Nebraska Avenue Neighborhood Association
5126 Nebraska Avenue, N.W.
Washington, DC 20008

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Date: August 21, 2002 **By Hand Delivery**

RE: Appeal No. 16879–Sunrise Assisted Living

REQUEST FOR RECONSIDERATION OF MOTION TO DISMISS

Geoffrey Griffis
Chair, Board of Zoning Adjustment
441 4th Street, N.W., Suite 210 South
Washington, DC 20001

Dear Mr. Griffis and Members of the Board:

The Nebraska Avenue Neighborhood Association (the "Appellant") hereby requests reconsideration of the Motion to Dismiss Appeal No 16879. This request is based on significant new information contained in a July 30, 2002 letter from Sunrise Assisted Living, Inc. ("Sunrise") written to the Board of Appeals and Review (Exhibit A). In this letter, **Sunrise reversed the position that it presented to the Board of Zoning Adjustment** (the "Board") at the June 18, 2002 BZA Public Hearing. Sunrise now claims that Permit B442149 includes modification of the elevator system, not just to the elevator penthouse as they previously claimed to the Board. That is, Permit B442149 includes new elevators, shaft and penthouse. This is important because the revised elevator system (Kone) also has a revised elevator penthouse (different from that shown in Plan Sheet A401 supplied by DCRA!) that the Appellants believe is noncompliant with zoning regulations. This is a basis of Appeal No. 16879.

BACKGROUND OF/JUSTIFICATION FOR THE REQUEST:

1. Sunrise claimed to the BZA (June 18, 2002 Public Hearing) that Permit No. B442149 (revision of Permit No. B435464) modifies only the elevator penthouse.

Sunrise claimed that the permit authorized no other modification of Permit B435464.

2. Sunrise reverses itself.

In a letter dated July 30, 2002 to the Board of Appeals and Review (Exhibit A), Sunrise changed its claim about Permit No. B442149 to say that **the permit modifies not only the elevator penthouse but also the elevator system** (Exhibit A).

BZA
Case No. 16879
Exhibit No. 45

Board of Zoning Adjustment
District of Columbia
CASE NO.16879
EXHIBIT NO.45

3. The BZA has not evaluated the new elevator system penthouse for zoning compliance.

The elevator modification in Permit B442149 is actually a new elevator system – two Kone Elevators (2500 and 3500 capacity). The Kone Elevator system includes the new elevators, a new elevator shaft, elevator lobby and relocated electrical closet (Plan Sheet A401, 11/29/01 and Kone manufacturers information in Appellants Exhibit E, May 29, 2002, "Exhibit E"). The elevator penthouse for this Kone Elevator system (Exhibit E) is noncompliant with Zoning Code, as was the original Otis Elevators and penthouse. **The Kone Elevator system, including its penthouse, has not been evaluated for compliance by the BZA**. This penthouse was one of the Appellant's appeal points

4. The new Kone Elevator system is included in Permit B442149 application.

Kone elevator details included with application materials for Permit B442149 are included in Exhibit E in the Appellant's May 29, 2002 submission to the Board. The required elevator penthouse is accurately depicted in that material. An affidavit is attached (Exhibit B) stating that Appellant's May 29, 2002 Exhibit E was copied from official DCRA files and provided to the Appellant by DCRA.

5. Permit B442149 is noncompliant with zoning regulations.

The newly stated Sunrise position agrees with the Appellant's documentation that Permit No. B442149 modifies the elevator system. Wording on Permit No. B442149 also substantiates this position-- Permit B442149 authorizes revision "to include elevator only as per plans." These plans are provided in the application and include a penthouse of the Kone Elevator system that is different from the one shown in Plan Sheet A401. The Kone Elevator system with the required taller penthouse also renders the roof structures with the same noncompliances affecting the disallowed Otis Elevators, including noncompliance with 11 DCMR §§400.1, 400.7(a), 400.7 (b), 402.4, 411.1, 411.2, 411.3, and 411.5.

6. The BZA's oral decision to dismiss Appeal No. 16879 based on erroneous interpretation.

The BZA's oral decision to accept Sunrise's motion to dismiss Appeal No. 16879 appeared to be substantially based on the assumption that Permit B442149 modified only the elevator penthouse as shown in Plan Sheet A401. Sunrise's revised position matches the Permit No. B442149 application and shows that this interpretation is incorrect.

The Appellants respectfully request reconsideration of the Motion to Dismiss Appeal No. B16879. The request is based on new information in which Sunrise contradicts and reverses its position presented before the Board on July 18, 2002. The new Sunrise position supports the appeal case. We believe due process requires the Board to hear Appeal No. 16879 and allow the Appellants to make their case before the Board. The Final Decision should be based on full appeal process including required service of information on all parties and the opportunity for parties to cross examine those presenting "evidence."

Yours truly,

Page Chiapella

Page Chiapella,
President, Nebraska Avenue Neighborhood Assn.

Attachments: Exhibit A: Sunrise letter dated July 30, 2002 to the Board of Appeals and Review
Exhibit B: Affidavit stating that records are copies of official DCRA records
Certificate of Service

Cc: Denzil Noble
Toye Bello
William Bennett, Esq.
Alan Bergstein, Esq.
Maureen Dwyer, Esq.
ANC 3G

Exhibit A

DISTRICT OF COLUMBIA BOARD OF APPEALS AND REVIEW

APPEAL OF NEBRASKA AVENUE NEIGHBORHOOD ASSOCIATION

RE: BUILDING PERMITS NO. B435464 and B442149 ISSUED FOR 5111 CONNECTICUT AVENUE, N.W.

