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

RECEIVED
D.C. OFFICE OF ZONING
2003 JUL 17 PM 3:23

DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS' RESPONSE TO BOARD'S REQUESTS FOR ADDITIONAL INFORMATION

At its July 8, 2003 hearing in this appeal, the Board requested that the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") (1) describe the consideration, if any, that DCRA gave to the "standards of external effects" set forth in 11 DCMR § 804 in deciding whether to issue a permit authorizing conversion of the facility at 2210 Adams Place N.E. into a community corrections center; and (2) provide information about the "temporary detention or correctional" institutions, if any, that DCRA has previously authorized pursuant to 11 DCMR § 801.7(k) ("Temporary detention or correctional institution on leased property for a period not to exceed three (3) years").

1. **The standards of external effects set forth in 11 DCMR § 804 do not apply to a community corrections center and were not considered by DCRA.**

In reviewing the application for Building Permit No. B425438, DCRA did not consider *and was not required to consider* the "standards of external effects in [11 DCMR] § 804." 11 DCMR § 801.7. An application for a building permit "for a use permitted under [11 DCMR] § 801.7" is required to be accompanied by a "description of

BZA
Case No. 16998
Exhibit No. 74

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 74

any operations that would be subject to the standards of external effects in § 804." 11 DCMR § 805.1 (emphasis supplied). If any of the operations of the proposed facility are expected to generate the kind of "external effect" that can be evaluated pursuant to § 804, the application for a building permit is required to include a description of those operations. 11 DCMR § 805.1. However, by its own terms, this requirement does not apply if *none* of the proposed operations would generate any of the external effects set forth in § 804. Because the application for Building Permit No. B425438 did not describe any such operations, there were no known effects for DCRA to evaluate under the "standards of external effects."

Moreover, DCRA had no reason – and still has no reason – to suspect that the application had improperly omitted external effects. Indeed, a community corrections center is a residential facility that would not be *expected* to generate any of the "external effects" described in § 804. These effects include (1) "sound inherently and recurrently generated," (§ 804.2), (2) "[o]bjectionable sounds of an intermittent nature" (§ 804.4), (3) "emission of any smoke" (§ 804.8), (4) "emission of any odorous gases or other odorous matter or steam" (§ 804.9), (5) escape or discharge of "noxious, toxic, or corrosive fumes or gases" (§ 804.10), (6) escape or discharge of "cinders, dust, or fly-ash" (§ 804.11), (7) "direct or reflected glare or heat" (§ 804.12), (8) "ground vibration inherently or recurrently generated" (§ 804.13), and (9) certain effects of an Electronic Equipment Facility (§ 804.14). Such effects are much more likely to result from some of the other kinds of facilities listed in § 801.7, like incinerators and manufacturing establishments, than from a community corrections center.

Finally, declining to consider possible external effects that have not been disclosed by an applicant does *not* give the applicant an incentive to withhold information from DCRA. By withholding information about the proposed facility, the applicant increases the risk of losing its certificate of occupancy – after having made a substantial investment in the facility – if DCRA subsequently determines that the facility is not being "operated so as to comply with the standards of external effects" in § 804. By disclosing possible external effects in its application for a building permit and allowing DCRA to evaluate them under the standards of § 804 *prior* to issuance of the permit, the applicant substantially reduces the risk of an adverse determination being made sometime after the permit is issued.

2. DCRA is not aware of any "temporary detention or correctional institution" being authorized under 11 DCMR § 801.7(k) other than Bannum Inc.'s community corrections center at 2210 Adams Place N.E.

DCRA believes that Building Permit No. 425438 is the first to be issued for a "temporary detention or correctional institution" pursuant to 11 DCMR § 801.7(k). DCRA's record-keeping system does not allow for a search of permits or certificates of occupancy based on the regulation(s) under which the permits or certificates were issued. However, the Acting Zoning Administrator is not aware of any permits being issued under § 801.7(k) other than the one for Bannum Inc.'s community corrections center. In addition, a review of published court decisions from the early to mid-1970's supports the conclusion that, during that period, the Department of Corrections ("Department") considered but never implemented the use of temporary housing units to alleviate overcrowding in the District Government's correctional institutions.

