IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

Nebraska Avenue Neighborhood Association **Anne Page Chiapella, President** **Petitioners,** **V.** **DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT** **Respondent** **Sunrise Connecticut Avenue Asisted Living, LLC** **Intervener**	**Case No. 02-AA1368** **(BZA Appeal No. 16879)**

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Support for Motion for an Expedited Order to Remand to THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

The Nebraska Avenue Neighborhood Association and Anne Page Chiapella, Petitioners, support the Motion for an Expedited Order to Remand to the Board of zoning Adjustment (the "Board"). The Petitioners strongly disagree with statements in the Sunrise Connecticut Avenue Assisted Living, LLC ("Sunrise") December 31, 2002 submission.

BZA
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Exhibit No. 60

Intervener Sunrise, errs in stating that Petitioners should have been fully aware of the filing deadlines. The Petitioners were informed by Office of Zoning staff that the weekend/holiday extension (11 DCMR §3110.2) applied to the period for mailing. Zoning staff assured Petitioners that this interpretation was based on extensive experience in the Office of Zoning. Petitioners also believed that this interpretation agreed with the specific wording of the regulation. Therefore, both experienced Office of Zoning Staff and (the Petitioners believed)

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precise wording of the regulations led Petitioners' filing to be one day late. Petitioners requested a waiver upon learning the filing was one day late. The one day did not affect any response by other parties or consideration by the Board. These facts strongly support remanding to the Board for reconsideration.

Title 11 Zoning Regulations ("11 DCMR") §3100.5 provides that the Board may waive, for good cause shown, provisions of its rules of practice and procedures. Intervener argues that "the Court does not substitute its judgment for that of the agency, rather the Court upholds agency actions that have rational basis. Citizens Coalition, et al. v. District of Columbia Board of Zoning Adjustment, 619 A.2d 940, 946-47 (D.C. 1993)." The Board provided rational basis for its request with respect to the waiver. The Board has substantial history of accepting waivers for such filing deadlines.

Sunrise states that the first appeal (No. 16716) of the building permit was rejected by the Board. In fact, this appeal was sustained in part by the Zoning Commission in a *sua sponte* of the Board's decision. This lead Sunrise to apply for a revised building permit. This revision permit is one part of the current appeal process (No. 16879).

Sunrise alleges that the Petitioners have engaged in a three-year long series of maneuvers to stop the Sunrise project as well as ongoing delay and harassment tactics. Sunrise provides no evidence or substantiation of this claim. The Court must appreciate that Petitioners are entitled to protect their rights against noncompliant development, especially when it is detrimental to the neighborhood and city.

Sunrise has engaged in misrepresentations and noncompliance with D.C. regulations, as documented in the record for BZA Appeal No. 16879 and records of BZA Appeal No. 16716 and

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Support for Motion for an Expedited Order to Remand to the Board of Zoning Adjustment was served by hand-delivery or first-class mail, postage prepaid, this 2nd day of January, 2003 upon the following:

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