DOCKET NO. BAR 02-5872-BP

PROPERTY OWNERS CROSS APPEAL AND NOTICE OF INTENTION TO INTERVENE

On behalf of Sunrise Connecticut Avenue Assisted Living, LLC (hereinafter "Sunrise"), the owner of the property located at 5111 Connecticut Avenue, N.W. (hereinafter "Subject Property"), we respectfully request that the Board of Appeals and Review (the "Board" or "BAR") deny the above-referenced appeal of the Nebraska Avenue Neighborhood Association. (hereinafter "NANA") as it was not filed in a timely manner in accordance with D.C. MUN. REGS. tit. 1 §503.2 (2002).

The building permits in dispute were issued by the Department of Consumer and Regulatory Affairs ("DCRA") on March 8, 2001, and January 22, 2002. The first permit authorized the construction of an assisted living facility (community residence facility) that provides housing for the handicapped (as that term is defined in Fair Housing Act) on the Subject Property. The second permit authorized the modification of the elevator penthouse structure and elevator system for the facility. NANA challenged each permit in two separate appeals that were filed with the District of Columbia Board of Zoning Adjustment ("BZA") claiming that the building permits did not satisfy the Zoning Regulations. The BZA denied each appeal and determined that the permits were valid.

The permits at issue have been subjected to an extraordinary level of scrutiny. The first permit was issued only after DCRA conducted an exhaustive eight-month review of the building permit application. The subsequent modification of the elevator penthouse and elevator equipment, Building Permit No. B442149, also received significant review and scrutiny by DCRA. This appeal is merely another attempt by NANA to prevent this project from being constructed.

NANA's appeal of the original building permit and subsequent modification permit does not satisfy the requirements of D.C. MUN. REGS. tit. 1 §503.2 (2002). That section requires that

> An aggrieved person, owner of property, or licensee shall file the notice of appeal with the Board within fifteen (15) days after service of the notice of the act, decision, or order with respect to which the appeal is filed.

The original building permit was issued on March 8, 2001. NANA was obviously aware of the issuance of the building permit, since it filed an appeal with the BZA on March 16, 2001. Similarly, NANA filed another appeal with the BZA on March 19 and 20, 2002, this time contesting the validity of the modification permit which was issued on January 22, 2002. Therefore, NANA has failed to satisfy the statutory requirements of D.C. MUN. REGS. tit. 1 §503.2 (2002). NANA should not be allowed to obtain a waiver of this requirement. NANA was fully aware of the issuance of the building permit and modification permit. Sunrise is the party that will be adversely affected if the Board allows the appeal to be heard. The Board should follow its enumerated regulations and not condone NANA's continued harassment of Sunrise.

Sunrise, as the property owner and party in interest, also hereby requests the opportunity allowed to participate in the Board's appeal process. Sunrise will be able to provide relevant

information to the Board as necessary throughout the process and assist DCRA in its defense of the validly issued building permits.

This appeal was mailed to Sunrise on July 19, 2002, thus, this cross appeal is filed in accordance with D.C. MUN. REGS. tit. 1 §§501.5 and 503.4 (2002).

CONCLUSION

The Board should dismiss NANA's appeal because it was not filed in a timely manner, nor does it have any substance or merit. Additionally, the Board should grant Sunrise, as the property owner and building permit holder, the ability to participate in this hearing process.

Respectfully submitted,

Allison C. Prince

Allison C. Prince, Esq.
Paul A. Tummonds, Jr., Esq.
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037

Date: July 30, 2002

Exhibit B

Anne Page Chiapella, Ph.D.
5126 Nebraska Avenue, NW
Washington, DC 20008

AFFIDAVIT

1. My name is Anne Page Chiapella. I am a taxpaying citizen of the District of Columbia. I have owned and resided in my home at 5126 Nebraska Avenue, NW since 1986. I am President of the Nebraska Avenue Neighborhood Association.

2. I certify that under the supervision of DCRA staff who maintained full control of the records, I viewed official Department of Consumer and Regulatory Affairs ("DCRA") records containing the application materials for and a copy of Building Permit No. B442149 (a revision of Building Permit No. B435464). Those official records included revised plans for elevator shaft, elevators and elevator lobby and specifications for Kone Ecosystem elevators.

3. I certify that I requested from DCRA photocopies of the complete official file of application materials and issued permit No. B442149 and that I paid all appropriate fees to the Government of the District of Columbia for photocopies from the official files for Permit No. B442149.

4. I certify that the records provided to the Board of Zoning Adjustment in Exhibit E of the May 29, 2002 submission by the Nebraska Avenue Neighborhood Association are photocopies of records from DCRA official files for Building Permit No. B442149.

Signed,

Anne Page Chiapella

Anne Page Chiapella

Notarized:

Melisa S. Lee, Notary Public
Montgomery County
State of Maryland
My Commission Expires Sept. 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy the forgoing submission to the Board of Zoning Adjustment, dated August 21, 2002, was mailed first class, postage prepaid, to the following:

Denzil Noble, Acting Zoning Administrator
941 North Capital St., NE
Washington, DC 20002

Toye Bello, Former Acting Zoning Administrator
941 North Capital St., NE
Washington, DC 20002

William Bennett, Esq.
Office of the Corporation Council
441 4th Street, NW
Washington, DC 20001

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Chevy Chase Community Center, 2nd Floor
5601 Connecticut Avenue, NW
Washington, DC 20015

Page Chiapella
Signed

Aug. 21, 2002
Date