BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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

BANNUM, INC.'S MOTION FOR AFFIRMATION OF DECISION AT CONCLUSION OF APPELLANT'S CASE

COMES NOW, BANNUM, INC. (hereinafter "Bannum") and files this Motion for Affirmation of Decision at Conclusion of Appellant's Case and states as follows:

Introduction

As stated by Bannum's attorney at the close of the June 17, 2003 hearing, and at the close of Appellant's case, Appellant has the burden of proof in this appeal and has simply failed to meet it. There is a presumption that DCRA acted properly in granting the building permit to Bannum, and Donald Temple and Appellant have failed to rebut that presumption. There is nothing in the record to permit this Board to grant the appeal. In fact, Appellant went so far as to present evidence and testimony that actually supports DCRA's granting of a building permit to Bannum. As such, the Board now has the authority to deny Appellant's appeal, and affirm the decision made by the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") in granting Building Permit No. B425438 for the renovation and construction of a community corrections center ("CCC") at 2210 Adams Place, NE, without the need for any further proceedings.

At the close of the June 17, 2003 hearing, Bannum's attorney represented to the Board that it could get the instant motion filed by June 30, 2003 if Bannum had a copy of the transcript at that time (see pg. 327 of the June 17, 2003 hearing transcript). Bannum notes that the instant

BZA
Case No. 16998
Exhibit No. 68

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 68

motion was not filed by June 30, 2003 since the transcript was not available from the Board until July 1, 2003. Bannum immediately obtained a copy, immediately reviewed it, and immediately prepared and filed this motion without delay.

Background

By way of background, Bannum submitted an application for a building permit to DCRA on October 9, 2002, wherein it stated its proposed use as a "**community correction center**" (See Exhibit 19). Bannum was very explicit and forthcoming about its intended use for the property in the application. The term "community corrections center" is language taken directly from the BOP's RFP, and Bannum's resultant contract with the BOP (See ANC 5B Document #3, "Statement of Work (SOW) Community Corrections Center (CCC)." This term was recently explained in very eloquent terms by the Court in Howard v. Ashcroft, 248 F.Supp.2d 518 (M.D.La.2003), which was specifically addressing Bannum's community corrections center in Orlando, Florida:

> So, the question the court faces would appear to have evolved into the question whether community confinement centers are penal or correctional institutions...**It becomes obvious, without going far, that a community corrections center is in fact a penal or correctional institution.**
> ...
> Moreover, the court finds that community confinement centers are 'places of imprisonment' as that phrase is most naturally understood.
> ...
> Placement in a CCC allows an inmate to leave the CCC for the purpose of employment, but otherwise requires the inmate to be in the CCC. As the joint report by the Sentencing Commission and the Bureau point out, '[e]xcept for employment and other require activities, offenders in the CCC component must remain in the facility at all times.'
> ...
> The inmates do not do not return to their homes. They do not set their own schedules. They are confined for all practical purposes and under the control of the Government through its agents. The

> *degree* of confinement is not determinative of *whether* these inmates are confined. Therefore, **the court cannot escape the conclusions that a term served in a CCC is a term of confinement and that a term of confinement is a term of imprisonment**...

Howard v. Ashcroft, 248 F.Supp.2d 518, 538-541 (M.D.La.2003).

In response to Bannum's building permit application, on December 12, 2002, DCRA issued a building permit to Bannum to "Change tenant warehouse space to 150 bed community corrections center."

On January 8, 2003, Bannum submitted an application to DCRA to revise building permit 425438 issued by DCRA on December 12, 2002 to state the proposed use as a "**3 year temporary use community corrections center**" (See Exhibit 19).

On January 17, 2003, DCRA issued a building permit to Bannum (Permit No. B448325) which revised Building Permit No. 425438 to read "3 yr temporary use," and authorized Bannum's use for a "[t]emporary 150 bed community corrections center on leased property for a period not to exceed (3) years" (See Exhibit 19).

