert Kelly

941 North Capitol Street, N.E., Suite 9500, Washington, D.C. 20002
Phone: (202) 442-8947 Fax: (202) 442-9445

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Administrator.

February 21, 2003

Donald Temple Esq.
Temple Law Offices
1200 G Street NW
Suite 370
Washington DC 20005

RE: 2210 Adams Street NE Zone, C-2-M

Dear Mr. Temple:

This letter is in response to your letter dated February 7, 2003, concerning the referenced address. The intended use, a 150-bed community corrections center, is institutional. The property is located in a C-M-2 zone, which permits such a use.

The building permit that was issued for this property (#B425438) does not have a three year expiration date. However, pursuant to DCMR 11, 801.7 (k), a...."temporary detention or correctional institution on leased property" is limited to a period of use not to exceed three years in a C-M zone, unless a special exception has been approved by the Board of Zoning Adjustment. DCRA will ensure that the certificate of occupancy for this property, when issued, specifically limits the use of this property as a correctional institution to three years, as stated in the zoning regulations.

In your letter you indicate that the approval of a construction permit was not consistent with the District of Columbia laws. It would assist us in providing a response if you could provide us with the sections of the codes and or laws to which you refer.

Your concerns involving previous Zoning Administrators' concurrences on non-governmental stationary have been addressed. This practice is no longer used by this office.

Should you have questions, contact me at 442-4455.

Sincerely,

Denzil Noble
Acting Administrator

Cc David Clark
Theresa Lewis
Robert W. Kelly

#166441

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

JOAN BLACK, et al.,	)	
Plaintiffs	)	
	)	**Case No. 03-CA-1639**
v.	)	**Calendar 7**
	)	**Judge Kravitz**
DISTRICT OF COLUMBIA, et al.,	)	
Defendants	)	

ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION PENDENTE LITE

This matter is before the Court on the plaintiffs' motion for a preliminary injunction. The plaintiffs allege that a halfway house scheduled to be opened later this month by defendant Bannum, Inc. at 2210 Adams Place, N.E. is a "community-based residential facility" that cannot be operated "as a matter of right" in a commercially-zoned district like the one in which 2210 Adams Place, N.E. is located. Noting that the District of Columbia Board of Zoning Adjustment has never granted either a variance or a special exception for the facility Bannum intends to operate, the plaintiffs argue that the opening of the facility would be in direct violation of well-established District of Columbia zoning regulations. The plaintiffs seek an order prohibiting defendant District of Columbia from issuing a final occupancy permit for the facility and enjoining Bannum from opening the facility pending the outcome of a hearing before the Board of Zoning Adjustment scheduled for April 22, 2003.

The defendants make several arguments in opposition to the plaintiffs' motion. Specifically, they assert that the plaintiffs lack standing to invoke the Superior Court's original jurisdiction over this matter, that the Court should defer to the primary jurisdiction of the Board of Zoning Adjustment, and that the plaintiffs have not satisfied

the strict evidentiary showing required in support of the issuance of a preliminary injunction. In this regard, the defendants assert that the facility Bannum intends to operate is properly classified under District of Columbia zoning regulations as a "temporary detention or correctional institution on leased property for a period not to exceed three years" and that such a facility may be operated as a matter of right in a commercially-zoned district. The defendants argue, accordingly, that the plaintiffs are not likely to succeed on the merits even though no variance or special exception has been granted by the Board of Zoning Adjustment. The defendants argue further that the plaintiffs have failed to establish either that they would be irreparably harmed by the opening of the facility or that the public interest would be advanced by the issuance of an injunction. Finally, Bannum argues that an injunction would cause it to breach its contract with the United States Bureau of Prisons and that it could be ruined financially as a result.

The Court has considered the plaintiffs' motion, the defendants' oppositions, and the plaintiffs' reply, as well as exhibits appended to the parties' briefs. The Court also has considered the testimony, exhibits, and arguments presented at an extensive hearing on the plaintiffs' motion held on April 3-4, 2003. For the reasons set forth herein, the Court concludes that the plaintiffs' motion must be denied.

The Court notes, as an initial matter, that the defendants have raised a significant question concerning the plaintiffs' standing to seek an injunction. D.C. Code § 6-641.09 (2001) does empower "any neighboring property owner or occupant who would be specially damaged" by a zoning violation to apply to the Superior Court for injunctive relief. However, it is not at all clear from the record that the plaintiffs are "neighboring

property owner[s]" within the meaning of the statute or that they would be "specially damaged" by the allegedly unlawful operation of Bannum's facility at 2210 Adams Place, N.E. 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 nearby would have any negative impact specific to them. Nevertheless, the Court need not resolve the standing issue at this time, in light of its determination that the plaintiffs have failed to establish that they are otherwise entitled to preliminary injunctive relief.