Section 801.7(k) dates back to Case No. 71-33. The Zoning Advisory Council's Final Report in that case stated the rationale for allowing "detention or correctional institutions" in certain areas on a temporary basis:

> This is a proposal . . . to add a new subparagraph "k" permitting the establishment of "detention or correctional institutions on leased property."
>
> The effect of this amendment would be to permit detention or correctional institutions on leased private property in the industrial zones of the city. This would permit the Department of Corrections to lease private industrial property for the purpose of establishing correction[al] facilities to accommodate overflow population from the established institutions or as a temporary facility while they proceed with the process of budget, acquisition, and development of permanent facilities.
>
> * * *
>
> In our opinion, the D[e]partment of Corrections needs the flexibility provided by this amendment. By providing the installations in industrial areas, the impact on residential sections of the city will be minimized. Therefore, we recommend approval of the amendment.

Exh. 18, Attach. A.

This amendment to the zoning regulations was made at about the same time that the U.S. District Court for the District of Columbia (the "Court") was addressing the problem of "serious overcrowded conditions" at the Department's Lorton Youth Center in Lorton, Virginia. *United States v. Alsbrook*, 336 F. Supp. 973, 976 (D.D.C. 1971) (Gesell, J.). On December 1, 1971, having found "need of both an interim and a long-term solution," the Court requested that the District Government and other parties submit "an interim plan for alleviating the present congestion," including the creation of "additional temporary facilities for at least 300 males inmates by April 1, 1972." *Id.* at 979. Three weeks later, the Court approved a proposal to have 75 inmates housed at a "minimum security facility adjacent to the former workhouse [at Lorton]," 75 inmates

housed at a "special facility" at the Lorton Youth Center, 75 inmates housed by the Federal Bureau of Prisons, and 300 inmates housed at "a new facility [to] be established by transforming and renovating the former Women's Reformatory [at Lorton]." *Id.* at 981. None of these measures involved the creation of a "temporary detention or correctional institution" in the District.[1]

On March 21, 1975, the Court issued an interim order in another case directing the District Government to address the "problem of space" in "the housing of pretrial detainees at the District of Columbia Jail." *Campbell v. McGruder*, 416 F. Supp. 106, 107 (D.D.C. 1975) (Bryant, J.).

But in a November 5, 1975 decision in the same case, the Court observed:

> Apart from converting other space to a new dormitory at the Jail, the Department and the city have made no substantial efforts to comply with the Order of this Court since its issuance in March; and there is no evidence of any contemplated effort to either reduce the population at the Jail or to provide additional space.

Id. at 109. The Court suggested that, as part of an effort to address the overcrowding problem, "demountable housing could be utilized at the Jail, the Lorton Complex, or elsewhere." *Id.* at 111. Indeed, months earlier,

> the Department had available and considered the use of 'demountable' housing units, temporary housing facilities owned by the District of Columbia. Instead, the Department decided to renovate a dormitory area at the Jail. . . . When the population again began to rise, however, no further efforts were made to obtain or utilize demountables, although some have been used at Lorton for office facilities.

Campbell v. McGruder, 416 F. Supp. 111, 116 (D.D.C. 1976) (Bryant, J.).

---

[1] The Lorton, Virginia complex included "the Reformatory for Men, the Workhouse, the Reformatory for Women, and the Youth Center." Annual Report of the Government of the District of Columbia, Fiscal Year 1966, at 5-16. **Attachment A** hereto.

In a decision issued about six months later, on May 24, 1976, the Court stated:

> No substantial efforts have been made by the Department to locate alternative housing facilities within the District of Columbia or at the Lorton Complex. The Department's view apparently is that no existing facility is adequate (including vacant spaces previously used for housing such as Junior Village or Bolling Air Force Base) because the buildings are not built as jails and therefore "security" would prevent utilization of such facilities.

416 F. Supp. at 117. The Department had begun housing inmates at its New Detention Facility in April 1976, *id.* at 113, but the Court decided to cap the facility's population at 960, *id.* at 117. The Court noted that the demountable housing units that the Department had considered using in August 1975 were "still available to the City." *Id.* at 116.

3. Bannum Inc.'s community corrections center at 2210 Adams Place N.E. appears to be the only facility currently operating pursuant to 11 DCMR § 801.7(k).