Subsequently, on January 24, 2003 Regina James filed an appeal **of the December 12, 2002 building permit (No. 425438) only**" (See Exhibit 1).

Subsequent to the filing of the aforementioned appeal of the building permit, on May 2, 2003, DCRA issued a Certificate of Occupancy to Bannum for a "temporary correctional institutional (sic) on leased property for a period not to exceed three (3) years" for the community corrections center at 2210 Adams Place, NE (See Exhibit 35). The Certificate specifically states that it "**expires on May 02, 2006.**"

Argument

In his opening statement, Mr. Temple argued that the Bannum facility is a "halfway house" as allegedly supported by the Statement of Work ("SOW") for a community corrections center, which is located at BZA Exhibit 16, Sub-Exhibit No. 3 (see page 198 of the June 17, 2003 transcript). Mr. Temple even invited the Board to go and review the SOW in this regard. Perhaps Mr. Temple has never actually read the SOW, for if he had he would have seen that it actually states that **"[a] CCC is considered a penal or correctional facility"** (see Attachment G, page 1 of 5 of SOW, a copy of which is attached hereto at Exhibit "1" for the convenience of the Board).

Mr. Temple then called several witnesses to allegedly testify in support of Appellant's position that DCRA had improperly issued a building permit to Bannum. However, Mr. Temple's witnesses offered no testimony whatsoever to support this argument. Specifically, none of Appellant's witnesses testified that Bannum's CCC is not a "temporary detention or correctional institution on leased property for a period not to exceed three (3) years." In fact, Appellant's witnesses actually made admissions which support DCRA's decision to issue the building permit to Bannum. Specifically, Appellant's witnesses testified as follows:

Council Member Phil Mendelson: Mr. Mendelson admitted that he does not know what Bannum does (see pg. 214 of June 17, 2003 transcript (hereinafter just referred to a "transcript")), and also admitted that Bannum's proposed use of the property is only for three years, and that the certificate of occupancy is only for three years (see pgs. 218-19 of transcript).

Denzil Noble: Mr. Noble admitted that Bannum is a temporary correctional facility that can be zoned as a matter of right in a CM-2 district if is on leased property for a period not to exceed three years (see pgs. 265-66 of transcript). Upon further

questioning from Mr. Temple, Mr. Noble admitted that Bannum's CCC at 2210 Adams Place, NE will only operate for a period of three years (see pgs. 269-70 of transcript).

Joan Black: Next, Mr. Temple called Ms. Black to testify, the acting Chair of ANC Ward 5B, who offered nothing to support Appellant's argument that DCRA improperly issued a building permit to Bannum. Ms. Black admitted that Appellant is not in opposition to "halfway houses," but that her only complaint is that Appellant was not allegedly not notified of Bannum's intention to open a CCC at 2210 Adams Place, NE (See pg. 274 of transcript).

Martha Pippano: Mr. Temple called Ms. Pippano, who testified that she is primarily concerned about "environmental hazards" associated with halfway houses, not whether Bannum's permit was properly issued by DCRA (see pgs. 281-84 of transcript). In her opinion, Ms. Pippano felt "gigantic coverup was perpetuated," but that she does not even know what Bannum does because she has not been to Bannum's facility since it opened (see pgs. 282 and 288, respectively, of transcript).

Regina James: Perhaps the most startling compelling testimony was offered by Regina James. Ms. James testified that she filed the appeal (pg. 295 of the transcript), and that she tried unsuccessfully to obtain copies of Bannum's lease and BOP contract to see what the intent of Bannum was (see pg. 296 of transcript). Under questioning from Board member Etherly, Regina James admitted that if the Bannum facility closes down after three years, that would be satisfactory (see pgs. 296-97 of transcript) (Member Etherly: "If you saw a C of O that said three years and then this place closes down, would that be satisfactory in your opinion?" Ms. James: "Under the current definition, sir, yes. That would be satisfactory.") Ms. James further testified that she looked up in the dictionary the definition of "temporary detention or correctional institute," and allegedly it is defined there as a "lock-up" (see pg. 297 of