A plaintiff seeking preliminary injunctive relief must establish: (1) that he is likely to succeed on the merits of the underlying claim, (2) that he will suffer irreparable harm if an injunction is not issued, (3) that he will suffer greater harm from the denial of the injunction than the defendant will suffer from the issuance of an injunction, and (4) that the public interest favors the issuance of the injunction requested. *District of Columbia v. Sierra*, 670 A.2d 354, 361 (D.C. 1996). *See generally* Super. Ct. Civ. R. 65. A preliminary injunction is an extraordinary remedy, to be issued only upon a clear showing that the plaintiff is entitled to such relief. *Id.* The plaintiffs here have not met their burden.

First, the plaintiffs have not shown that they are likely to succeed on the merits. It is true, as the plaintiffs contend, that the District of Columbia's zoning regulations cite "residential halfway houses" as an example of "community-based residential facilities," DCMR § 11-199.1, and that "community-based residential facilities" may not be operated as a matter of right in commercially-zoned districts. DCMR § 11-801.2. Moreover, at the hearing on the plaintiffs' motion, the plaintiffs presented the testimony

of Denzil Noble, the Administrator of the Building and Land Regulation Administration, and Robert Kelly, the Zoning Administrator, each of whom agreed with the plaintiffs' position that the facility Bannum intends to open is a "community-based residential facility" that cannot be operated as of right at 2210 Adams Place, N.E.

Nevertheless, it remains unclear whether the Bannum facility is properly viewed under the District's zoning regulations as a "community-based residential facility" or as a "temporary detention or correctional institution on leased property for a period not to exceed three years." If it is the latter, as the defendants contend, then Bannum would be entitled to operate its facility as a matter of right in a commercially-zoned district like the one in which 2210 Adams Place, N.E. is located. *See* DCMR § 11-801.7(k). The record reflects, in this regard, that two other high-level District of Columbia zoning officials have taken a view contrary to that taken at the hearing by Mr. Noble and Mr. Kelly and have concurred in Bannum's proposed use of the property consistent with DCMR § 11-801.7(k). The relevant zoning regulations are part of a complex web of definitions and rules that have evolved from an elusive "legislative history" in an often confusing and internally inconsistent way, and their proper interpretation simply is not readily apparent.

Perhaps most important, the Board of Zoning Adjustment has never addressed the question of whether a facility like the one Bannum wishes to operate may be opened as a matter of right in a commercially-zoned district. The ultimate question for the Court on the merits of the plaintiffs' claim will be whether the government has made an administrative decision concerning this matter that is unreasonable as a matter of law. *See Brauner Building, Inc. v. Shehyn*, 442 F.2d 847, 857 (D.C. Cir. 1971). In light of the uncertainty concerning the proper interpretation of the zoning regulations, as well as the

fact that the Board of Zoning Adjustment has not yet spoken, the Court is not able to find that the plaintiffs are likely ultimately to prevail.

Second, the plaintiffs have not shown that they will be irreparably harmed by the opening of the Bannum facility. The plaintiffs are understandably worried that an influx of pre-release inmates into their neighborhood might result in a decrease in their property values and an increase in the amount of crime in their community. Any group of concerned citizens likely would share those worries. However, there is no evidence in the record to suggest that the plaintiffs' fears are based on anything more than a normal reaction to the opening of a halfway house nearby. The plaintiffs have not presented any evidence that property values have gone down or that crime rates have gone up in other communities in which halfway houses for pre-release felons have been allowed to operate. Nor have the plaintiffs mounted a serious challenge to the testimony presented by Bannum's executive director that the company runs its halfway houses with significant controls over the movement of its residents and under very tight monitoring by the United States Department of Justice. The plaintiffs' fears, although understandable, are simply too speculative to be deemed an adequate showing of irreparable harm.

Third, and finally, the plaintiffs have not shown that the public interest favors the issuance of an injunction. It is undeniable that the public has a strong interest in seeing the District's zoning regulations properly interpreted and enforced. However, in light of the uncertainty over the proper interpretation of those regulations, the public's equally strong interest in the opening of a halfway house with 150 beds for pre-release felons clearly predominates over any speculative judgment as to whether the regulations permit

Bannum's intended use for its facility as a matter of right. As the United States Court of Appeals for the District of Columbia stated in *Brawner Building, Inc.*, 442 F.2d at 850:

> The halfway house bridges the gap between institutionalized custody and private life in the community. The benefits for its residents and society are manifold: individuals can support their families by the earnings from their jobs while living at the center and thereby retain and gain self-respect; they can become contributing members of society while finishing their sentences; they can gain training and a means of demonstrating their employment ability, thus earning community acceptance; and they can reestablish and maintain contacts with their families and the realities of life in a residential setting.

