BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of ANC 5B	)	
	)	
	)	BZA Appeal No. 16998
Re: 2210 Adams, Place, N.E.	)	
	)	

APPELLANT'S MOTION FOR RECONSIDERATION AS TO THE BZA REQUIREMENT THAT ANC 5B SUBMIT A SECTION 3115 REPORT

COMES NOW, ANC 5B and respectfully urges this Board to reconsider its decision that ANC 5B file a report as indicated in Rule 3115, "ANC Commission Reports." Opposing counsel is wrong in its insistence that 3115.1 applies to the present ANC Appeal.

Section 3115 governs cases where the ANC is neither party nor applicant, and when an ANC states its position on a third party's appeal or application. This rule is applicable when the BZA relies upon the ANC's views on an appeal or petition and gives it "great weight." The Board might also give close attention, as well, to Sections 3115.1(e),(f) and 3115.2. These provisions demonstrate that the ANC, unlike in this case, through their report would be voicing "issues and concerns" about an application "as related to the standard if the Zoning Regulations against which the appeal or application must be judged."

Section 3115.1 must be read in conjunction with Rule 3113, "Prehearing Procedures for Applications" and Section 3112 "Prehearing Procedures for Appeals." The latter governs the appeal presently before you. Clearly, BZA rules distinguish "applications" from "appeals." ANC 5B has complied with all stated rules governing the appeal process in Section 3112.

BZA
Case No. 16998
Exhibit No. 47

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 47

ANCS have historically made appeals to the BZA without filing authorization reports. Moreover, there are no rules in the DCMR which require the ANC to submit a report in order to participate as a party or to justify its appeal. Rule 3106.2 which excludes the ANC from the filing requirements of a party is instructive. Under this rule, the ANC is accorded a special treatment because of its representative status.

To the extent that Bannum questions whether Ms. James was authorized to institute the instant appeal, there can be no doubt that the submitted February 6, 2003 minutes of ANC 5B's meeting expressly ratified her appeal and further demonstrates ANC 5B's opposition to Bannum's halfway house. The appeal and the minutes are significant indications as to the ANC 5B 's intentions and its compliance with applicable rules. To the extent that Bannum seeks to challenge the integrity of ANC 5B's appeal before the BZA in the context of standing or authority its burden, at this stage, is insurmountable. To refute ANC's status as a party requires much more than Bannum's speculation, innuendo, or subjective interpretation of what occurred at the meeting. Bannum would have to prove to the Board that there was no ANC 5B Board meeting, no quorum, no discussion and no vote on this issue. The minutes abundantly demonstrate otherwise. The imposition of a requirement upon the ANC to show that its appeal is authorized as Bannum asserts is without legal authority.

Nonetheless, for purpose of Mr. Griffis' inquiry, the record is helpful. ANC 5B's minutes are responsive and reflect the following: (1) that a meeting of ANC 5B was held on February 6, 2003; (2) that a Quorum was established; (3) that a discussion occurred regarding Regina Janes' Appeal to the BZA in which ANC 5B expressed opposition to Bannum's halfway house; (4) that a motion was made to notify the approval; and (5) that a vote on the motion was taken and said

motion passed. It also shows that ANC 5B strenuously opposed Bannum's halfway house. This record should satisfy Mr. Griffis' inquiry. In sum, there no unmet legal requirement by ANC 5B. As such, the ANC should be allowed to continue as a party and to present its case to the BZA. To do otherwise, would create yet another unnecessary level of inquiry which would further impede and delay the Board's efficient and judicious resolution of zoning issues.

Finally, Appellant urges this Board to see through Bannum's efforts to prevent the Board from hearing the facts of this claim and making an independent and objective determination of the issues based upon their merits. Hence, a specific limited and minium time allotment should be set aside to hear this issue. Thereafter, the BZA should rule as expeditiously as possible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of Appellant's Motion for Reconsideration as to the BZA Requirement that ANC 5B Submit a Section 3115 Report were mailed, by first-class delivery, postage prepaid, this 13 day of June 2003 to the following:

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APPELLANT'S OPPOSITION TO MOTION FOR RECONSIDERATION

INTRODUCTION

COMES NOW, ANC 5B, appellant in the above-captioned appeal pending before the Board of Zoning Adjustment ("BZA"), and strenuously opposes Bannum, Inc.'s Motion for Reconsideration. The record in this case is quite significant and prior to ruling on this motion this Board should, upon review of developments to date, glean the disingenuous tactics and strategies of Bannum to abuse this process. For example, Bannum was granted a continuance at the last hearing because it stated that it did not have counsel. Yet, its current lawyers were in attendance at the April 22, 2003 hearing. Of note, Bannum's current lawyers are already counsel of record in Bannum's case against Regina James and the ANC. Thus, Bannum's current lawyers are familiar with the facts of this appeal and could have entered an appearance at the May 22, 2003 hearing, thereby precluding its continuance.

