BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal No. 167 of the Nebraska Avenue Neighborhood Association challenging the building permit No. 16716 for 5111 Connecticut Avenue, N.W.

Appeal Hearing Date: July 17, 2001
Motion Hearing Date: July 10, 2001

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1. Introduction

This statement presents the Nebraska Avenue Neighborhood Association's response to a motion to recuse Board of Zoning Adjustment Member Anne Renshaw from participating in Case No. 16716. The motion was submitted by Sunrise Assisted Living LLC (Sunrise). On July 3, 2001, I received notice of this motion in a memorandum, dated June 27, 2001, from Jerrily R. Kress, Director of the Office of Zoning. I also received notice by phone on July 3, 2001. Sunrise, however, was obligated to notify interested parties of its motion. It did not do that.

The Motion as stated: 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.

Our main goal is to maintain the full voting strength of the Board. I asked Zoning Office staff whether recused votes could be replaced by substitutes. I was told that the BZA process docs not allow that.

The process is significant: it is important to maintain a complete BZA panel. Balance unsubstantiated claims of bias against the unquestionable bias caused by non-participation of members. By recusing each a Member, you interfere with the process. The appellant must obtain three affirmative votes, or 60% of the full panel. A recusal is like a negative vote. With a recusal, the applicant is deprived of the opportunity to influence that vote.

The following is our assessment of and arguments countering Sunrise's Motion to Recuse Board Member Anne Renshaw from Participation in All Matters Related to BZA Appeal Case No. 16716 (sections I and II) our overall evaluation (III) and request (IV).

I. Addressing Sunrise's Overview section:

1. Ms. Renshaw has served on ANC 3G for several years and is currently chair of ANC 3G. Sunrise claims, "The ANC consistently has opposed the Project[1]." However, Sunrise does not present substantial evidence for the claim that the ANC consistently has opposed Sunrise development at the subject site. Sunrise equates opposing the alley-closing with opposing

BZA
Case No. 16716
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO.16716
EXHIBIT NO.31

Sunrise development on the subject property. This is incorrect.

2. Sunrise states: "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." Sunrise claims rejection of their alley-closing application this was a vote against their project. However, this alley stub is critical to the functioning of the entire alley. This was the basis of rejecting the alley-closing application.

Ms. Renshaw voted against Sunrise's proposed alley closing at a meeting on April 24, 2000. ANC 3G voted unanimously to oppose the alley closing, not just Ms. Renshaw. This was a reasonable vote by reasonable people and it was based on the negative effect the alley closing would have on the neighborhood. It was not a move against any potential Sunrise project.

Important additional background:
We believe the alley-closing application (S.O. No. 99-69 --attachment) was inappropriate. The current owners of most of the property, Sunny and Louis Reyes, applied to close this same alley stub in 1986 (S.O. No. 8646 -- attachment). Not only did ANC 3G unanimously oppose the alley closing at that time, the City Council also unanimously rejected the alley closing. The reason: THIS ALLEY WAS DETERMINED TO BE NECESSARY AS PUBLIC ALLEY. The reasons for rejecting the alley-closing application were at least as strong in 1999 as in 1986: traffic flow, safety, access to residents houses, location of alley exits only on Nebraska Avenue, N.W. Access to the alley and parking on Nebraska Avenue are limited by rush hour and snow emergency restrictions.

Sunrise, acting in cooperation with Mr. and Mrs. Reyes, attempted to close the same alley stub for which the Reyes application had been denied before. Rejecting the alley-closing application showed good sense, not prejudice. The repeated alley-closing attempts have put the neighborhood, ANC 3G, city agencies and City Council through considerable effort and expense -- not once but twice!

3. Sunrise claims that ANC 3G is endeavoring to have the Property downzoned in an effort to preclude Sunrise from building the much-needed[2] assisted living facility.

Facts: ANC 3G proposed a downzoning of three blocks along the east side of Connecticut Ave., N.W. between Nebraska Ave. And Jocelyn Street -- three blocks are included in the proposal. This covers most but not all of the property included in the building permit No. B435464.

Jeff Norman, ANC 3G member for the area including the subject property; had previously raised the issue of downzoning the east side -- long before the proposed Sunrise project. In 1988, the west side of Connecticut Ave. N.W. was downzoned from R-5-C to R3, making it consistent with the Comprehensive Plan.