DCRA has determined the current zone district of each facility – aside from Bannum Inc.'s community corrections center at 2210 Adams Place N.E. – that has been identified by DCRA's counsel as an apparent halfway house and/or community corrections center currently or recently operating in the District of Columbia. The only one located in a C-M zoning district was CCC 4 at 1355-1357 New York Avenue N.E., which is no longer in operation. Counsel has identified the following the facilities:

Facility	Current Zone District
Hope Village 2844 Langston Place, S.E.	R5A
Extended House 810 4th Street, N.E.	R4
The Trudie Wallace House 1816 19th Street, N.W.	DC/R5B

The Fairview 1430 G Street, N.E.	R4
EFEC (Efforts from Ex-Convicts) 1514 8th Street, N.W.	R4
CCC 4 1355-1357 New York Ave., N.E.	CM2
Bureau of Rehabilitation Inc. "Residences":	
California Residence 2019 19th Street, N.W.	R5B
Lamont Residence 1855 Lamont Street, N.W.	R4
Shaw I Residence 1770 Park Road, N.W.	R4
Shaw II Residence 1740 Park Road, N.W.	R4
Shaw III Residence 1301 Clifton Street, N.W.	R5B
Sheridan Residence 2520 Pennsylvania Ave., S.E.	C2A

DCRA has located the certificates of occupancy for most of these facilities. However, none of the certificates of occupancy identify a particular zoning regulation as the basis for permitting the use.

Given that 11 DCMR § 801.7(k) pertains only to the placement of facilities in C-M zones, CCC 4 is the only facility listed above that looks like it might have been authorized under that provision. However, CCC 4 was not a "temporary" facility. Published court decisions show that CCC 4 was in operation at least as far back as 1974. *McMillian v. United States*, 326 A.2d 241, 241 (D.C. 1974); *cf. Brown-Bey v. Hyman*,

649 A.2d 8, 9 (D.C. 1994) (defendant transferred to CCC 4 on Aug. 30, 1990); *Thurston v. United States*, 779 A.2d 260, 260 (D.C. 2001) (defendant assigned to CCC 4 in 1999). Therefore, even CCC 4 does not appear to have been authorized pursuant to § 801.7(k).

4. The record in this appeal does not include the April 15, 2003 Report and Recommendations of the District of Columbia Community Corrections Facility Siting Advisory Commission.

DCRA's counsel has a copy of the final Report and Recommendations of the District of Columbia Community Corrections Facility Siting Advisory Commission issued on April 15, 2003. The report's Executive Summary states:

> The Community Corrections Facility Siting Advisory Commission was established by the Mayor to recommend criteria for siting halfway house facilities. This report addresses issues involving where community corrections facilities should be located, as well as more general issues relating to the process by which siting decisions are made, and the operation and management of halfway houses in the District.

Counsel will provide the Board and the parties with copies of this report upon request.

Respectfully submitted,

ROBERT J. SPAGNOLETTI
Corporation Counsel

CHARLOTTE W. PARKER (#186205)
Deputy Corporation Counsel
Civil Division

BENNETT RUSHKOFF (#386925)
Senior Counsel
Office of the Corporation Counsel
441 4th Street, N.W., Suite 450-N
Washington, DC 20001
(202) 727-5173

Attorneys for the District of Columbia

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2003, copies of the foregoing Response to Board's Request for Additional Information, and Attachment A thereto, are being faxed and mailed, first-class postage prepaid, to:

Donald M. Temple, Esq. fax: 202-628-1149
Temple Law Offices
1200 G Street, N.W.
Suite 370
Washington, DC 20005

Joseph A. Camardo, Jr., Esq. fax: 315-252-3508
Kevin M. Cox, Esq.
Law Firm of Joseph A. Camardo, Jr.
127 Genesee Street
Auburn, NY 13021

mailed, first-class postage prepaid, to:

Regina James, Chair
Advisory Neighborhood Commission 5B
1363 Adams Street, N.E.
Washington, DC 20018

and hand-delivered to:

Lori Monroe
Assistant Corporation Counsel
Office of the Corporation Counsel
441 4th Street, N.W., 6th Floor-N
Washington, DC 20001

