BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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

D.C. OFFICE OF ZONING
2003 JUN 16 AM 9:32

APPELLANT'S OPPOSITION TO BANNUM INC.'S
VERIFIED MOTION FOR RECUSAL

COMES NOW, ANC 5B, appellant in the above-captioned appeal pending before the Board of Zoning Adjustment ("BZA") and files this Opposition to Bannum Inc.'s Motion for Recusal of BZA Member and Vice Chairperson of the District of Columbia Zoning Commission, Anthony J. Hood, on the following grounds:

Intervenor Bannum, Inc. ("Bannum") has failed to present facts that are legally sufficient to establish a personal bias and thus to require disqualification of BZA member Anthony Hood. See, Vann v. District of Columbia Board of Funeral Directors and Embalmers, 441 A.2d 246, 249-50 (D.C. 1982); see also, In re Evans, D.C.App., 411 A.2d 984, 994 (1980); In re Bell, D.C.App., 373 A.2d 232, 234 (1977) (setting forth the three-point test of the legal sufficiency of a claim of personal bias adopted by the District of Columbia jurisdiction).

The sum of Bannum's allegations against Mr. Hood were comments made by Mr. Hood during an exchange with Bannum's Executive Director, David Lowry ("Lowry"). During the exchange at the April 22, 2003 hearing, Mr. Hood expressed concern that Bannum may have violated D.C. laws regarding contributions to elected ANC 5 members when Bannum paid the air fare and possibly other expenses for at least two ANC 5 members to visit one of its halfway

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houses located in Orlando, Florida. These comments were made in context of Mr. Hood's exchange with Lowry regarding the case before the BZA and facts related thereto. In this regard, Mr. Hood's comments constitute legitimate and reasonable expressions of concern that Bannum violated D.C. laws that relate to his halfway house. Bannum has admitted paying traveling expenses for two ANC members in the affected ward. This issue has also been raised in related state and federal court actions. Mr. Hood's comments, standing alone, do not show bias, and are not sufficient to convince a reasonable man that bias exists. See, Vann, 441 A.2d at 250.

Bannum also claims that Mr. Hood's comments were unrelated to the proceedings and therefore "exhibited a clear bias on his [Mr. Hood's] part against Bannum." In fact, Bannum was awarded a contract to operate a 150 bed community correctional center at 2210 Adams Place, N.E. on the ground that it secured support of *local elected officials*. Therefore, Bannum's involvement with *local elected ANC members* is directly related to the background facts of the issue at hand, to wit, the legality of Bannum's contract award to operate a halfway house in Ward 5. Such information should actually provoke the curiosity of BZA members. Mr. Hood's line of questions actually triggered inquiries about the Bannum-BOP contract and Bannum's proposal to the BOP.

Bannum also claims that Mr. Hood should be recused because he is unable to be fair and impartial with Bannum and the District of Columbia ("D.C.") as he is a resident of Ward 5 and is politically affiliated with Councilman Vincent Orange ("Orange"). Bannum's assertions about "political affiliations" are unfounded and unsupported by any BZA precedent or existing D.C. law. Firstly, Bannum has presented no evidence of any political affiliation between Mr. Hood and Councilman Orange other than a letter written by Councilman Orange to the Bureau of

Prisons regarding Bannum's use of the subject property. Bannum claims that Mr. Hood's reference to the letter during the May 2003 hearing signifies Mr. Hood's "personal and devious attempts to attack Bannum." This exaggerated leap by Bannum is both disingenuous and legally flawed. Shamefully, Bannum views objective criticisms of its transparent tactics and its questionable legal actions to be "personal and devious."

Bannum has presented no legal support whatsoever that justifies recusing BZA member Anthony Hood from these proceedings. According to applicable case law, "Recusal is necessary when the alleged bias is *traceable* to a source other than the judge's participation in the case." Gladden v. District of Columbia Bd of Zoning Adjustment, 659 A.2d 249, 256 (D.C. 1995); Morrison v. District of Columbia Bd. Of Zoning Adjustment, 422 A.2d 350 (D.C. 1980). By analogy, Bannum has not provided any evidentiary link between Mr. Hood's residency and Mr. Hood's allegedly biased concerns that Bannum violated D.C. laws regarding contributions to elected officials. Should Bannum's logic prevail here, each time a matter comes before this Board, the member from the affected Ward would have to recuse him or herself. This reasoning would affect all Board members appointed by the Mayor. For example, this case implicates the Executive Branch of the D.C. government. It would be senseless to ask all mayoral appointees to recuse themselves because of their relationship with the Mayor or their history of actions.

In this regard, Mr. Hood's past political activism as secretary of Ward 5 Democrats also does not show bias. The threshold for bias is much more than one's political past. Every BZA member has a political past and that political past does not necessarily impede their ability to function as fair and impartial Board members. No where in the record is there evidence that Mr. Hood has or will fail to be fair and impartial. Moreover, Board members were likely appointed

to their respective positions because of their past political activism and their involvement with and deep commitment to their communities. In the absence of facts that demonstrate more than past political activism, Bannum has failed to support its position that BZA member Anthony Hood recuse himself from these proceedings.

For the reasons stated above, ANC 5 respectfully requests that Anthony Hood maintain his involvement in the subject BZA proceeding, and that Bannum's Motion for Recusal be denied, subject to limited debate.

Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that copies of ***Appellant's Opposition to Bannum Inc.'s Verified Motion for Recusal*** were mailed, by first-class delivery, postage prepaid, this 13 day of June 2003 to the following:

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NOTES: Board of Zoning Adjustment Motions
Re: Application Appeal #16998
Recusal Attached

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