transcript). Ms. James then goes on to testify that Webster's dictionary defines this term as "incarceration," and that the prisoners "can't go anywhere" (see pg. 297-98 of transcript). However, when pressed by DCRA counsel Mr. Rushkoff on cross-examination, Ms. James could not answer whether Webster's defined "temporary detention or correctional institute" as "incarcerated" or "detained," but that the definition came directly out of "Standard Webster's Dictionary" (see pg. 303 of the transcript). However, the Board should take judicial notice that there is no definition for "temporary detention or correctional institute" contained in Webster's Dictionary. For a definition of "community corrections center," Bannum refers the Board back to the definition stated in the BOP's Statement of Work, submitted into evidence by Appellant, and attached hereto as Exhibit "1," which states that **"[a] CCC is considered a penal or correctional facility."**

Conclusion

As states herein above, Appellant has failed to meet its burden of proof in this appeal. Appellant has put nothing into the record, either documentary evidence or testimony, which would permit this Board to grant the appeal. Appellant went the other way and actually presented evidence and testimony that supports DCRA's granting of a building permit to Bannum. Therefore, the Board now has the authority to deny Appellant's appeal, and affirm the decision made by DCRA in granting Building Permit No. B425438 to Bannum without the need for further proceedings.

Dated: July 3, 2003

Respectfully submitted,

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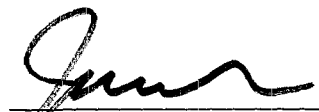
Attorney for Intervenor Bannum, Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Motion for Affirmance of Decision at Conclusion of Appellant's Case was served this 3rd day of July, 2003, by facsimile transmission and first-class mail, postage prepaid, to the following:

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EXPLANATION OF TERMS

AVERAGE MONTHLY POPULATION (AMP) - The contractor adds the days invoiced on the monthly bill for three consecutive months and divides by three to determine the AMP.

BUREAU OF PRISONS (BOP) - A component of the Department of Justice responsible for federal offenders sentenced to a term of imprisonment.

BOP INTERNET HOME PAGE - www.bop.gov

CALIFORNIA TECHNICAL BULLETINS - The California Bureau of Home Furnishings and Thermal Insulation enforces California statutes and regulations governing upholstered furniture, bedding, and thermal insulation industries.

The bulletins referenced in the SOW are published by the California Bureau of Home Furnishings and Thermal Insulation. The Bureau of Home Furnishings and Thermal Insulation are available by contacting the following address: 3485 Orange Grove AVE; North Highlands, California, 95660; (916) 574-2041.

COMMUNITY CORRECTIONS CENTER (CCC) - The location in which the Contractor's programs are operated; also called facility, center, community treatment center (CTC), or a halfway house. A CCC is considered a penal or correctional facility.

COMMUNITY CORRECTIONS MANAGER (CCM) - The BOP employee responsible for all functions, programs and services related to Community Corrections within a judicial district(s).

COMMUNITY CORRECTIONS MANAGEMENT CENTER ADMINISTRATOR (MCA) - The BOI employee who supervises the CCM. The MCA exercises responsibility fo: Community Corrections operations and programs within a geographical area originally covering more than one CCM office.

COMMUNITY CORRECTIONS REGIONAL ADMINISTRATOR (CCRA) - The BOP employee responsible for all Community Corrections functions, service and operations within a region.

COMMUNITY CORRECTIONS REGIONAL SAFETY SPECIALIST (CCRSS) - a BOP staf member responsible for contract compliance with county, city, state, federal and national safety policies.

COMPREHENSIVE SANCTIONS CENTER (CSC) - The location in which the Contractor's programs are operated; also called facility or a halfwa house. A CSC is considered a penal or correctional facility.

CONTRABAND - Contraband will be considered anything not authorized f retention by the facility rules and regulations or not issued by authorized staff.

CONTRACT AWARD - The date the Contracting Officer signs the contract