Chevy Chase
Advisory Neighborhood Commission 3G
MAILING ADDRESS: P.O. BOX 6252 Northwest Station Washington, DC 20015

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(202) 363-5803
FAX (202) 686-4366
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D.C. OFFICE OF ZONING
2002 MAY 29 AM 9:02

May 24, 2002

Mr. Geoffrey Griffis, Chairman,
Board of Zoning Adjustment
441 4th Street Room 210
Washington DC 20001

Re: BZA Appeal No. 16879

Sent by FAX and Mail

Dear Ms. Griffis:

ANC 3G submits this statement in response to the Board's order of May 21, 2002. ANC 3G opposes the motion to dismiss filed by Sunrise Assisted Living Facility (Sunrise) by letter dated March 15, 2002. As grounds for its motion, Sunrise claims that this appeal is barred because its raises the same facts and issued raised in a previous appeal, No. 16716A

Sunrise's assertion is clearly wrong. The current appeal challenges matters that were not and could not have been raised in the earlier appeal because they relate to matters arising out of revised plans, a revised building permit, and other new information, specifically that post-dates the prior appeal. Specifically this appeal focuses on (1) revised elevator and penthouse plans which do not comply with applicable requirements; (2) building safety violations adjacent to the revised elevator penthouse and not raised in the previous appeal; (3) FAR calculations that have been produced by DCRA; and therefore could not have been raised in the previous appeal.

It appears from recent filings that Sunrise is arguing that this appeal does not raise new and different issues and therefore is improper. This is incorrect. The instant appeal is based both on new issues and on newly-discovered evidence, as follows.

First, the building permit that is the subject of this appeal is based on the new roof plans submitted by Sunrise in its effort to moot a prior appeal before the Zoning Commission. Sunrise submitted new roof plans that lower the height of the roof over penthouse that houses the elevator equipment. However, Sunrise did not submit new plans for an elevator system, even though the existing elevator equipment requires a roof substantially higher than the new roof plans provide for. This is the gravamen of the appeal – that Sunrise has, in effect, submitted fake

BZA
Case No. 16879
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16879
EXHIBIT NO.28

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We ask the Board to rule that the Zoning Administrator erred by issuing a building permit when the plans submitted, taken as a whole, are internally inconsistent and the building cannot possibly be built as described.

In support of this position, ANC 3G offers the attached affidavit of its expert witness, Mr. Christopher Fromboluti, a licensed architect and an acknowledged expert whose expert testimony was admitted in a previous appeal involving Sunrise. As Mr. Fromboluti avers, the elevator system in the current plans cannot be accommodated under the new roof plans, which have a lowered roof line. Further, no elevator approved for use in the District of Columbia will fit under the new, revised roof plan. Nor will the most compact elevator Mr. Fromboluti was able to identify (which is in any event not approved for use in D.C.) fit under the new, revised roof plan. It is telling that even though the Board expressly invited Sunrise to file additional material about this issue, and even though the company was well aware of this problem as it was raised in earlier filings, the affidavit of Sunrise's expert fails completely to address this question.

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Accordingly, the Board should permit this appeal to proceed because newly-discovered evidence calls into question the Administrator's determination that the building's FAR was calculated correctly, warranting new consideration of this issue.

In view of the material new matters raised in the appeal, Sunrise's motion should be denied with prejudice.

Sincerely

Allen E. Beach
Secretary
ANC 3G

(Signed by Secretary in absence of either Chair or Vice Chair, as authorized by ANC 3/4G.)

1/ The new roof plan also raises safety issues that the Board has not previously addressed and that are newly presented given the new design and plans.

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Councilmember Adrian Fenty
Ms. Jerrily Kress

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9. The documents submitted by Sunrise show a distance of approximately 12'-6" from the highest car stop to the underside of the elevator hoist beam. This 12'-6" is required to achieve the non-protruding elevator machine room configuration pictured on the building section. The minimum required distance shown on the manufacturer's technical data sheet for the elevator proposed shows 13'-8". This is for the "Kone EcoSystem" elevator proposed by Sunrise.

