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

D.C. BOARD OF ZONING
2003 MAY 22 A 10:22

ANC5B'S OPPOSITION TO INTERVENOR'S
MOTION TO CONTINUE HEARING

COMES NOW Petitioner, ANC5B, and respectfully opposes Bannum's motion to continue hearing.

1. On Thursday, May 15, 2003 opposing counsel, Whayne S. Quinn, advised the undersigned by phone that Holland and Knight would be withdrawing as counsel for the Intervenor in the above captioned matter now pending before the Board of Zoning and Adjustment (BZA) and that he would be filing a motion to continue the previously scheduled May 20, 2003 hearing.

2. In so doing Bannum relies in part on the ANC5B's intention to call Denzel Noble as a witness in this hearing and suggests a conflict of interest under Rule 3.7 of the Rules of Professional Conduct. It is noteworthy that Mr. Noble did testify on April 3, 2003 in a matter now pending in the District of Columbia Superior Court. Despite the similar factual and legal issues presented by his April 3, 2003 testimony, Holland and Knight did not withdraw from that case based upon either a conflict or the appearance of a conflict. The conflict is based upon the fact that one of its attorneys, Carolyn Brown, drafted several letters which were concurred to in

BZA
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Exhibit No. 38

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2000 and 2001 by then acting Zoning Administrators.

3. Holland and Knight now indicates five (5) days before the hearing that it has a "need" to withdraw from continued representation of Bannum. Given its cloak of privilege and confidentiality , we cannot question fully this purported "need." However, we must question the Bannum ability to timely substitute counsel and the genuine need to continue the scheduled hearing on May 20, 2003. This hearing, already delayed and postponed, is intended to address an unprecedented development in District of Columbia zoning jurisprudence. An out o f state contractor has determined to proceed on a novel and questionable interpretation of DC zoning law, with the government's concurrence, that a certain correctional institution Community Based Residential Facility ("CBRF") can be located as a matter of right in a CM-2 district. The government, in sanctioning this alleged illegal interpretation of the zoning laws, has issued to the contractor both a permit and a certificate of occupancy ("COO"). The affected citizens of the area have challenged these illegal action in the local court and before the BZA and seek to hold its elected and appointed officials accountable to the enforcement of its local zoning laws. In this respect, time is of the essence and the BZA's consideration of this issue has significant legal implications. Additionally, this hearing is very time sensitive given Bannum's intention to open the halfway house at issue.

4. Bannum has been disingenuous in the adjudication of this issue and its actions and requests commands the highest scrutiny. On one hand in April 2003, Bannum urged the Superior Court to defer exercising jurisdiction over this exact issue until the BZA ruled on the pending appeal. On the other hand, in a federal law suit against ANC5B, it attempted to enjoin this hearing by federal court order, which was denied. Then at the last hearing Bannum employed

several strategic motions and unnecessarily lengthy arguments, which substantially delayed the BZA consideration of the issues before it on their merit.

5. In this respect, ANC5B notes that at least six (6) lawyers representing Bannum were present at the April 22 BZA hearing, including three from Holland and Knight. The other three lawyers represent Bannum in its previously mentioned federal law suit. For the record they are Shawn Whittaker of Gaithersburg, Maryland and Joseph A. Camardo and Kevin M. Cox of Auburn, New York. Neither of them share the apparent or potential conflict of interest noted by Holland and Knight and should be able to immediately represent Bannum in the scheduled hearing. Given their attendance and participation in the federal court proceedings on April 21, 2003 and the BZA hearing on April 22, 2003 they are invariably versed in the issues before this panel. To the extent that Bannum intends to select other lawyers who would have to familiarize themselves with the factual and legal issues at hand, it significantly prejudices the Petitioner.

6. Based upon its experience as a sophisticated litigator and as an intervenor in this matter, Bannum is fully apprized of its obligation to have legal counsel, to the extent that it expects to be fully represented in this hearing. Bannum should not be allowed to continue to delay consideration of this case to the detriment of the public interest, while steadfastly pursuing its objective of opening its facility. Since the last hearing, for example, Bannum has applied for and secured a Certificate of Occupancy to open the facility as a"Temporary Correctional Institution." This classification, we submit, still does not allow it to open as a matter of right in a CM-2 district.

7. Based thereupon, and absent BZA intervention, Bannum can now legally open its facility prior to the proposed June 17 date. Bannum will undoubtedly open its facility as soon as

possible and use its opening to circumvent even your ruling should you find that its actions are illegal. For example, if it is allowed to open prior to your resolution of the issue before you, Bannum will argue as it has in the D.C. Superior Court that its closure is economically detrimental.

8. Rather than continue the scheduled May 20, 2002 hearing, the BZA should allow ANC5B and the District to present their cases, and if necessary, allow Bannum to recall any witness that it deems appropriate. The creation of a record in this case is time sensitive for the parties and the intervenor's rights should not outweigh those of the primary parties.

9. The prejudice of further delay to the public interest far out weight the prejudice to Bannum here, especially given its consistent dilatory efforts to obfuscate any judicial or administrative process that would lead to a resolution of this case on its merits.

10. Bannum knew or should have known of its stated potential conflict of interest within days of the April 22, 2003 hearing. To allow it to benefit from further delay is simply wrong. Justice delayed is justice denied!

CONCLUSION

In the interest of fairness and protecting the public interest herein, this motion for a continuance should be denied immediately.

Respectfully submitted,

Donald M. Temple, Esq.
1200 G Street, N.W. #370
Washington, D.C. 20005
202-628-11

CERTIFICATE OF SERVICE

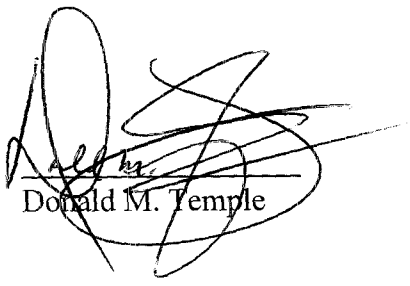
I hereby certify that on this 19th day of May 2003, a copy of the foregoing was mailed, first-class postage prepaid to:

David Laurie
Bannum, Inc.
2165 Sunnydale Boulevard, Suite C
Clearwater, FL 33765

Arabella W. Teal, Esq.
Interim Corporation
Charlotte W. Parker, Esq.
Deputy Corporation Counsel
Bennet Rushoff, Esq.
Senior Counsel
Office of the Corporation Counsel
441 4th Street, N.W., Suite 450-N
Washington, D.C. 20001

Whayne S. Quin, Esq.
Mary Carolyn Brown, Esq.
Holland & Knight, LLP
2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006

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



Donald M. Temple