REVISED

Appeal No. 16998 of Advisory Neighborhood Commission 5B (Community Corrections Center)

Hearing Dates: April 22 and May 20, 2003

PRELIMINARY MATTERS:

Motion from the Intervenor to continue the hearing. Holland & Knight has withdrawn as counsel for Bannum, Inc. and is requesting that the hearing be postponed to allow sufficient time for the retention of new counsel.

Motion objecting to the postponement from ANC 5B.

The Appellant withdrew his request to introduce the testimony of Denzil Noble from a hearing at the DC Superior Court.

RELIEF SOUGHT: 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. Appellant alleges that DCRA erred by issuing the building permit as the proposed use will allegedly be operated as a community based residential facility (halfway house) and therefore in violation of the prohibition of new residential use in a C-M District pursuant to section 801. The subject property is located at premises 2210 Adams Place, N.E.

ZONING: C-M-2 District

SQUARE & LOT: Square 4259, Parcel 154/81

APPELLANT: Advisory Neighborhood Commission 5B
To be represented by Donald M. Temple
Commissioner Regina James spoke on behalf of the ANC at the April 22, 2003 public hearing. The Office of Zoning was informed on May 8, 2003, that Ms. James is no longer

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	the chairperson of ANC 5B. The decision was made at the April 30, 2003 ANC meeting. According to the staff of the ANC, Commissioner Joan Black, the present vice-chair will serve as the acting chair.
APPELLEE:	Department of Consumer & Regulatory Affairs. Office of the Zoning Administrator To be represented by Attorney Bennett Rushoff, Office of the Corporation Counsel.
LESSEE: **INTERVENOR:**	Bannum, Inc. [Under the auspices of the Bureau of the Prisons] Exhibit Nos. 17, 20 Represented by Carolyn Brown/Whayne Quin at the April 22, 2003 hearing.
PROPERTY OWNER:	2210 Adams Place, N.E., LLC
COUNCILMEMBER:	Letter Vincent G. Orange, Ward 5 Councilmember, in opposition to the opening and operation of the proposed facility.

Bannum Inc. was award a contract by the US Bureau of Prisons to operate a temporary community corrections center at the site. The subject Building Permit was issued on January 12, 2002, to use a warehouse to accommodate a 150-bed community correctional facility. The Building Permit reads "Change Tenant Warehouse Space to 150 Bed Community Corrections Center ..." Bannum stated that because the Building Permit failed to indicate that the facility was short-term, a second Building Permit was issued to state that the facility is a 150 bed temporary community corrections center on leased property for a period of three years.

The building has undergone extensive renovations, and at the time of the public hearing, the Bannum indicated that the renovations were almost completed. The facility's anticipated opening date was May 1, 2003.

Bannum requested that the Board dismiss the case for lack of jurisdiction on the following four grounds:

1. **The ANC has failed to meet the Basic Statutory and Regulatory Requirements for Proceeding with the Appeal**

Bannum stated that the file did not contain documentation to indicate that the appeal was duly authorized and filed on behalf of the entire ANC. Bannum also indicated that the ANC did not file basic information about the case, as required by §§ 3112.10 and 3115.1 of the Regulations.

Bannum argued that the ANC 5B did not file a pre-hearing statement 14 days prior to the public hearing as required by section 3112 of the Zoning Regulations. [The ANC filed the pre-hearing statement eight days prior to the public hearing.] Bannum stated that the late filing severely prejudiced their ability to defend their interests and hinders a fair and impartial hearing.

The Board indicated that Bannum filed an extensive pre-hearing statement in anticipation of the hearing and must have known the facts of the case to do so. Additionally, the ANC indicated that the case was referred to the Board of Zoning Adjustment from the DC Superior Court and Bannum had extensive knowledge of the case's history.

The Board denied the Motion to dismiss the case because the ANC failed to meet basic statutory requirements.

2. **Motion to Dismiss Because ANC 5B Is Not An Aggrieved Party**

Bannum indicated that Advisory Neighborhood Commission 5A should be considered a participant in the case, but is not directly aggrieved by the action of the Department of Consumer and Regulatory Affairs to issue the Building Permit. Bannum stated that courts have consistently held that a person may only be considered aggrieved if that person demonstrates that he or she will be specifically and adversely affected by a zoning decision.

Bannum further argued that ANC 5B cannot be aggrieved because of the isolated location of the property, the nature of the surrounding uses in the C-M-1 District, and there is no other residential property in close proximity to the site. In sum, they argued that the site is not likely to have any adverse impacts because it is located in a desolate location.

The Board disagreed with Bannum stating that the ANC is a legally sanctioned entity that has elected members who are sanctioned by the District government and are responsible for representing the interests of its constituents.

The Board denied the Motion to dismiss the Appeal finding that ANC 5B is an aggrieved party.

3. **Motion to Dismiss Based on Timeliness**

Bannum indicated that, through counsel, they met with the District's Zoning Administrator on two separate occasions [December 11, 2000 and November 26, 2001] and received countersigned letters that the proposed facility was permitted as a matter of right in the C-M-2 District. Bannum stated that the dates of the letters should be used as the benchmark for determining when Advisory Neighborhood Commission 5B should have filed the appeal, instead of waiting for the issuance of the Building Permit.

The Board determined that the issuance of the Building Permit began the process for the ANC to appeal the action of the DCRA since none of the previous documents associated with the case were made available to the public, the documents were not available for review at the DCRA, and the ANC was not notified of their existence.

The Board denied the Motion to dismiss the Appeal because it was not timely filed.

4. **Motion to Dismiss Based on Estoppel/Latches**

Bannum argued that substantial financial investments totaling approximately $500,000 have been made in the property based on reliance on the actions of the District government and denying the appeal would cause irreparable harm. Bannum stated that the reliance on the actions of the city was based on (a) two letters that were signed by the Zoning Administrator and Acting Zoning Administrator; (b) the issuance of two Building Permits; (c) a letter from the Department of Consumer and Regulatory Affairs to Vincent Orange assuring the Council Member that the Building Permit would be issued only for three years; and (d) a letter from the Department of Consumer and Regulatory Affairs to Donald Temple [counsel for ANC 5B] reiterating that the Building Permit was properly issued.

The Board indicated that until additional information about the case is known, a decision would not be made on this Motion.

Only preliminary matters were discussed at the April 22nd public hearing. The Board requested that the parties file the following documents in the record prior to the next scheduled hearing:

- A statement identifying the official ANC position, as required by Section 3115.1 of the Zoning Regulations. ***The document was received, Exhibit No. 33***.

- A Brief from Donald Temple outlining the testimony given by Denzil Noble, Administrator, Building and Land Regulation Administration, in DC Superior Court. [The Board is to decide if the transcript of the DC Superior Court proceeding should be included in this case file.]
  Mr. Temple has withdrawn this request.

- A Brief from Donald Temple outlining the testimony given by Robert Kelly, Zoning Administrator, Department of Consumer and Regulatory Affairs, in DC Superior Court. Mr. Temple was to file the brief by April 23, 2003.

The Board is in receipt of statements in opposition to admission of the Superior Court testimony of Messrs. Noble and Kelly from Whayne Quin and Bennett Rushkoff, Exhibits 31 and 30.

The hearing was scheduled to **CONTINUE on MAY 20, 2003,** third case in the afternoon. The Board also scheduled the afternoon of **JUNE 17, 2003** for the continuation of the hearing.

The record is open; the parties may file any document that they believe could be relevant to their case.

Participating Board Members on April 22, 2003: Curtis L. Etherly, Jr., David A. Zaidain, Anthony J. Hood and Geoffrey H. Griffis.

BAB/5.15.03