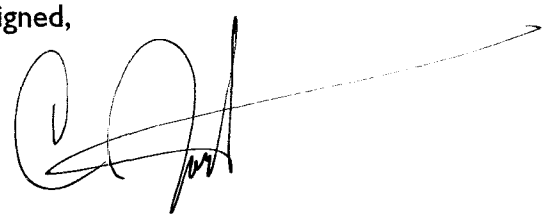
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11. The distance required from the top floor landing to the underside of the elevator hoist beam for an elevator that is currently approved for use in the District of Columbia is 22"-10". This is considerably greater than the 12'-6" shown on the Sunrise drawings.

Signed,

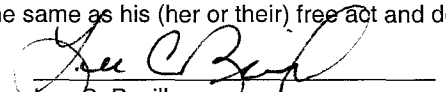


Christopher Fromboluti, AIA

Notarized:

District of Columbia

On this 24th day of **May 2002**, before me personally appeared **Christopher Fromboluti**, who is **personally known to me** or who has produced **N/A** as identification and who executed the foregoing instrument, and acknowledgement that he (she or they) executed the same as his (her or their) free act and deed.



Lee C. Beville
Notary Public, District of Columbia
My commission expires 9/30/05

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

MAY 2 2 2002

Allen E. Beach, Secretary (By FAX)
Advisory Neighborhood Commission 3G
5601 Connecticut Avenue, N.W.
Washington, DC 20015

RE: BZA Appeal No. 16879 – Nebraska Avenue Neighborhood Association (Sunrise Assisted Living)

Dear Mr. Beach:

The Office of Zoning is in receipt of the Advisory Neighborhood Commission's correspondence concerning the motion to dismiss the Sunrise appeal. A faxed copy of your correspondence was received in the Office of Zoning on May 17, 2002, and the original May 21, 2002. It should have been received by close of business May 15, 2002. The Board of Zoning Adjustment determined that your letter was submitted late and will not be considered during its deliberation on the case. However, you can articulate your views to the Board when you respond to the material that you will be receiving from Shaw Pittman on May 22, 2002. As a reminder, your response to the Shaw Pittman correspondence must be received by **NOON, WEDNESDAY, MAY 29, 2002.**

Should you have any questions or need clarification, please contact the Office of Zoning on (202) 727-0364.

Sincerely,

JERRILY R. KRESS, FAIA
Director

Enclosure

Government of the District of Columbia
BOARD OF ZONING ADJUSTMENT

MEMORANDUM

To: To File
From: Sheri M. Pruitt,
Secretariat to the Board of Zoning Adjustment

Date: May 21, 2002

Re: **BZA Appeal 16879 Sunrise Connecticut Avenue Assisted Living**

At the May 21, 2002, special public meeting, the Board decided to hold in abeyance the motion submitted by the intervener (Sunrise) to dismiss BZA Appeal No. 16879. The Board requested Sunrise provide supplemental evidentiary information that there is no significant difference between the building permit No. B434564 issued March 21, 2001, and the modified building permit No. B442149 issued January 22, 2002. Additionally, Sunrise is to serve all parties with the information by close of business Wednesday May 22, 2002. Responses to the supplemental information must be submitted to the Office of Zoning by 12:00 noon on Wednesday May 29, 2002 for a decision at a Special Public Meeting at 1:00pm.

Cc:

Anne Page Chiapella
Allison Prince
Marilyn Holmes
Alan Bergstein

BAB/5.21.02

Chevy Chase
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D.C. OFFICE OF ZONING
2002 MAY 28 PM 1:47

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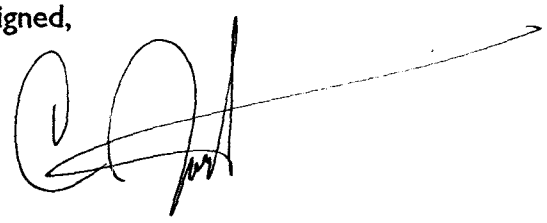
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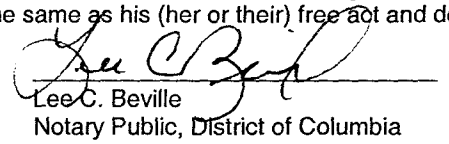


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HELLMUTH, OBATA + KASSABAUM, P.C.

ARCHITECTURE, ENGINEERING, PLANNING,
INTERIORS, GRAPHICS, CONSULTING

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