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16998

URGENT ATTENTION PLEASE

November 12, 2003

BY HAND DELIVERY

Mr. Robert J. Spagnoletti
Office of Corporation Counsel
441 4th Street NW
Washington, DC 20534

Re: Final BZA Opinion of Appeal of ANC 5B Re: 2210 Adams Place, N.E.

Dear Mr. Spagnoletti:

I am writing this letter on behalf of ANC5B to express concern regarding the period of time in which the Office of Corporation Counsel ("OCC") is taking to issue a written decision in the above referenced case, to alert you to an inherent conflict of interest which is possibly contributing to this delay, and to request your intervention in order to assure a timely written BZA decision.

The matter at issue concerns a legal challenge before the Board of Zoning Adjustment (BZA) to Bannum, Inc.'s operation of a 150 bed federal Bureau of Prison halfway house at 2210 Adams Place, N.E. in Ward 5, Washington, DC, an area presently zoned Commercial Manufacturing Light (CM-2). ANC 5B has consistently challenged the legality of this Bannum facility on the basis that under District of Columbia zoning laws, community based residential facilities ("CBRFs"), which include halfway houses, are expressly prohibited. The District of Columbia government by way of the Department of Consumer and Regulatory Affairs ("DCRA"), however, has thus far concurred with Bannum. The Office of Corporation Counsel dutifully, but unsuccessfully, represented the District and DCRA before the BZA. After four hearings and many hours of argument and presentation of evidence, the BZA rendered a 4-1 opinion agreeing with the ANC. Now, for more than 8 weeks the same OCC, which opposed the ANC and supported Bannum, is charged with writing the legal opinion on behalf of the BZA. With all due respect, while apparently allowable by law, such an arrangement is clouded with the appearance of bias and partiality and constitutes an inherent conflict of interest. Moreover, this glaring concern is hardly alleviated merely because a lawyer in a different division of OCC is writing the opinion.

BZA
Case No. 16998
Exhibit No. 89

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 89

This case involves a very controversial and unprecedented zoning matter which has significant legal and political implications for communities across the city. Related legal matters are pending in both the District of Columbia Superior Court and the United States District Court for the District of Columbia. Both courts are expected to significantly rely on the BZA opinion. Of note, the Office of the Corporation Counsel is representing DC in these pending matters as well, which in our view further exacerbates their potential conflict of interest. We urge you to investigate this concern and to take appropriate steps to assure that any potential conflict is properly addressed, including consideration of an independent or private counsel in situations such as this.

A more immediate problem is that two months have passed since the September 9, 2003 BZA oral decision and it has not yet issued a written decision. In its oral decision the BZA after reviewing the parties' Proposed Findings of Fact and Law concluded that Bannum's use of the space in this particular CM-2 zone was illegal.

Our ultimate concern, which we hope that you share, is that the government's zoning review process maintain objectivity, fairness and integrity and retain the force of law. As a rule, it should not take eight weeks to render a written decision adopting the Board's public articulation of its view. The BZA's 4-1 decision on the basis articulated is now legally mandated. Moreover, after months of cogent legal arguments, its time sensitivity is abundantly clear. The possibility that OCC or attorneys therein could be impeding or delaying the issuance of a written decision because that decision is contrary to a position that it argued on behalf of its client is greatly disturbing.

This already delayed decision simply allows Bannum, despite the illegality of its actions, to continue to argue before the courts that it has expended monies which justify keeping it open. This delayed decision is paramount to the Board reaching a contrary decision and allowing the losing party to prevail. The BZA administrative and the judicial processes must be allowed to run their course in order for the law to be appropriately enforced and respected.

While pursuit of a mandamus action is clearly an option, the ANC nor the residents of ward 5, or residents of any other ward, should have to further resort to the courts to make our administrative government process work. Again, we urge you to closely examine the suggested conflict of interest question and more importantly, take steps to ensure the expeditious issuance of a written BZA decision.

Thank you in advance for your consideration.

Respectfully,

Donald M. Temple, Esq.
Counsel for ANC5B.

cc: Regina James
BZA
Councilmember Linda Cropp
Councilmember Sharon Ambrose
Councilmember Vincent Orange
Councilmember Phil Mendelson