This Board should be extra judicious in its efforts to disallow Bannum to continue abusing its process. Close attention to the factual backdrop below indicates a broader picture from which this Board should make its rulings.

FACTUAL BACKGROUND

Bannum is a sophisticated contractor operating at least seventeen (17) halfway houses across the country. It is significantly familiar with zoning laws in various jurisdictions.

Bannum has a pattern and practice of using the legal process to further its creative objectives. It has shrewdly used federal and state courts across the country to take advantage of less resourceful communities. To wit, there are at least five reported federal court of appeals cases where Bannum has sought to force governments and communities to house their programs. (See, Bannum, Inc., v. Town of Ashland, 922 F.2d 197 (1990), Bannum, Inc., v. City of Louisville, 958 F.2d 1354 (1992), Bannum, Inc. v. City of St. Charles, 2 F.3d 267, Bannum, Inc. v. City of Fort Lauderdale, 166 F.3d 355 (1998), Bannum, Inc. v. City of Columbia Zoning Board of Adjustments, 335 S.C. 202 (1999)).

Prior to January 2003, Defendant BOP awarded a 5 year contract to Defendant Bannum for purposes of operating a halfway house at 2210 Adams Place, N.E. in Ward 5, Washington, D.C. This area is zoned CM-2. Under D.C. zoning regulations, a CM-2 zone is a commercial-light manufacturing district zoned for medium-bulk industrial purposes. In this instance, there are single family homes, apartments and businesses located within a mile of the Adams Place, N.E. site. Additionally, there is a public elementary school, Langdon Elementary School, located approximately 4-5 blocks from the site.

BOP awarded a contract to Bannum on the grounds that Bannum secured appropriate clearance to operate a CCC from local zoning officials and support of local elected officials. Neither was attained by Bannum prior to the BOP's awarding said contract and the BOP was

fully appraised of this fact. The term "community correctional center," albeit defined by the BOP, is not defined in the D.C. zoning regulations. According to District of Columbia Municipal Regulations ("DCMR"), a halfway house is defined as a "community based residential facility ("CBRF") and as such, is significantly regulated. The BOP uses the terms "community correctional center" and "halfway house" interchangeably. According to the BOP, Bannum's facility at 2210 Adams Place, N.E. is unequivocally a halfway house. It is therefore a CBRF.

According to DCMR, in no case can a CBRF locate more than 20 persons in any CM zone in D.C. and only *temporary* detention centers and correctional facilities can operate as a matter of right in a CM-2 zone. The halfway house proposed by Bannum is a permanent halfway house and is not a "temporary correctional institution." To date, no correctional halfway house can be or has been located as a matter of right in D.C., and the Board of Zoning Adjustment ("BZA") has approved all of the existing halfway houses located in D.C.

In the immediate situation, Bannum has not sought any BZA review or approval whatsoever to operate its 150 bed halfway house in a CM zone. In its bid solicitation to the BOP, Bannum was required to submit satisfactory proof in writing that it met all D.C. zoning requirements, including documentation from necessary local officials stating that the contract may be performed at the proposed site(s) in accordance with the current zoning and other requirements of the local jurisdiction.

Also, prior to the BOP awarding a contract Bannum was also required to demonstrate support of its proposal from local elected officials. No elected officials in D.C. support Bannum's halfway house. Through Attorney Carolyn Brown ("Brown") of the law firm, Holland & Knight, Bannum transmitted a letter dated December 2000 to Michael Johnson ("Johnson"),

then Acting Zoning Commissioner, seeking a "concurrence" with a general opinion about the location of a "temporary correctional institution" in a CM district. The letter suggested to Johnson that Brown's client was building a jail-like temporary detention facility for residents to either serve or complete their sentences. Brown's December 2000 letter omitted any reference to the term halfway house or community based residential facility. Brown's letter also failed to disclose to Johnson that Bannum intended to use this letter as an official verification of compliance with D.C. zoning laws for purposes of its intended 150 bed halfway house and to secure a contract from the BOP. Brown's letter also stated that Bannum intended to lease the property for use as a residential CCC under a contract with the Department of Justice ("DOJ"), that the area was zoned as CM-2 and that a temporary detention or correctional institution is permitted on leased property in the CM-2 district as a matter of right for a period not to exceed three (3) years.

