BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of Advisory Neighborhood Commission 5B, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of David Clark, Director, Department of Consumer and Regulatory Affairs (DCRA) for the issuance of Building Permit No. B425438, for the renovation of a warehouse for use by a community corrections center.	)	BZA Appeal No. ~~16998~~

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DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS' SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES

In issuing Building Permit No. B425438 for a temporary "community corrections center" in a C-M District, the District of Columbia Department of Consumer and Regulatory Affairs has authorized the conversion of the subject property, on a temporary basis, into the kind of detention or correctional institution known as a "halfway house." A halfway house normally qualifies as a "community-based residential facility" ("CBRF"), 11 DCMR § 199.1 (2003), and CBRFs are ordinarily not permitted in a C-M District as a matter of right, 11 DCMR § 801.2. However, a halfway house that qualifies as a CBRF may *also* qualify as a "temporary detention or correctional institution on leased property for a period not to exceed three (3) years," in which case the halfway house *may* be located as a matter of right in a C-M District. 11 DCMR § 801.7(k).

1. A halfway house normally qualifies as a CBRF.

A "halfway house" fits within the definition of "adult rehabilitation home" – the first of seven subcategories of CBRF set forth in 11 DCMR § 199.1 – if it provides "residential care" for one or more individuals who are (1) "sixteen (16) years of age or older" and "charged by the United States Attorney with a felony offense," or (2) "twenty-

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one (21) years or older" and "under pre-trial detention or sentenced court orders." In addition, a halfway house that treats only younger offenders may still qualify as a CBRF by fitting within the definition of "youth rehabilitation home," another subcategory of CBRF set forth in 11 DCMR § 199.1.

2. A halfway house that qualifies as a CBRF may also be a "detention or correctional institution."

Assuming that a halfway house qualifies as a CBRF, it will *also* be a "detention or correctional institution" if it houses individuals who are serving sentences for criminal offenses and who are being legally "detained." For example, a halfway house in the District of Columbia Department of Corrections system qualifies as a "detention or correctional institution" because the halfway house is considered "but a substitute for a more structured environment." *Armstead v. United States*, 310 A.2d 255, 256 (D.C. 1973). A resident of the halfway house is considered to be "in the custody of the Department [of Corrections]" and "in a penal institution of the District of Columbia for purposes of the breach of prison statute." *Id.* For this reason, an inmate at a "privately owned halfway house under contract with the Department of Corrections" who "left the halfway house and failed to return" could be criminally prosecuted for prison breach. *Id.* at 255-57. Indeed, the fact that inmates in these halfway houses do not face the "physical deterrence" of "strict prison security" has been cited by the District of Columbia Court of Appeals as a reason why "the deterrence provided by the increased penalties under the felony prison break statute is particularly important." *Gonzalez v. United States*, 498 A.2d 1172, 1176-77 (D.C. 1985); *cf. United States v. Vaughn*, 446 F.2d 1317, 144 U.S. App. D.C. 316 (D.C. Cir. 1971) (participant in work release program prosecuted for escape based on failure to return to D.C. Jail).

3. Though the typical halfway house is not permitted anywhere as a matter of right, some halfway houses are permitted in a C-M District as a matter of right, pursuant to 11 DCMR § 801.7(k).

Of course, the mere fact that a halfway house qualifies as a "detention or correctional institution" does *not* mean that the halfway house can be located "as a matter of right in a C-M District." Typically, a halfway house is neither "temporary" nor located "on leased property for a period not to exceed three (3) years." 11 DCMR § 801.7(k). Therefore, the typical halfway house is merely a type of CBRF, and, therefore, *not* permitted in a C-M District as a matter of right. 11 DCMR § 801.2.

On the other hand, if a halfway house qualifies as a "detention or correctional institution" *and* is "on leased property for a period not to exceed three (3) years," then it *can* be located as a matter of right in a C-M District. A halfway house that is allowed as a matter of right in a C-M District is still a CBRF, but it is a type of CBRF that qualifies for "as a matter of right" treatment under 11 DCMR § 801.7(k).