In their evaluation of the downzoning, the Zoning Commission noted that housing for seniors

could be built in all the zones that the Planning Office recommended for the area.

CONCLUSION: Sunrise's claim: "ANC 3G is endeavoring to have the Property downzoned in an effort to preclude Sunrise from building the much-needed assisted living facility is not substantiated.

II. Addressing Sunrise's Discussion section:

1. Sunrise has not made a reasonable case for Ms. Renshaw's prejudice. They have shown no evidence of her record of opposing the Project such that a reasonable person would have to conclude that she would be biased. On two alley-closing applications and a down-zoning proposal, the ANC votes were unanimous; on one alley-closing vote by the City Council and one rezoning vote by the Zoning Commission, the votes were unanimous -- all in the same direction as Ms. Renshaw's vote.

2. According to Sunrise, there are no standards for recusal of board members by the Board. Therefore, Sunrise claims, the 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). Sunrise claims that the rules that the Board must follow[3] are that Ms. Renshaw must be recused once Sunrise identifies material facts that:

1. would convince a reasonable person that a bias exists; and
2. show that the bias is personal rather than judicial in nature.

First, convincing evidence of bias has not been presented.

Second, material presented by Sunrise elsewhere states that the Board is not obliged to follow a court's rules of evidence (American University et al. v. Prentiss et al. Civ. No 931 133 F Supp. 389; 1953 U.S. Dist. LEXIS 2588 -- case presented by Sunrise attorneys in a previous motion). The Board is not a judicial body and is apparently not compelled to follow court rules and standards.

Third, the Corporation Council should address this issue if it is a legal matter.

III. Evaluation

Sunrise has not presented a sufficient case to establish that Member Anne Renshaw has a personal bias in this case that warrants her involuntary recusal. Sunrise presented incomplete

information about the background alley-closing applications (two, not one) and downzoning application. The current case is about evaluating whether a building permit followed 11 DCMR regulations; the issues are mainly technical.

IV. Request to deny motion

The Nebraska Avenue Neighborhood Association respectfully requests each Member of the Board of Zoning Adjustment to participate and allow all other Members to participate in this appeal. Do not approve the Sunrise Motion to Recuse a Board Member or recuse yourself without well documented justification.

Attachments: Material from Alley-closing applications S. O. Nos. 86-46 and 99-69.

NOTES

1. The term "the Project" is not defined in the motion. The term is used repeatedly. It appears to mean -- any Sunrise development at the site.

2. There are over 500 units for seniors located within about ½ miles from the proposed assisted living facility. These residences include community residence facilities (Chevy Chase House, The Methodist Home, Ingleside House), intermediate care facilities (The Methodist Home and Ingleside House) and subsidized housing for the elderly (Regency House). Within a mile there are several more.

At the Zoning Commission hearing (March 29, 2001), Sunrise testified that if local seniors did not need this facility, the facility would serve the city's priority to increase its population by bringing in residents from outside the city. Sunrise presents their project as "much-needed" assisted living based on the city's overall objectives (senior housing, increased population), not the needs of residents in the neighborhoods surrounding the location. These needs are already well served.

3. Sunrise references a case but presents no information to support their conclusion: Morrison v. D.C. Board of Zoning Adjustment, 422 A.2d 347 (D.C. 1980). We have not had time to review the case.

KLAUS KLATT

DIPL. ING., ARCH. T.U.

ARCHITECT PLANNER

OFFICES AT 3533 YUMA ST. N.W.
WASHINGTON, D.C. 20008
USA

TEL. 202 362-6610

WASHINGTON, D.C.

To the District of Columbia Government
Office of the Surveyor
614 H St. N.W.
Washiington, D.C. 20016

June 5, 1986

Gentlemen:

This letter is further to a letter submitted with the above application, dated Feb. 12, 1986.

The owners Louis and Sunny Reyes, of 5119 Connecticut Ave. N.W., also own the following lots:

161, 57, 56, 55, 54, 53,

These lots directly abut a dead-end public alley of 22 ft. in width and + or - 72 ft. in length, which they have requested to be closed.