In November 2001, Brown elicited a similar "concurrence" for a CCC from then Acting Zoning Administrator, Olutoye Bello ("Bello"). Brown's letter to Bello also failed to state that Bannum intended to operate a 150 bed halfway house or CBRF at the Adams Place, N.E. location. In response to Brown's letter, Bello, like Johnson, gave a written concurrence on the stationary of Bannum's law firm, Holland & Knight. When Bannum sought and secured the aforementioned "concurrences," neither Brown nor Bannum provided copies of Bannum's BOP contract, BOP's contract solicitation documents, Bannum's contract proposal to the BOP nor Bannum's lease to Johnson or Bello. Hence, Johnson's and Bello's knowledge as to Bannum's specific use intentions were significantly limited. Despite knowledge that use of land for the

purpose of a halfway house required BZA approval and issuance of a variance or exception, Bannum represented to the BOP that it secured local zoning approval. To date, it not submitted these documents to the BZA, which precludes it from fully assessing the issue before it.

Prior to making its proposal and being awarded the BOP contract, Bannum knew or should have known that D.C. zoning laws do not authorize CBRFs or halfway houses with more than 20 persons to be located in any S, C, CM, R, or W district in D.C. absent BZA approval. Bannum, and its Agent, Holland & Knight, clearly knew that a CBRF of 150 or more individuals is not permitted as a matter of right in a CM-2 district. Instead of complying with the law, Bannum took steps to circumvent the law, the zoning review process and the rights of affected residents to comment on Bannum's intended use. Moreover, D.C. government and the BOP have sanctioned Bannum's illegal actions. In so doing, Bannum, the BOP and D.C. have Bannum to locate a 150 bed halfway house, which could house up to 250 returning federal inmates within six (6) blocks of a residential community and an elementary school, and within two (2) blocks of a group home for abused and neglected girls.

The D.C. government has not issued any comprehensive and use specific zoning rulings or decisions pursuant to a full and complete disclosure of Bannum's intentions. Thus, Bannum in pursuing its halfway house in an illegal fashion has acted at its own peril.
The BOP awarded a contract to Bannum to operate a *permanent* CCC, not a *temporary* detention center nor a *temporary* correctional institution. Invariably, to secure this contract, Bannum advised the BOP that it could operate a permanent halfway house as a matter of right at the Adams Place N.E. site, even though its correspondence to the Zoning Administrators implied that its CCC would be temporary in nature. Pursuant to the contract award, Bannum leased the

warehouse space located at 2210 Adams Place in Northeast Washington, D.C. in order to open a permanent CCC.

In October 2002, Bannum applied for a permit from the D.C. Department of Consumer and Regulatory Affairs ("DCRA") stating its intentions to convert a warehouse to a 150 bed CCC. Bannum, once again, purposefully omitted from its application that it intended to operate a halfway house in a restricted district. On or around December 12, 2002, the DCRA approved Bannum's permit.

In January 2003, certain Ward 5 residents notified the Ward 5 community-at large of Bannum's intentions to open a 150 bed halfway house without first securing zoning board approval in the nearby CM-2 zone and that such use was illegal under DC zoning laws. Ward 5 residents immediately began to express their opposition to their elected officials and began to sponsor community meetings. Among their chief concerns was that Bannum's location of the CBRF near an elementary school and in all girl home created public safety risks to students and young girls, that environmental considerations are not addressed, that the site threatened their property values and unjustly nullified their opportunity to participate in a public review process.

Tax paying Ward 5 citizens were especially concerned that the Mayor of D.C. and DCRA endorsed, sanctioned and have legally defended Bannum's blatant violation of D.C. zoning laws.

On January 13, 2003, D.C. City Councilmember Vincent Orange ("Orange") of Ward 5 wrote to David Clarke ("Clark"), Director of DCRA, protesting DCRA's issuance of a permit to Bannum. Orange urged Clarke to immediately issue a stop work order of the Bannum renovation. (Attached.) On January 23, 2003, ANC 5B Commissioner Regina James ("James")

appealed DCRA's issuance of a permit for a CCC, alleging that Bannum's facility was in fact a CBRF and required BZA approval.

In a January 31, 2003 letter, Clark rejected Councilmember Orange's urging, and stated that Bannum's actions were legal since its facility was "institutional" in nature. At that time, neither Clark nor the DCRA were in possession of any of the pertinent documents related to Bannum's intended use, including but not limited to Bannum's lease, the BOP's solicitation document, Bannum's proposal to the BOP or Bannum's contract with the BOP. Moreover, up to this point Bannum refused to acknowledge that its site was a halfway house.