4. Use as a "temporary detention or correctional institution on leased property for a period not to exceed three (3) years" is a CBRF use, not an "other use" within the meaning of 11 DCMR § 199.1.

The foregoing analysis can be easily reconciled with the sentence of 11 DCMR § 199.1 that provides that "[i]f an establishment is a community-based residential facility [CBRF] as defined in this section, it shall not be deemed to constitute any *other* use permitted under the authority of these regulations." (emphasis supplied) The term "any other use" in this sentence necessarily means "any use other than as a CBRF." It follows that once an establishment is determined to be a CBRF, any *non*-CBRF uses are irrelevant to its treatment under the zoning regulations.

But this provision does not preclude a halfway house from qualifying, for zoning purposes, as a "temporary detention or correctional institution on leased property for a period not to exceed three (3) years." Use as a "detention or correctional institution" – whether temporary or permanent – *is* a type of CBRF use because a detention or correctional institution is either an "adult rehabilitation home" or a "youth rehabilitation home" under the definition of CBRF:

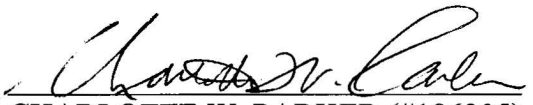
> **Adult rehabilitation home** - a facility providing residential care for one (1) or more individuals sixteen (16) years of age or older who are charged by the United States Attorney with a felony offense, or any individual twenty-one (21) years of age or older, under pre-trial detention or sentenced court orders;
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> * * *
>
> **Youth rehabilitation home** - a facility providing residential care for one (1) or more individuals less than twenty-one (21) years of age who have been detained or committed by a court pursuant to their involvement in the commission of an act designated as an offense under the law of the District of Columbia, or of a state if the act occurred in a state, or under federal law. The facility shall not house persons sixteen (16) years of age or older who are charged by the United States Attorney with a felony offense;

11 DCMR § 199.1 (2003) (definition of "community-based residential facility").

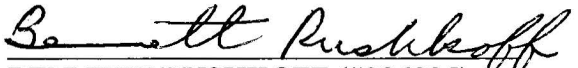
Therefore, a determination that a halfway house qualifies as a "temporary detention or correctional institution on leased property for a period not to exceed three (3) years" does not mean that the halfway house is engaged in a non-CBRF use. Rather, the halfway house is engaged in a CBRF use – temporary *adult (or youth) rehabilitation home* on leased property for a period not to exceed three years – that may be located as a matter of right in a C-M District.

Respectfully submitted,

ARABELLA W. TEAL
Interim Corporation Counsel



CHARLOTTE W. PARKER (#186205)
Deputy Corporation Counsel
Civil Division



BENNETT RUSHKOFF (#386925)
Senior Counsel
Office of the Corporation Counsel
441 4th Street, N.W., Suite 450-N
Washington, DC 20001
(202) 727-5173 phone
(202) 727-6546 fax
bennett.rushkoff@dc.gov

Attorneys for the District of Columbia

May 15, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2003, copies of the foregoing Supplemental Memorandum of Points and Authorities were faxed and mailed, first-class postage prepaid, to:

Donald M. Temple, Esq. fax: 202-628-1149
Temple Law Offices
1200 G Street, N.W.
Suite 370
Washington, DC 20005

Whayne S. Quin, Esq. fax: 202-955-5564
Mary Carolyn Brown, Esq.
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006

mailed, first-class postage prepaid, to:

Regina James, Chair
Advisory Neighborhood Commission 5B
1363 Adams Street, N.E.
Washington, DC 20018

and hand-delivered to:

Lori Monroe
Assistant Corporation Counsel
Office of the Corporation Counsel
441 4th Street, N.W., 6th Floor-N
Washington, DC 20001

Bennett Rushkoff