Recent questions by the D.C. Public Works Department prompt this letter as an explanation for their main reasons for the above request:

The stub of alley kihas become a nuisance to the Reyes, since over the years unknown persons have left junked cars and a lot of larger debris within this area, trash has accumulated and the daily occurance of persons parking there illegally. All requires their calling the responsible District agencies on innumerably occasions, in order to request relief. The closing and subsequent permission to provide an appropriate fence at the suggested boundary line, will eliminate such nuisance and burden on all concerned. The remaining small triangle outside the proposed boundary line will also allow for the placement of all trash [illegible] the tenants and the Reyes for [illegible] pick-up without the alley.
We do not wish to provide a "permanent" parking lot on this alley portion either, since same is only 22 ft. wide and therefore will only allow two cars to be parked side by side. Whose cars should therefore be prefered? We wish to provide green and gardenspace instead.

Yours very truly,

Klaus Klatt
Architect
for the Reyes

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JUN
SURVEYOR

MARGARET PETITO

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WASHINGTON, D.C.

The President of the
ANC 3G
P. O. Box 6252
N. W. Station
Washington, D.C. 20015

Jan. 12, 1988

Subject: *S.O. No. 48-86, City Council Case No. 7-326*
Alley closing near Nebraska and Conn. Ave.

Gentlepersons:

Several years ago, the Reyes asked me to look into the possibitlies to curtail the nuisance in connection with a dead-end alley behind their properties. As you know, I made an application with the D.C. Surveyor to have same closed; same resulted in a round table City Council discussion late last year, at which time "unanimous" opposition was voiced by the ANC to my effort.
Other business prevented me from attending this meeting. Only last week, through the intervention of Mr. Nathanson, was I allowed to view the official records and found certain inequities, which must be corrected.

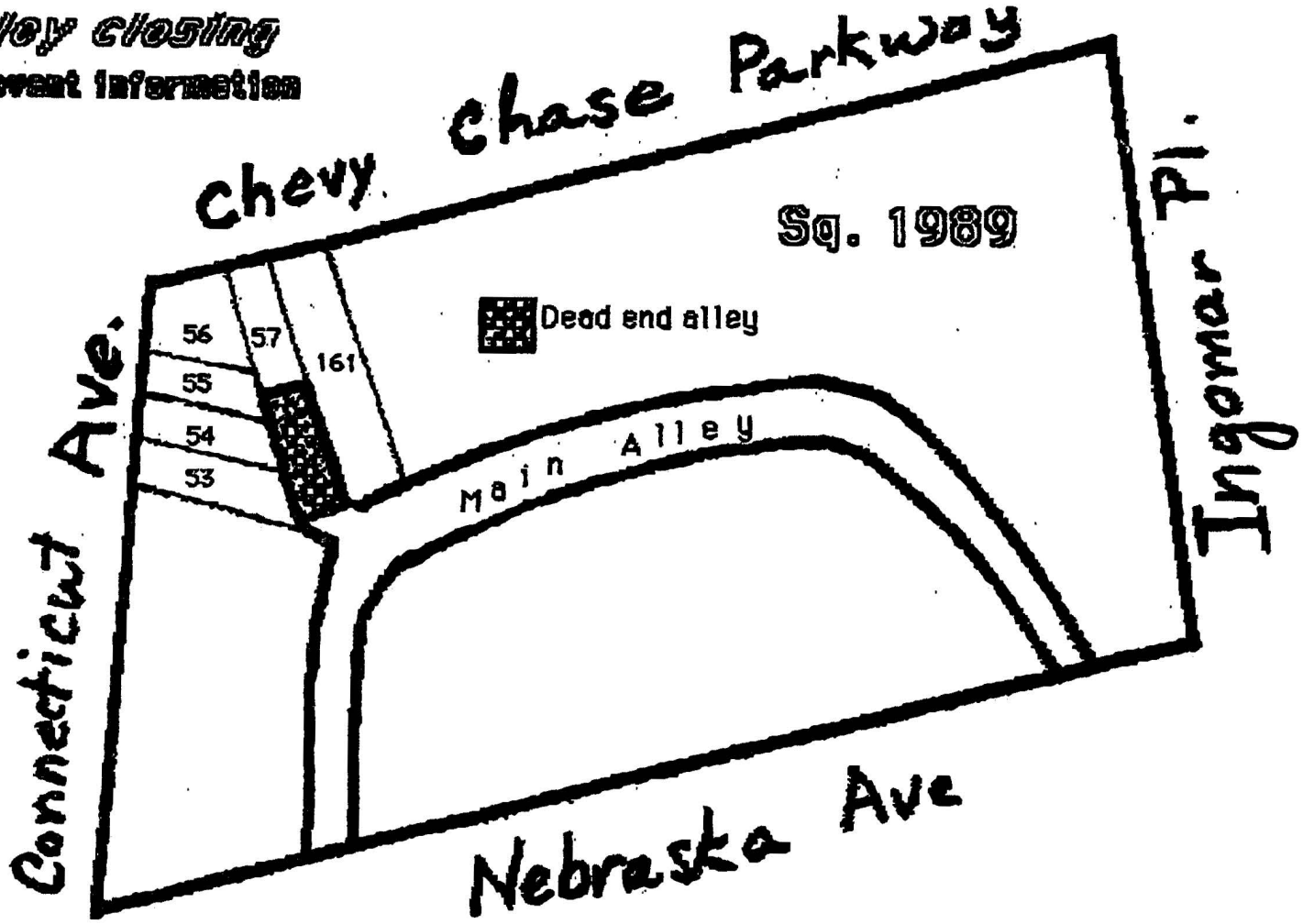
I herewith make the request to speak to the members of ANC 3G at your next scheduled meeting with regard to this above application. Would you be so kind to notify me as well as Page Chiapella, the president of Project 1989 of this, my intention and to let me know, when it may take place.