In a February 7, 2003 letter, Concerned Citizens of Ward 5, through Counsel, wrote a letter to Clark explaining in detail that the site being built was a halfway house, not a detention facility, and that Bannum's intended use was illegal. On February 21, 2003, on behalf of Clark, Denzil Noble ("Noble"), head of the Office of Building and Land in DCRA, responded to the February 7, 2003 letter, repeating almost verbatim Clarke's January 31, 2003 response to Vincent Orange. Noble, too, responded without the benefit of reviewing or possessing any pertinent documentation related to Bannum's BOP contract.

Clarke and Noble, on behalf of DCRA, jointly refused to enforce applicable zoning laws relative to Bannum's intended use of the Adams Place, N.E. site. Thence, each both boldly violated D.C. zoning laws and sanctioned Bannum's illegal application of D.C. zoning laws. On or around May 2, 2003, Bannum applied to DCRA for a Certificate of Occupancy ("COO") for a "temporary correctional institution." On the same date, DCRA, again without benefit of possession and/or review of the pertinent documents from BOP or Bannum's lease, issued a COO to Bannum to operate its "temporary correctional facility." This COO effectively

allows Bannum to operate a halfway house, under the undefined auspices of a community correctional center, up to 150 persons in a CM district as a matter of right. This is an unprecedented government action in D.C. zoning history.

On May 13, 2003, DCRA General Counsel Karen Edwards indicated in response to a letter from Citizens for a Safe Ward 5 that the DCRA Office of General Counsel "has reviewed the process taken by Building and Land Regulation Administration ("BLRA") regarding the applications for this project (permit and COO). DCRA did apply the appropriate law and regulations. In the same letter, Ms. Edwards said that DCRA and herself had not reviewed the BOP award contract nor the lease agreement to verify the accuracy and integrity of Bannum's theretofore representations to the city. Hence, DCRA and its attorneys authorized a 150 bed halfway house as a matter of right in a CM 2 district for a purported 3 year period without reference and review of pertinent contract conditions and lease. The contract at issue is a 5 year contract, not a 3 year contract.

Given the futility of the affected citizens' efforts to require the government to enforce its own laws, which include public notice of Bannum's halfway house intentions and holding public hearings, several residents who live in close geographical proximity to the site filed a civil action in the District of Columbia Superior Court seeking a declaratory judgment and injunctive relief *pendente lite* (pending outcome of the BZA consideration of Regina James' appeal). In the Superior Court action, Bannum persuasively argued that the BZA should first rule on the pending ANC 5 B appeal before the Superior Court exercised jurisdiction or take any action. On April 3, 2003, the D.C. Superior Court nevertheless heard evidence in support of the Motion for injunctive relief. On April 17, 2003 the court denied Plaintiffs' Motion for injunctive

relief, ruling among other things, that the BZA should first consider the matter and that its decision would be instructive to the court.

D.C. government officials representing the BLRA have made several admissions against its interest. When examined by Plaintiffs' counsel, Denzil Noble, a high ranking DCRA official stated the following:

> Q. Would you tell the Court, please, relative to your understanding of community based residential facilities, in particular halfway houses, can a community based residential facility, based on your experience, be located in a CM-2 district as a matter of right.
>
> A. *No it can't.* (Emphasis added.)
>
> Q. If an individual or corporation or entity wanted to pursue or to build or locate a CM-2, excuse me, a community based residential facility / halfway house in a CM-2 district under D.C. zoning laws, what would be required?
>
> A. *A special exception from the Board of Zoning Adjustment.* (Emphasis added.)
>
> Q. Can you explain to the court, please, what a special exception procedure entails?
>
> A. It's an application to BZA. It's a public hearing. They then review the projects.
>
> ....
>
> Q. Would there be hearings, public hearings, where people who live in the area where they're proposing to locate this community based residential facility could testify?
>
> A. It's a public process.

Noble also stated very clearly that a CCC would be something like the D.C. jail, which is a detention center. When the court inquired further about this issue, Noble stated that there is no other facility in the District of Columbia that falls within the definition of a

community correctional center, to which Noble responded: "No, I don't. I can't think of any." Noble also clarified the difference between a halfway house and a detention center: "... [a] halfway house is where people go and come. The detention center, correctional institution, is where they are housed for hours." Under D.C. zoning laws, Noble stated that there's no situation where a community based residential facility with 15 or more people can be located as a matter of right.

