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

DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS' MOTION FOR AFFIRMANCE OF DECISION AT CONCLUSION OF APPELLANT'S CASE

Appellant Advisory Neighborhood Commission 5B ("ANC") having completed the presentation of its case-in-chief at the June 17, 2003 hearing in this appeal, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) now moves the Board to affirm DCRA's decision to issue Building Permit No. B425438. The ANC has failed to present any evidence that might provide a basis for the Board to reverse or modify the decision to issue the permit.

DCRA's issuance of Building Permit No. B425438 was based on 11 DCMR § 801.7(k), which allows a "[t]emporary detention or correctional institution on leased property for a period not to exceed three (3) years" as a matter of right in a C-M District. Exh. 19 (2/21/03 letter from Noble to Temple). The location of Bannum Inc.'s ("Bannum's") proposed facility was in the C-M-2 District. Exh. 19 (Permit Nos. B425438 & B448325).

The ANC has not pointed to any information in Bannum's application for the building permit, Exh. 19 (attachment to Permit No. B425438), that would have justified a decision by DCRA to deny permission for the building at 2210 Adams Place, N.E., to be

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converted into a "community corrections center." As long as it was *possible* for Bannum's proposed "community corrections center" to be used as a "[t]emporary detention or correctional institution on leased property for a period not to exceed three (3) years," DCRA had no basis for denying the application. Therefore, unless the proposed use as a "community corrections center" (as that term is used in Bannum's application) was simply inconsistent with use as a "temporary detention or correctional institution" (as that term is used in 11 DCMR § 801.7(k)), DCRA's decision to issue the permit must be affirmed.

The ANC contends that a "community corrections center" is the same thing as a "halfway house,"[1] and that a halfway house cannot be a "temporary detention or correctional institution" under 11 DCMR § 801.7(k). But, as explained in DCRA's Supplemental Memorandum of Points and Authorities, Exh. 34 (p.2), a halfway house qualifies as a "detention or correctional institution" *if* it houses individuals who are serving sentences for criminal offenses and is "but a substitute for a more structured environment." *Armstead v. United States*, 310 A.2d 255, 256 (D.C. 1973). If the halfway house is *also* a "temporary . . . institution on leased property for a period not to exceed three (3) years," then it is allowed in a C-M district as a "matter of right" under § 801.7(k).[2]

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[1] *Cf. Brawner Building, Inc. v. Shehyn*, 442 F.2d 847, 849 (D.C. Cir. 1971) ("A community correctional center, also known as a halfway house, helps prisoners through the difficult and crucial period of reintegration into the community.").

[2] Because a "temporary detention or correctional institution" is a type of "community-based residential facility" ("CBRF"), a halfway house may qualify *both* as a CBRF *and* as a "temporary detention or correctional institution." Exh. 34 (DCRA's Supp. Mem. of Pts. and Authorities).

The record includes at least one unsupported assertion that Bannum's community correctional center is not "temporary . . . for a period not to exceed three (3) years," 11 DCMR § 801.7(k), because Bannum is operating the facility pursuant to a five-year contract with the Bureau of Prisons. *E.g.*, Exh. 16 (Exh. 5 thereto). Had Bannum's application for a building permit disclosed to DCRA that the renovated facility would not be used as a "temporary" institution under 11 DCMR § 801.7(k), DCRA would have had a reason to deny the building permit. But the ANC does not contend that the existence of a five-year contract was ever disclosed to DCRA in connection with Bannum's application for a building permit. Thus, DCRA did not err in issuing a building permit that authorized Bannum to renovate the building for use, upon issuance of a certificate of occupancy, as a "temporary detention or correctional center."

The fact that the ANC appears unable to challenge DCRA's issuance of the building permit does not necessarily mean that the ANC is without a remedy. By showing that Bannum made a "false statement or misrepresentation of fact" in its building permit application, or that Bannum's "construction does not comply [with] the permit" that was issued, the ANC could provide DCRA with a basis for revoking the permit. 12A DCMR § 108.9 (1999). Likewise, by showing that Bannum's "actual occupancy does not conform with that permitted" by the certificate of occupancy, the ANC could provide DCRA with a basis for revoking the certificate of occupancy. 12A DCMR § 118.4.1 (1999). A "refusal" by DCRA to revoke a building permit or a certificate of occupancy could then be appealed to this Board. 11 DCMR § 3112.2 (2003).

In conclusion, a contention by the ANC that Bannum is not operating its "community correctional center" as a *bona fide* "temporary detention or correctional facility," if supported by evidence, might provide a basis for revoking Building Permit No. B425438 or the subsequent certificate of occupancy. However, the ANC has not demonstrated that there is any basis for overturning DCRA's decision to issue Building Permit No. B425438.

Respectfully submitted,

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Attorneys for the District of Columbia

June 30, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2003, copies of the foregoing Motion for Affirmance of Decision at Conclusion of Appellant's Case were faxed and mailed, first-class postage prepaid, to:

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Advisory Neighborhood Commission 5B
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and hand-delivered to:

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Office of the Corporation Counsel
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Bennett Rushkoff

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PROPOSED DECISION AND ORDER

Appellant Advisory Neighborhood Commission 5B ("ANC") having presented its case-in-chief on June 17, 2003, the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") filed a motion on June 30, 2003 requesting that the Board affirm DCRA's decision to issue Building Permit No. B425438. The parties having briefed the motion, and the Board having been advised by its counsel, the Board determines that Appellant has not demonstrated that there is any basis for overturning DCRA's decision to issue a permit authorizing the conversion of the building at 2210 Adams Place, N.E., into a "community corrections center."

It is therefore **ORDERED** that DCRA's motion is hereby **GRANTED,** and DCRA's decision to issue Building Permit No. B425438 is hereby **AFFIRMED**.

VOTE:

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE IN TEN DAYS AFTER IT BECOMES FINAL.