Yours very truly,

Klaus Klatt

KK/imk
cc.: Louis and Sunny Reyes
cc.: Russell A. Smith

Alley closing
Relevent Information



Relevant Information

This factsheet presents information relating to Bill No. 7-326, to close the dead end public alley in Sq. 1989.

The proposed alley to be closed is an offshoot of the main alley in Sq. 1989 which has two openings onto Nebraska Ave: one near Connecticut Ave. and one near Ingomar Place. The dead end section is close to the exit near Connecticut Ave. This exit is our main access to Nebraska Avenue. It is a heavily congested area and is often totally blocked during rush hour traffic.

We often meet vehicles coming the other way in this section of the alley. Passing is difficult even when both vehicles are small; passing is impossible if one vehicle is wide or if there is another vehicle parked in the alley. The dead end section provides the only turn around for vehicles to head out the other end of the main alley or to move out of the way of larger vehicles in the main alley. Closing the dead end section would lead to hazardous traffic conditions.

The property owner-petitioner for this bill No. 7-326 requests the right to install a gate across the end of the dead end alley at it's intersection with the remaining alley. This gate would present further safety problems for our neighborhood. Emergency vehicles would have difficult access to lots nos. 53, 54, 55, 56, 57, and 161 in Sq. 1989 and would be limited in manouvering to service other parts of the alley. Garbage collection services would be affected. Etc.

We believe that the underlying reason for the closure request is to make this alley available for medium-high density development. The proposed bill vests (returns) the alley to the adjoining properites, all owned by a single property owner. Most of this dead end alley automatically reverts to RSC zoning: medium-high density residential. The property owner has been offering the adjacent land for development. The donation by the city of additional land (the alley) for development by the current property owner is inappropriate. It should not be casually

The Honorable David A. Clarke
Chariman, Council of the District of Columbia

Re: Bill No. 7-326, To close dead end public alley in Sq. 1989

Dear Chairman Clarke:

We the undersigned, as citizens of the District of Columbia and residents of Square 1989 bounded by Ingomar Place, Nebraska Ave., Conneticut Ave. and Chevy Chase Parkway, strongly oppose Bill #7-326 which would close the dead end alley in Sq. 1989. We do herein join to petition the Council to retain the public alley as it exists.

We feel that the closing of this alley would adversely affect the quality of life in our neighborhood for the following reasons:

Safety: Closing this alley would result in hazardous conditions due to
1) frequent blockage of traffic in the main alley of Sq. 1989,
2) limit access of emergency vehicles to a section of Sq. 1989,
3) traffic blockage at the adjacent intersection of the main alley with Nebraska Avenue up to Conneticut Avenue.

Development: The proposed action appears a move to consolidate additional land in order to increase the size of a large and unwarrented high-rise development. This enjoinder would severely increase the hazardous conditions listed above. In addition, increasing the scope of development would adversely affect parking, garbage storage and collection and local traffic congestion on Nebraska and Conneticut Avenues and Chevy Chase Parkway.

For these reasons, we request that the public alley remain open.