Despite Noble's and Kelly's testimony that Bannum was acting in violation of D.C. Zoning laws, the BOP, DCRA's General Counsel and D.C.'s Corporation Counsel continue to support Bannum's illegal actions. At all times referenced herein, D.C.'s Corporation Counsel has represented the government against Ward 5 citizens and supported Bannum in D.C. Superior Court and in the BZA. All efforts to enforce applicable zoning laws have been futile.

According to Title 11 DCMR §199, a halfway house is a "residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living." The DCMR further states: "If an establishment is a community based residential facility as defined in this section, ***it shall not be deemed to constitute any other use permitted under the authority of these regulations***." (Emphasis added.) Hence, the Bannum site cannot be a halfway house and a temporary correctional institution. Title 11 DCMR unambiguously and consistently restricts the use of a CBRF with more than 20 persons in the varied zoning districts and requires zoning approval for most, if not all CBRFs . Title 11 DCMR at Chapter 8 specifically excludes halfway houses or CBRFs as a matter of right in CM-2 districts noting further and expressly that CBRFs shall not be considered as commercial for purpose of this section.

On April 21, 2003, Bannum, consistent with its aggressive litigious practices, sued Darryl Carter, Concerned Citizens of Ward 5, Regina James and ANC 5B in the United States District Court for the District of Columbia. Contrary to it's arguments in the D.C. Superior Court, Bannum sought in its federal law suit to enjoin the BZA from considering ANC 5B's appeal of DCRA's decision to issue Bannum a permit. Bannum's requested relief demonstrated its disingenuousness and revealed that its actual intentions were to obfuscate the zoning review process, subvert neighboring citizens' rights and the public interest in this case and intimidate and retaliate against those private citizens leading public opposition to Bannum's halfway house. The court denied Bannum's motion

At the first BZA hearing on April 22, 2003, Bannum caused the BZA not to consider the substantive issues on appeal by filing and arguing at great length several preliminary motions. As a result of Bannum's time consuming arguments, the BZA delayed their hearing until May 22, 2003. On May 22, 2003, Bannum requested and was granted a continuance because Holland & Knight, LLP, its counsel of record, withdrew. The next hearing is scheduled for June 17, 2003.

On May 23, 2003, five (5) D.C. councilmembers urged Clark to suspend Bannum's COO pending the BZA's June 17, 2003 consideration of the issue. Bannum is now receiving inmates. To date, Bannum has secured both an illegal permit and an illegal Certificate of Occupancy, completed its renovation and began to receive residents for purposes of operating a CBRF in violation of D.C. zoning laws, while simultaneously avoiding scrutiny of any and all review by the DC Board of Zoning Adjustment.

ARGUMENT

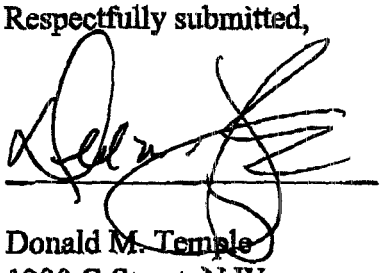
It is clear that Bannum is using whatever legal tactics it can to obfuscate and impede the BZA process. Ward 5 citizens, its ANC 5B, and its city Council member are all aggressively opposed to Bannum's illegal use of the Adams Place site as a halfway house as a matter of right. This Board has ruled on the issues that Bannum raises again in its Motion for Reconsideration. According to the Board's rules, the ANC clearly enjoys a unique status relative to zoning issues in their respective districts.

As to the merits of Bannum's Motion for Reconsideration, the Appeal in this case was timely filed, and the record herein reveals that it is Bannum that is approaching the issue at hand in bad faith and violating District of Columbia law. It is Bannum that argues one way in the D.C. Superior Court and another in D.C. federal court and then before you. It is Bannum that has come into Washington, D.C. and has sued the ANC and its Commissioner for filing an appeal before the BZA.

CONCLUSION

The BZA should not allow Bannum nor any other party to trivialize and prostitute its integrity and process. Accordingly, Bannum's Motion for Reconsideration should be denied without argument.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of ***Appellant's Opposition to Motion for Reconsideration*** were mailed, by first-class delivery, postage prepaid, this 5th day of June 2003 to the following:

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2003 JUN 13 PM 4:56

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DATE: 6/13/03

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PAGES (WITH COVER):

FROM: Donald M. Temple, Esq.

NOTES: Board of Zoning Adjustment Motions
Re: Application Appeal #16998
2 Motions Attached

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