These benefits are of even greater importance now due to the recent federalization of the District's criminal justice system and the resultant incarceration of our convicted felons in federal prisons around the country. All citizens of the District of Columbia have a significant interest in ensuring the existence of sufficient halfway house beds so as to make it more likely that felons convicted in our local courts will be reintegrated into our community in a successful and productive way.[1]

It is this 8 day of April 2003

ORDERED, that the plaintiffs' motion for a preliminary injunction is **DENIED**.

Neal E. Kravitz

Neal E. Kravitz, Associate Judge
(Signed in Chambers)

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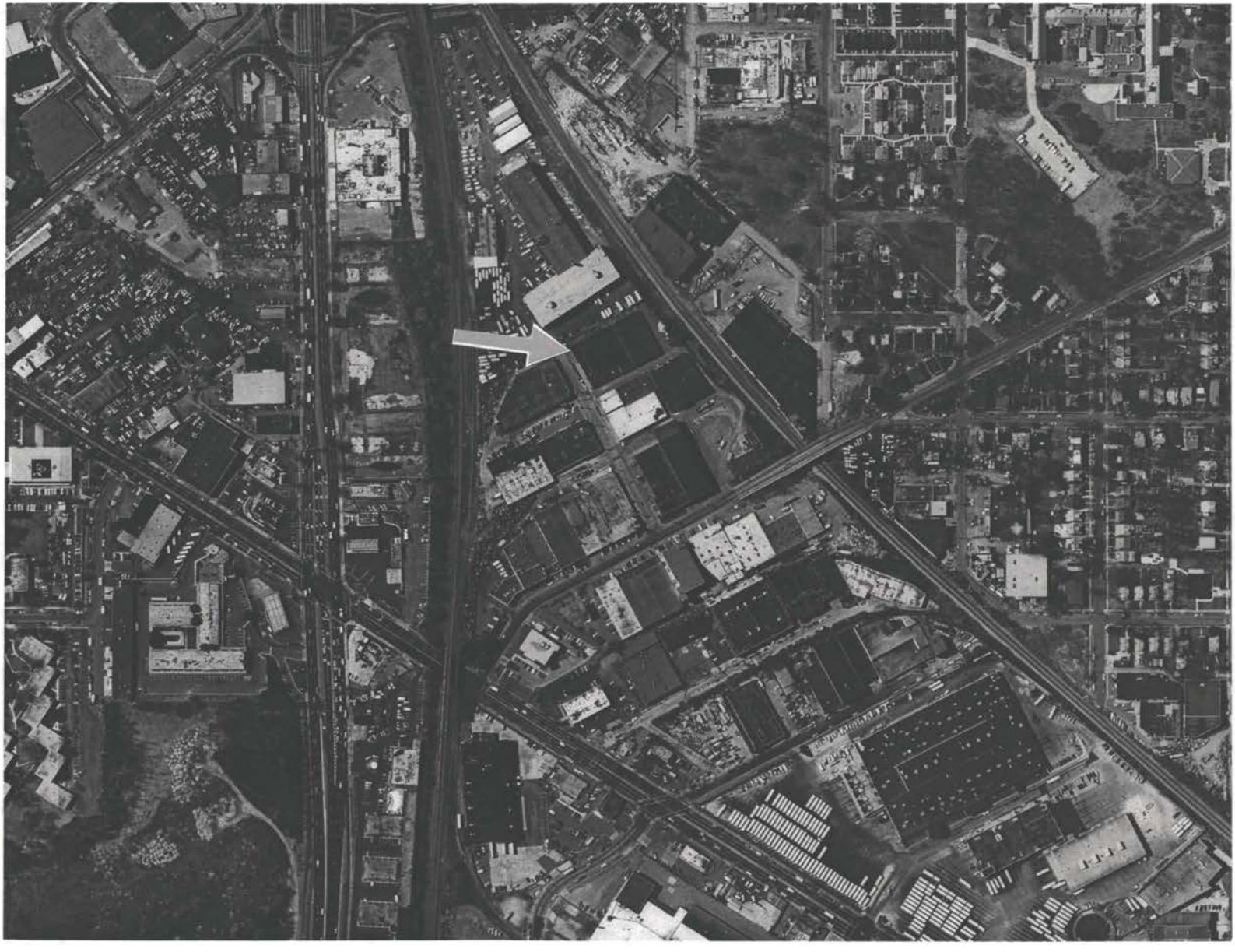
[1] Although not necessary to its analysis, the Court feels it appropriate to note that it is not persuaded by Bannum's assertion that the issuance of an injunction would cause the company's financial ruin. The defendant's claim, advanced by both its executive director and its lead counsel, is based on grossly exaggerated predictions of financial loss and is largely speculative in nature.

