BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal No. 16716 of the Nebraska Avenue Neighborhood Association challenging the building permit to construct an assisted living facility at 5111 Connecticut Avenue, NW

Hearing Date: July 10, 2001
ANC 3G

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GOVERNMENT OF D.C.
ZONING COMMISSION

MOTION TO RECUSE
BOARD MEMBER ANNE RENSHAW

I.
Overview

Sunrise Assisted Living LLC ("Sunrise"), the party-in-interest in this appeal, hereby moves for the recusal of Board of Zoning Adjustment ("BZA") Member Anne Renshaw ("Ms. Renshaw"), Chair of ANC 3G, from any and all matters relating to this appeal, including but not limited to the hearing to be held on July 10, 2001. In this appeal, the Nebraska Avenue Neighborhood Association is challenging the Zoning Administrator's decisions in connection with the issuance of a building permit that would allow Sunrise to construct a 100-bed assisted living facility at 5111 Connecticut Avenue (the "Project"). At the same time, ANC 3G is endeavoring to have the Property downzoned in an effort to preclude Sunrise from building the much-needed assisted living facility.

The factual basis for the request is as follows:

BZA
Case No. 16716
Exhibit No. 18

Board of Zoning Adjustment
District of Columbia
CASE NO.16716
EXHIBIT NO.18

1. Ms. Renshaw currently is a member and the Chairperson of ANC 3G, the seven-member ANC in which the Project site is located. She has served continuously on ANC 3G since 1991. The ANC consistently has opposed the Project.

2. Early on in its protracted efforts to obtain approval to construct the Project, Sunrise sought to have an alley stub behind the Project site closed. In the course of the ANC's lengthy consideration of the alley closing, concerns were raised about matters far beyond the scope of the alley closing such as the proposed use, building height and mass. In her capacity as an ANC Commissioner, Ms. Renshaw voted against Sunrise's proposed alley closing at a meeting on April 24, 2000. In voting, Ms. Renshaw expressed concerns about the entire Project. As a result of the ANC's opposition to the alley closing, Sunrise abandoned its plans to attempt to close the alley, and instead, redesigned its Project plans, at great cost, around the alley stub to accommodate the ANC's desire that it remain open.

3. Still not satisfied, a few vocal citizens began a campaign to have Sunrise's property downzoned. ANC 3G has come out strongly in support of both the pending effort to downzone the property and this appeal.

4. Ms. Renshaw has been present at many, if not all, of the ANC meetings at which the Project has been considered and discussed in great detail.

5. Ms. Renshaw attended the Zoning Commission hearing on March 29, 2001, at which the downzoning of the Project site was considered.

II.
Discussion

Ms. Renshaw must be recused from participating in this appeal on the ground of bias and prejudice. In light of Ms. Renshaw's pre-existing record of opposing the Project on behalf of the ANC, any reasonable person would have to conclude that she would be biased, and that her bias

stems from other than her consideration of the record in the appeal. Dupont Circle Citizens Association v. D.C. Alcoholic Beverage Control Board, 766 A.2d 5 (D.C. 2000). Rather, her bias stems from, and is evidenced by, her active participation in decisions that were reached by the ANC in opposition to the Project.

Since there are no standards for the recusal of board members, this Board is required to use the same standards that apply to judges. Morrison v. D.C. Board of Zoning Adjustment, 422 A.2d 347 (D.C. 1980). Under those standards, Ms. Renshaw must be recused once Sunrise identifies material facts stated with particularity that, if true:

1. would convince a reasonable person that a bias exists; and

2. show that the bias is personal rather than judicial in nature.

In re Bell, 373 A.2d 232, 234 (D.C. 1977).

The facts in this case clearly establish personal bias and a need for recusal. Ms. Renshaw's long history of opposition to the Project and close involvement in the ANC's actions directed at the Project are themselves clear indications of her pre-existing bias.

