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' OPPOSITION TO BANNUM'S MOTIONS FOR EXTENSION OF TIME AND FOR CONTINUANCE

The District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") opposes Intervenor Bannum, Inc.'s ("Bannum's") motions for an extension of time (in which to file a dispositive motion) and for a continuance of the hearing in this case, which is now scheduled to resume on July 8, 2003. Only in unusual circumstances should the Board stop taking evidence in the middle of a hearing in order to give a party time to brief a motion. The Board had hoped to complete the evidentiary hearing in this appeal on June 17; unfortunately, due to the lateness of the hour, the hearing had to be continued to July 8, the next available date. Having decided to continue the hearing, it made sense for the Board to allow Bannum to use the time between June 17 and July 8 to brief a dispositive motion. However, a decision to continue the hearing one more time would have the potential for substantial delay, especially in view of the Board's tight schedule between now and September.

Bannum insists that it needed a copy of the transcript of the June 17 hearing in order to prepare its motion. But Bannum's proposed motion was analogous to a motion

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for an affirmance at the conclusion of a plaintiff's case-in-chief, which is normally made orally and without the benefit of a transcript. If, as Bannum said, ANC 5B's case-in-chief is exceedingly weak, then Bannum's motion should not have required a verbatim record of the testimony heard on June 17. Rather, a brief summary of the testimony, based on counsel's notes, would have sufficed. Indeed, DCRA was able to prepare its own Motion for Affirmance of Decision at Conclusion of Appellant's Case – which was filed in a timely manner on June 30 – without the benefit of a hearing transcript. Normally, a motion for an affirmance at the conclusion of an appellant's case offers the possibility of a more expeditious resolution of an appeal. Had Bannum filed such a motion by June 30, the deadline set by the Board, the Board could have decided the motion as a preliminary matter on July 8. By seeking an extension of time in which to file the motion, Bannum threatens instead to delay further the resolution of this appeal.[1]

Bannum's motions for an extension of time and for a continuance should be denied.

Respectfully submitted,

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[1] This is the second time that Bannum has sought a continuance in this case. On May 20, 2003, the Board granted Bannum's motion for a continuance in order to allow Bannum time to retain new counsel.

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2003, copies of the foregoing Opposition are being faxed and mailed, first-class postage prepaid, to:

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