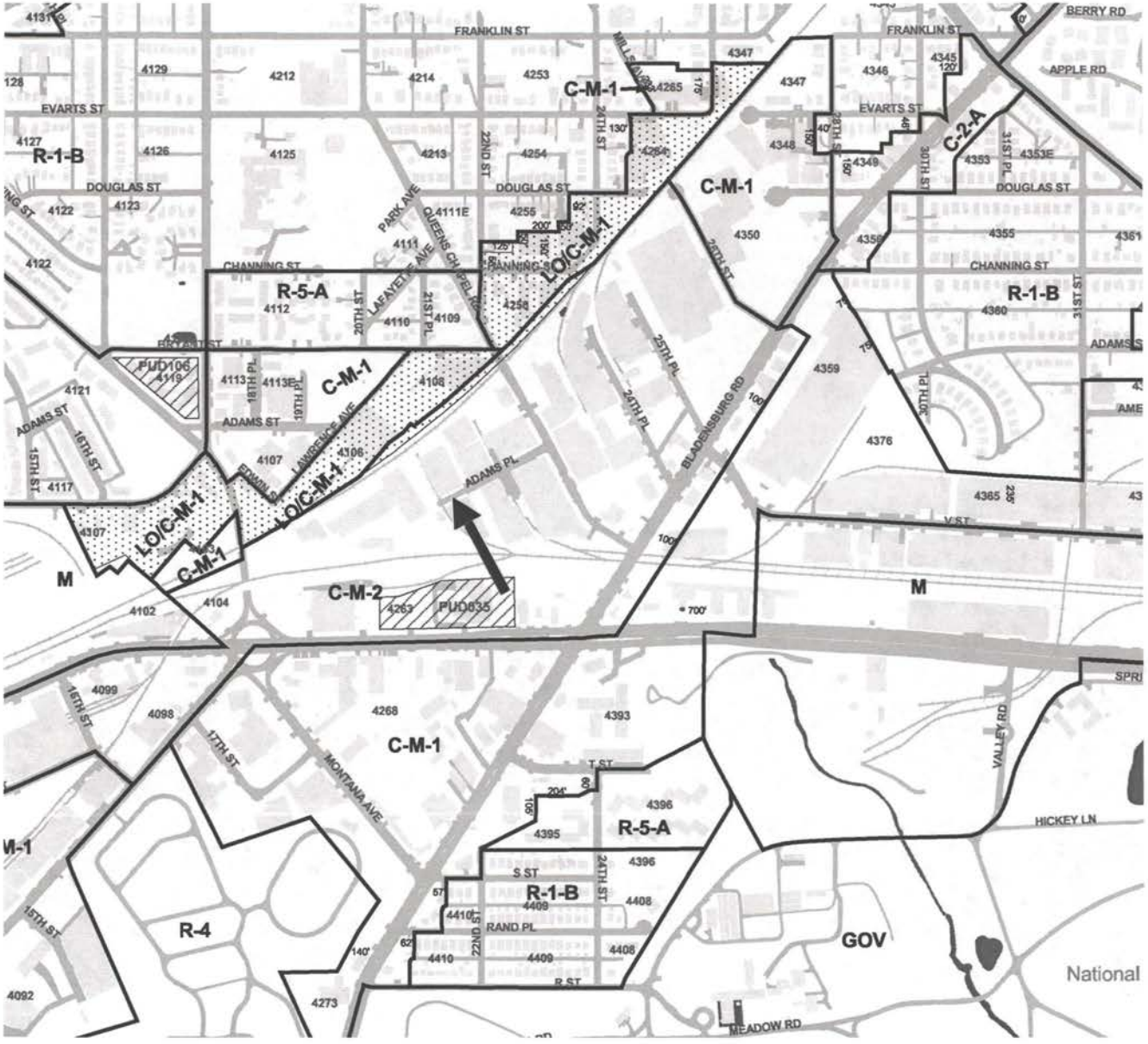
Copies mailed from chambers to:

Donald M. Temple, Esq.
1200 G Street, NW
Suite 370
Washington, DC 20005

Andrew Saindon, Esq.
Office of the Corporation Counsel
441 4th Street, NW
Washington, DC 20001

Whayne S. Quin, Esq.
2099 Pennsylvania Avenue, NW
Suite 100
Washington, DC 20006




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ADAMS PL
BERRY RD
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