In addition to her involvement in the ANC's consideration of the alley closing, in the spring of 2000, the ANC held meetings to decide whether to petition for the downzoning of a three-block area including the Project site. The ANC's interest in downzoning was a direct result of its earlier discussions regarding the Project in connection with the alley closing. Ultimately, on June 12, 2000, the ANC voted to request the downzoning of the Sunrise site to R-3, reducing the permitted density by almost half. Ms. Renshaw attended numerous ANC meetings regarding this matter and even attended the Zoning Commission hearing on March 29, 2001, at which the downzoning was considered. Ms. Renshaw's presence at the meetings and the hearing demonstrates her continuing interest in its outcome.

Ms. Renshaw's history of involvement in opposition to this project in her capacity as an ANC Commissioner while she served on the BZA would convince a reasonable person that a bias exists. Her vote against the Project in connection with the alley closing, standing alone demonstrates a predisposition to grant the requested appeal. This vote, when considered along with her extensive and continuing involvement in community meetings regarding the Project, can lead to no other conclusion.

Finally, there is no question that the bias is "personal" in nature under the standards for recusal. The Court of Appeals has explained that such bias is considered "personal" and therefore grounds for recusal, if it results from any source other than the judge's (or here, Board Member's) perceptions from within "the four corners of the courtroom." In other words, the decision-maker's determination must result only from what he or she perceives during the proceeding at issue, not from his or her outside personal experience. In re Evans, 411 A.2d 984 (D.C. 1980). In the case at hand, it cannot be disputed that Ms. Renshaw's position on this appeal will result from factors extrinsic to the appeal and her service as a Board member because she has already made a record of her position as to the Sunrise Project before the appeal proceedings even began. (See Dupont Circle v. D.C. A.B.C. at page 14) Ms. Renshaw has gleaned extensive knowledge of the Project from outside the hearing room. If allowed to participate in the hearing, Ms. Renshaw will bring a level of knowledge far beyond that of her colleagues. This knowledge, combined with her established bias, would result in an inherently unfair hearing.

Recently, in Appeal No. 16646, this Board was faced with a similar situation. Ms. Renshaw attended numerous ANC 3G meetings regarding the appeal of a building permit affecting a residence on Northampton Street. Even though the ANC did not file a report in the

case, the Board concluded that "due to her knowledge of the facts of the case derived from earlier ANC meetings," she was required to recuse herself from the Board's decision meeting. The Board noted that:

> The Board's decision must be based on the exclusive record of proceedings before the Board (D.C. Code §1-1509(c)(1999)) and there is no practical means of affording the parties the opportunity to cross-examine or respond to matters discussed at the ANC meeting. (BZA Appeal No. 16646 at page 3.)

The Sunrise case is even more compelling because Ms. Renshaw actually voted against the Project in connection with the alley closing, participated in numerous meetings at which the decision to request the downzoning was reached, attended the downzoning hearing and attended the ANC meeting to discuss the appeal.

In Dupont Circle Citizens v. D.C. A.B.C., supra, the Court of Appeals recently upheld the recusal of an Alcoholic Beverage Control Board member and former ANC Chairman. In that case, Dennis Bass, in his capacity as an ANC Chairman, voted against the grant of a liquor license for an establishment. Later, when Bass was serving as a member of the Board that grants such licenses but after his ANC term had expired, the Board considered the license request for that establishment. The Court of Appeals held that the Board acting appropriately when it recused Mr. Bass after he declined to voluntarily recuse himself. In response to the citizens' claims on appeal that Mr. Bass' previous activities were irrelevant because they were undertaken in his capacity as ANC Chair rather than as a private citizen, the Court said that was "beside the point."

Again, this situation is more extreme because Ms. Renshaw continues to serve as the Chairman of ANC 3G, which has an established track record of opposition to the Project, while she serves on the Board. Recusal is the only means of addressing this situation.

For the foregoing reasons, we request the Board's disposition of the request at its next public meeting. Given the significance of this matter, this decision should not be deferred until the public hearing on July 10, 2001.

Respectfully submitted,

Maureen E. Dwyer

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5/7/01