	Name	Address	Date
1.	Anne Page Chapellia	5126 Nebraska Ave NW	11/8/87
2.	Margaret L. Petito	5124 Nebraska Ave. N.W.	11-8-87
3.	Charles A. Phillips SR	5130 NEBRASKA AVE N.W.	11-9-87
4.	Margaret I Phillips	5130 Nebraska Ave. N.W.	11/9/87
5.	Elizabeth McCabe	5134 Nebraska Ave. NW	11/9/87
6	[illegible]	[illegible]	11/9/87
7	[illegible]	5138 Nebraska Ave NW	11/9/87
	[illegible]	[illegible]	11/10/87

1 additional signature sheets - not attached.

S.O. 99-69

WILKES, ARTIS, HEDRICK & LANE
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GREENBELT, MARYLAND
WALDORF, MARYLAND

August 2, 1999

Received at Hearing 08-02-99

Hand Delivery

Mr. Roland F. Dreist, Jr.
Office of the Surveyor
941 N. Capitol Street, N.E.
Second Floor
Washington, D.C. 20002

Re: Square 1989 – Alley Closing Application

Dear Mr. Dreist:

Attached please find an application, without a public hearing, for the closing of the 22 foot wide alley stub in the southern portion of Square 1989 adjacent to Lots 52-57 and 161. The subject square is bounded by Ingomar Place to the north, Connecticut Avenue to the south, Chevy Chase Parkway to the west and Nebraska Avenue to the east. Sunrise Connecticut Avenue Assisted Living, L.L.C. is the contract purchaser of Lots 52-57 and 161 in Square 1989 and the Applicant in this case.

This application may be processed without a public hearing due to the support of all of the record owners of the property abutting the dead-end alley stub proposed to be closed, pursuant to D.C. Code Annotated § 7-425(3) and 24 DCMR §1403.4. Statements evidencing the support of these property owners are attached to this application.

This proposed alley closing will permit the construction of a Sunrise Assisted Living Facility along Connecticut Avenue in Square 1989. This facility will have a gross floor area of approximately 110,000 square feet and a floor area ratio of approximately 3.72. The project will also include a multi-level parking garage with parking spaces for approximately 34 cars.

Access to the below-grade parking spaces will be from the proposed closed alley stub. Deliveries to the project will be made by accessing the loading area from the

proposed closed alley stub. The delivery trucks will then exit the facility via Ingomar Place and Nebraska Avenue. The facility includes one loading berth and one service/delivery space.

This application is filed for processing under the procedures for alley closings set forth in the Omnibus Regulatory Reform Act of 1998, effective April 29, 1998. Included with the alley closing application form are the following documents, as required by 24 DCMR §§ 1400 et seq.:

1. A sketch of the proposed closing;

2. A filing fee of $1,435.00;

3. A completed retail tenant displacement form;

4. Six copies of a vehicular tracking diagram drawn to scale of one inch equals 20 feet pursuant to Section 1400.8(j); and

5. Six sets of the site development plan for the project which includes:

   (a) A key location sketch showing the development and its relationship to the square and surrounding streets (with the streets identified), pursuant to Section 1400.8(b) and (d);

   (b) A footprint of the proposed building, pursuant to Section 1400.8(c);

   (c) The depiction of the alley proposed to be closed, pursuant to Section 1400.8(e);

   (d) The approximate gross floor area of the project (as previously described in this letter), pursuant to Section 1400.8(f);

   (e) Points of ingress and egress that vehicles will use for parking and loading purposes, pursuant to Section 1400.8(g);

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(f) Location of off-street parking spaces, the amount and size of the parking spaces, and the location and size of the loading and unloading facilities, pursuant to Section 1400.8(h) and (i); and

(g) Elevation views for each side of the building proposed for the site, pursuant to Section 1400.8(k).

Please begin the processing of the above-referenced application. If you have any questions, please do not hesitate to call Maureen Dwyer at (202) 457-7860 or Paul Tummonds at (202) 457-7854. Thank you for your prompt attention to this matter.

Sincerely yours,

Maureen Dwyer /pdf
Maureen E. Dwyer

Paul A. Tummonds
Paul A. Tummonds, Jr.

Enclosures

FAX

To: Board of Zoning Adjustment
FAX: 202-727-6072
Date: July 6, 2001
From: Nebraska Avenue Neighborhood Association
Page Chiapella, President

Re: Case No. 16716

Attached is our response to Sunrise's Motion to Recuse.
Total: 12 pages. (inc cover sheet)

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