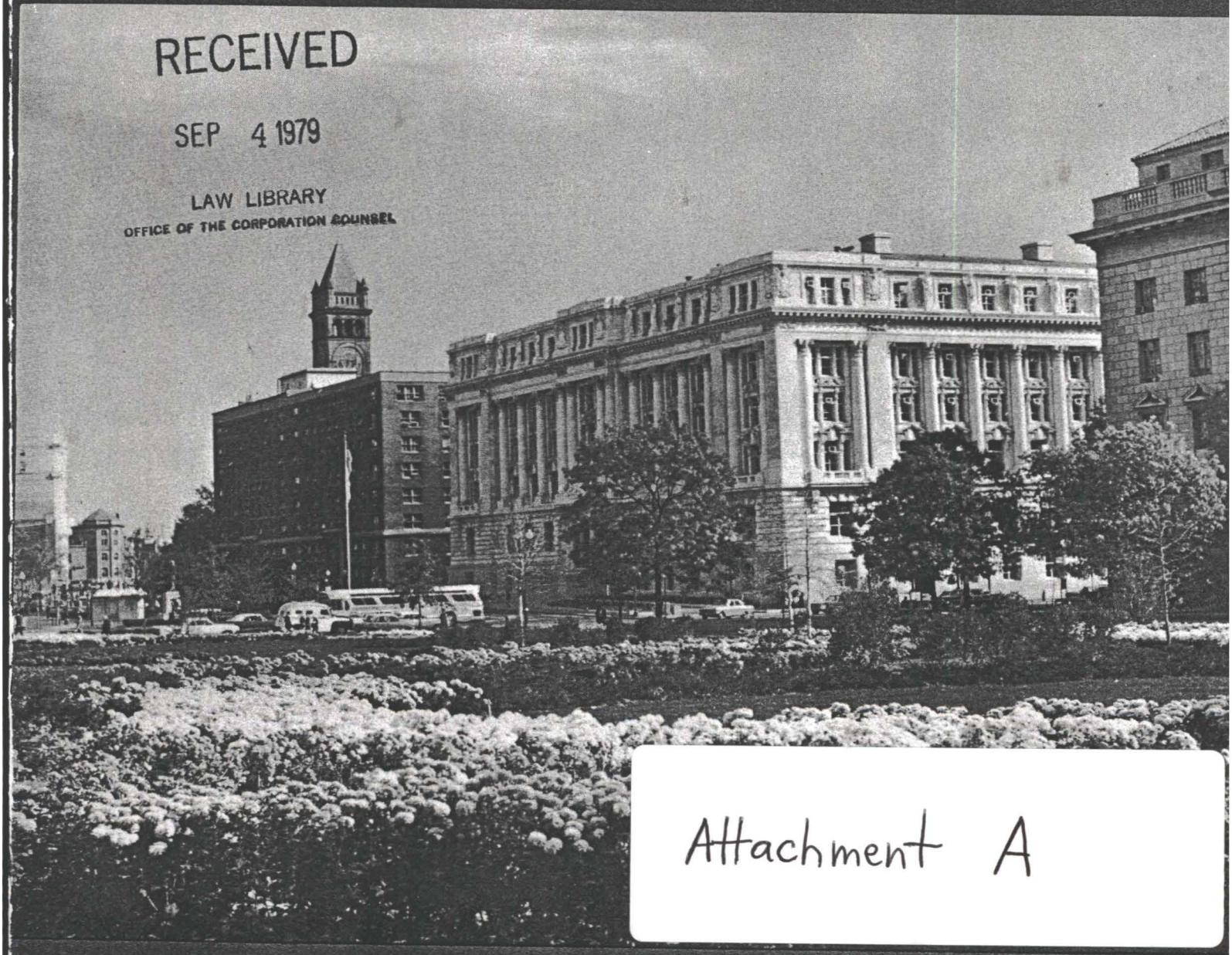


Bennett Rushkoff

ANNUAL REPORT

Government of the District of Columbia
Fiscal Year 1966

RECEIVED
SEP 4 1979
LAW LIBRARY
OFFICE OF THE CORPORATION COUNSEL



Attachment A

View of the District Building from Pershing Square

DISTRICT OF COLUMBIA TAX COURT

The District of Columbia Tax Court has jurisdiction to entertain appeals from all taxes relating to the District of Columbia, except Social Security taxes and special assessments for improvements. In addition it has jurisdiction to entertain appeals from disallowance by the Finance Officer of the District of Columbia for refund of income taxes.

