Nebraska Avenue Neighborhood Association
5126 Nebraska Avenue, N.W.
Washington, D.C. 20008

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February 3, 2003 Delivery by FAX

Geoffrey Griffis
Chair, BZA
441 4th St. NW, Suite 210
Washington, DC 20001

RE: Motion to Reconsider Appeal No. 16979 (Sunrise / 5111 Connecticut Ave. NW)

Dear Mr. Griffis and Members of the Board:

Sunrise Assisted Living, Inc. ("Sunrise") argues that Appeal 16879 is improper because it raises no new issue, is untimely, they relied on their permits the process has been costly to them. In response, the Appellants point out the following:

1. *Res judicata*

Res judicata (prohibiting re-adjudication on the same issues) does not block re-adjudication of this appeal because there is substantial change in circumstance Citing *Towles v. District of Columbia BZA*, 578 A.2d 1128 (D.C. 1990) . The original permit application materials were so ambiguous and faulty that construction could not be determined from the approved plans. Current construction shows noncompliance with zoning regulations. Sunrise abandoned any right to rely upon the plea of *res judicata* by not submitting unambiguous building plans and not following plans submitted.

2. *laches* and *estoppel*

The defenses of *laches* and *estoppel* are judicially disfavored in the zoning context because of the public interest in enforcement of the zoning laws. *Sisson v. District of Columbia BZA*. 805 A.2d 964 (D.C. 2002).

Laches is rarely applied in the zoning context except in the clearest and most compelling circumstances. *Sisson v. D.C. BZA*, supra. Determination if the facts are sufficient to sustain the defense of laches is one of law to be answered de novo by the appellate court. *Sisson v. D.C. BZA*, supra.

BZA
Case No. 16879
Exhibit No. 62

Board of Zoning Adjustment
District of Columbia
CASE NO.16879
EXHIBIT NO.62

The defense of *estoppel* requires that the developer acted in good faith. *Murray, et al., v. District of Columbia BZA* 572 A.2d 1055 (D.C.App. 1990). *Sisson v. D.C. BZA*, supra. The Appellants allege that Sunrise has not acted in good faith, based on the following actions by Sunrise* (*Regulation and documentation):

(a) Submitting ambiguous and inaccurate plans with permit applications, plans not compliant with D.C. Municipal Regulations, compromising their permit to build (12 DCMR §§ 107.15, 111.3);

(b) Misrepresenting the building as 23' 2" tall on the Environmental Impact Screening Form (helping avoid a full environmental impact evaluation);

(c) Submitting inaccurate responses to DCRA requests for correction/ clarification (Plan Correction Lists); and not responding to every request;

(d) Misrepresenting public alley as private property (to close alley for development);

(e) Not providing structural plans prepared by a current DC-licensed engineer (12 DCMR § 113.1);.

(f) Not scheduling required building inspections (12 DCMR §§ 113.2, 113.3, 113.6) that would have identified discrepancies between construction and approved permit plans.

3. Exhaustion of administrative remedy:

Current construction that is not compliant with 11 DCMR is subject to application for administrative remedy (variance and/or special exception). This procedure is necessary to protect the integrity of the D.C. Zoning Regulations.

We request that the Board reconsider the Motion to Dismiss and hear the subject appeal as provided by the regulations.

Respectfully,

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President, Nebraska Ave. Neighborhood Assn.

Attachment: Certificate of Service

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing letter was served by hand-delivery or FAX this 3rd day of February, 2003 upon the following:

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2/3/03
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