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May 4, 2004

By Hand Delivery

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: Supplemental Submission of Sunrise Assisted Living ("Sunrise" or "Property Owner")
BZA Appeal No. 17127 – Motion to Dismiss

Dear Chairman Griffis and Members of the Board:

At the close of the Board's consideration of Sunrise's Motion to Dismiss Appeal No. 17127, representatives of Sunrise and the Nebraska Avenue Neighborhood Association ("NANA" or "Appellant") were each asked to submit a final response to the Motion to Dismiss the appeal. As a supplement to its Motion to Dismiss, Sunrise notes the following:

I. THE ACTUAL PURPOSE OF THE APPEAL

NANA and ANC 3/4G stated openly to the Board that the purpose of the appeal is not to address an alleged (but non-existent) zoning violation, but rather, to secure leverage to negotiate some desired changes to the completed project. By letter dated April 12, 2004, Christopher Fromboluti of ANC 3/4G specifically stated:

> As the building is complete, it is not reasonable to expect Sunrise to demolish part of it to bring it into FAR compliance. However, as the loading situation can be readily improved, I request that the BZA consider requiring Sunrise to do so.

Specifically, the ANC requested the relocation of two alley light posts to facilitate loading access. The light posts are located in public space. While it is noteworthy that Sunrise itself unsuccessfully sought to relocate these light poles, this matter is entirely outside the zoning process. As the Board is well aware, it does not have the ability or authority to request the relocation of light poles in public space. The Board should not countenance this misuse of the appeal process to address community grievances that are not related to zoning issues or the building permits that have been appealed.

BZA
Case No. 17127
Exhibit No. 20

Board of Zoning Adjustment
District of Columbia
CASE NO.17127
EXHIBIT NO.20

II. THE APPEAL OF THE FIRST PERMIT MUST BE DISMISSED SINCE IT IS NOT TIMELY

At the hearing on April 13, 2004, the Board narrowed the scope of the appeal to only two of the six permits that were initially challenged by NANA. The first of the two permits, Building Permit No. B454315 dated August 25, 2003, was issued over four months prior to the date that BZA Appeal No. 17127 was filed. Under the Board's newly adopted 60-day time limit for the appeal of a permit (Zoning Commission Order No. 02-01), the appeal of this permit must be dismissed since it was not filed in a timely manner. Given NANA's aggressive and unrelenting scrutiny of every detail of Sunrise's construction activities on the property and filings with the Building and Land Regulation Administration, there can be no excuse for its delay in filing an appeal. Regardless, this statement addresses the work that was authorized by Building Permit No. B454315.

III. DISCUSSION OF WORK AUTHORIZED BY THE PERMITS

We have worked extensively with the architect to scrutinize every change authorized by both permits. Both permits involved a series of technical, minor changes to the building. Contrary to the allegations of NANA, these permits did not involve any changes to the penthouse, increase the building's FAR, create a room under the stairs at the rear of the building, or eliminate a required loading berth. We must note, however, that contrary to our initial understanding, the plans did involve some minor exterior changes as well as extensive interior changes. Notwithstanding, these exterior changes effected a slight ***reduction*** of gross floor area and had no other zoning impacts. The changes associated with the first permit, Permit No. B454315, were as follows:

- The conversion of former interior space on the northern end of the 6th floor to exterior balconies. (This resulted in a minor *reduction* in gross floor area.)

- The removal of two open balconies at the sixth floor and two open balconies at the seventh floor at the southern end of the building. (This change involved no shift in the location of the building's exterior wall, and had no effect on the building's gross floor area.)

- The conversion of an existing toilet room from one serving the residents, to one serving both residents and visitors on the seventh floor.

- The installation of 18" high planters on the perimeter of the 7th floor roof deck as a safety precaution.

- The movement of a stairwell doorway on the seventh floor roof deck.

- The installation of built-in cabinetry in the elevator lobby on the seventh floor.

- The removal of a gable roof over the balcony on the seventh floor along the alley stub.

- The elimination of the roof over three covered balconies. (This change resulted in a minor *reduction* in gross floor area.)

- Relocation of heat pump loop piping in the sixth floor ceiling.

The changes associated with the second permit, Building Permit No. B456618 dated November 7, 2003, were primarily related to PEPCO's decision to install the required transformer at the rear of the building rather than the front as originally planned. In addition, the trash enclosure was relocated ***pursuant to citizen request*** from the originally planned location adjacent to the alley stub, to a new location at the southeastern corner of the building. It is ironic that NANA has shown such great concern over the relocated trash enclosure. NANA strongly disagreed with the original location of the trash enclosure, arguing that it would result in blockage of the alley stub. Thereafter, the Mayor's community liaison member assigned to the project requested its relocation to address citizen concerns. Sunrise responded to the request by relocating the trash enclosure adjacent to the southeastern corner of the building, only to find that its effort to address community concerns has given rise to yet another appeal. This exercise gives new meaning to the saying "no good deed goes unpunished." While the enclosure could be relocated to the original location, Sunrise believes that it would, once again, hear complaints from neighboring property owners.

Specifically, Building Permit No. B456618 allowed the following modifications:

- The electrical room was relocated from the front portion of the building at the garage level, to existing space within the rear portion of the building. The change was needed since the electrical room must be located near the transformer.

- The trash enclosure was relocated from a location adjacent to the alley stub to the southeastern corner of the site adjacent to the building. The trash enclosure is an accessory structure that consists of a total of 80 square feet. It is built into an existing retaining wall and its roof is at grade level.

- A non-required stair from the garage level to the first floor was removed.

- A manually operated door was added next to the trash enclosure and the electrically operated roll door into the garage.

- Interior partitioning walls were changed to achieve a slight reduction in the size of the elevator lobby to accommodate the relocated electrical room.

- A small corner of the foundation of the building adjacent to the alley stub was adjusted one foot to align with the structure above the corner.

- A stairway door was relocated away from a drive aisle in the garage.

- The DCRA permit reviewer specifically asked the architects to mark the drawings to show that there is no room under the stairs that lead from the ground floor level of the building to the garage level in the rear of the building. The reviewer made this request to address NANA's repeated allegations that the stairs covered usable space. Accordingly, the architects marked the drawings to indicate that there is no usable space beneath the stairs. (It is particularly ironic that NANA is now appealing permit drawings that were specifically marked to remove any basis for NANA's continued allegations about the presence of a room under the stairs. This is not a new issue.)

- A retaining wall was added between the PEPCO electrical transformer and the new trash enclosure at the ground floor level.

- Interior room revisions were made to allow for better walking areas and views.

- Balconies were deleted at the second and third floors.

Enough is enough. There are two permits at issue and the appeal of one must be dismissed as untimely. Both permits involve a long list of minor changes that had no effect whatsoever on the building's zoning compliance. A public hearing is not needed to determine that these minor changes do not result in zoning violations. Further, the Appellant has admitted that it has filed this appeal to gain leverage to address issues that do not relate to zoning. Accordingly, Appeal No. 17127 should be dismissed without a public hearing.

Respectfully submitted,

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Certificate of Service

I hereby certify that on May 4, 2004, a copy of the foregoing letter was hand-delivered, to the following:

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