During the fiscal year 1966, 40 appeals were filed with this Court. The Court disposed of 76 appeals (several being filed in the previous year), of which 4 were Inheritance, 5 Personal Property, 5 Real Estate, 3 Sales & Use Tax, and 59 Income and Franchise Tax. Refunds were in the amount of $1,316,616.

Appeals from the District of Columbia Tax Court are made directly to the United States Court of Appeals for the District of Columbia Circuit, and 4 such appeals were filed in 1966. The same appellate rule applies to both the District of Columbia and the United States Tax Courts, and the procedure is the same. Eleven appeals were disposed of by the Court of Appeals during the fiscal year. Decisions in 7 cases were affirmed, 2 remanded and reversed, 1 remanded for new trial, and 1 remanded.

CORRECTIONS

The principal mission of the Department of Corrections is to care for, protect, instruct, and rehabilitate its wards. These duties are performed in five correctional institutions: the D.C. Jail in Washington; the Reformatory for Men, the Workhouse, the Reformatory for Women, and the Youth Center located on a 3500 acre reservation near Lorton, Virginia.

On September 18, 1965, Donald Clemmer, Director of Corrections for the past 19 years, died unexpectedly. While earnest efforts were made by the staff to carry on his good work, the loss of a leader had a profound effect upon the operations of the Department during the past year.

During the past year the Department has participated in a series of studies by the D.C. Management Office, The President's Commission on Crime in the District of Columbia, The American Correctional Association, The Senate Judiciary Sub-Committee on Improvement of Judicial Machinery, and a private consultant retained by the District Government, former director of U.S. Prisons, James V. Bennett.

FISCAL YEAR	OPERATING EXPENSE APPROPRIATION (THOUSANDS)	PERCENT OF OPERATING EXPENSE TOTAL	AUTHORIZED POSITIONS
1962	$7,607.0	3.4%	872
1963	7,849.5	3.3%	887
1964	8,403.9	3.2%	898
1965	9,037.8	3.3%	936
1966	9,720.9	3.2%	950

POPULATION

The average daily population for fiscal year 1966 was 4,224, a decrease of 271 over 1965. Actually, an even more significant decrease in the Department's population occurred during the year which is best illustrated by comparing the population at the beginning of the fiscal year, (4,572) with the population at the close of the fiscal year, (3,276) and noting a decrease of 1,296 or 28%. This rather sizeable reduction in population can be attributed primarily to the impact of the "Easter" decision which provided for civil procedures in handling chronic alcoholics arrested as public intoxicants. Secondly, considerable effort was expended by the Department to reduce the population at the Jail which had reached alarming proportions in October 1965 with daily populations in excess of 1300. The normal rated capacity of the Jail is 695. These efforts included the innovation of a series of practices which expedited the transfer of sentenced inmates to the reservation institutions and the encouraging of the courts to speed the processing of men awaiting trial. These two influences resulted in a 36% reduction of the Jail population from the first of the fiscal year to its close, a 46% population reduction at the Reformatory for Women, and a 50% population reduction at the Workhouse. Conversely, the population at the Youth Center and the Reformatory for Men rose slightly as a result of the population reduction procedures introduced at the Jail.

INMATE ADJUSTMENT

Considering the ferment taking place within the Department as well as in the larger society and the unstable nature of the wards, the inmates conformed reasonably well to the regimes and conduct standards of the institutions. There was an average of eight rule infractions per day out of an average daily population of 4,224, representing misbehavior by less than 2/10 of one per cent of the inmates. There were 21 escapes during the year with 18 occurring from the unfenced Workhouse and 3 from the Youth Center. The Workhouse escape rate continued to climb this year with two more walkaways than were reported last year.

These statistics appear to reflect the changing nature of the Workhouse population. Two of the Youth Center escapes occurred while the inmates were participating in activities outside of the institution in