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May 18, 2004

By Hand Delivery

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

**Re: BZA Appeal No. 17127: Response to Submissions of NANA dated May 4, 2004 and May 11, 2004**

Dear Chairman Griffis and Members of the Board:

NANA's May 11, 2004 submission in connection with its fourth appeal of Sunrise-related permits are filled with complete factual inaccuracies that indicate Ms. Chiapella's misunderstanding of both the plans and the Zoning Regulations and an abuse of the appeal process. We strongly urge you to disregard Ms. Chiapella's declaration in which she purports to explain the zoning impact of the drawings. Ms. Chiapella is not an architect and does not have the expertise to understand or explain the drawings. Nonetheless, after consultation with Steven Ruiz, the Project Architect, Sunrise has addressed all of her allegations in the affidavit attached as Exhibit A.

One example of a misleading statement by Ms Chiapella's is her argument that the Wall Test demonstrated that there are zoning violations at the property. She fails to note that the DCRA issued a Certificate of Occupancy indicating that the building was constructed in a manner that was consistent with the Zoning Regulations and the approval permit plans. Further she fails to note that she never challenged the building's Certificate of Occupancy. Ms. Chiapella continues to confuse and obscure the facts in this matter.

Ms. Chiapella's May 4 submission is accompanied by a statement from Christopher Fromboluti of ANC 3G dated April 26, 2004. Mr. Fromboluti is an

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experienced and respected architect. Therefore, his comments on the drawings merit greater consideration than those of Ms. Chiapella. Mr. Framboluti made three comments:

1. **A pedestrian access door and trash room have been added at the grade level. In the original plans the area that now contains those two features was shown as earth mounted against the building. Thus, the amount of cellar has been reduced and the amount of basement has been increased. This increases the FAR of the project over that allowable.**

   **Response:** The trash enclosure is an accessory structure that abuts the rear of the building. It was incorporated tino an existing retaining wall and its roof is at grade level. The trash enclosure originally was located in an open area at the rear of the site and was relocated at the request of the Mayor's Liaison who noted community complaints about the location of the trash enclosure.

   The construction of an accessory structure in this location is permitted under the regulations. It does result in a reduction in the amount of cellar area of the building. Further, since its roof is at grade level, it has no effect on FAR. Even if it did increase the gross floor area of the building, it must be noted that the building was not constructed to the full FAR. Therefore, even this minor change (that was done to accommodate neighbors) did increase the gross floor area of the building, it would still be well within the maximum permitted FAR.

2. **The trash room noted above intrudes into the required minimum yard space.**

   **Response:** Mr. Framboluti's statement would be correct if the trash room were constructed as an addition to the main building. However, it was not. It is an accessory structure that abuts the main building. Because of the community concerns about the original location of the trash enclosure, the architect determined that it was best to place the enclosure as close to the back of the building and as far away from neighboring property owners as possible. This location has enhanced, not decreased maneuvering room at the rear of the building.

It must be noted that Sunrise would have been fully within its rights to place a large dumpster in its rear yard directly abutting the alley and much closer to neighboring property owners. The fully enclosed trash room is a superior solution in terms of its visual and other impacts on the neighbors.

3. **An electrical transformer that was not shown in the original plans has been placed in one of the two required loading spaces. This required loading space has not been replaced. Thus, the project only contains one loading space, which forces loading to occur in the alley.**

**Response:** The permit that allowed the installation of the electrical transformer is not the subject of this appeal. Further, the transformer did not displace a required loading space. The building continues to provide the required amount of loading.

We reiterate our request that you deny NANA's fourth appeal. As stated in our statement to the Board dated May 4, 2004, Ms. Chiapella is using this appeal to raise stale arguments and reargue her longstanding issues with the project. Her efforts to argue her points by making confusing and misleading statements should not be countenanced by this Board. We urge you to dismiss this appeal.

Respectfully submitted,

Maureen E. Dwyer ALP

Maureen E. Dwyer

Allison C. Prince

Allison C. Prince

Paul A. Tummonds ALP

Paul A. Tummonds

**Certificate of Service**

I hereby certify that on May 18, 2004, a copy of the foregoing letter was mailed first class, postage prepaid, to the following:

Anne Paige Chiapella
President, Nebraska Avenue Neighborhood Association
John Frye, MD
5126 Nebraska Avenue, NW
Washington, DC 20015

Robert Gordon, Chairman ANC 3/4 G
3711 Military Road, NW
Washington, DC 20015

William Bennett
Office of the Corporation Counsel
441 4th Street, N.W.
Washington, D.C. 20001

Andrea C. Fertster
1100 17th Street, N.W., 10th Floor
Washington, D.C. 20036

Allison C. Prince

EXHIBIT A

**AFFIDAVIT**

I, Steven Ruiz, being duly sworn, states as follows:

I am a partner in the architecture firm of Beery, Rio & Associates.

My office prepared the plans associated with all of the building permits for the Sunrise Assisted Living Facility at 5111 Connecticut Avenue, N.W. (the "Project"). I am the architect of record for the building permit application plans that resulting in the issuance of Building Permits No. B454596, B454315, B453159, B4544523, B454064, and B456618 which are the subject of Appeal No. 17127. These building permits authorized minor modifications to the project and had no effect on the zoning computations for the project. Specifically:

- No changes had any impact on the total FAR of the project.
- No changes had any impact on the required rear yard of the project.
- No changes had any impact on the measurement of the height of the project.
- No changes had any impact on the roof structure of the project.
- No changes had any impact on the location of the parking garage of the project.

- The door added next to the trash enclosure has no zoning consequences beyond adding approximately 80 square feet mentioned above. Since there was no lowering of the adjacent grade, there were no zoning consequences for any adjustment of the retaining wall.

- No retaining walls were deleted. Therefore, there are no zoning consequences due to deletions of retaining walls.

Steven Ruiz

Subscribed and sworn to before me this 18th day of May, 2004.

Notary Public, ~~D.C.~~ VA

My commission expires: September 30, 2006

# AFFIDAVIT

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- No changes had any impact on the total FAR of the project.
- No changes had any impact on the required rear yard of the project.
- No changes had any impact on the measurement of the height of the project.
- No changes had any impact on the roof structure of the project.
- No changes had any impact on the location of the parking garage of the project.

Further, based on a detailed review of NANA's submission dated May 11, 2004, I continue to believe that Building Permits B454315 and B456618 had no zoning consequences. Specifically, in response to NANA's claims in Exhibit A of their May 11, 2004 submissions, under Building Permit B454315:

- The deletion of the external balconies on the seventh floor had no zoning consequences.
- The removal of the enclosures around the south stairwell had no zoning consequences.
- The elimination of the roof over two covered balconies had no zoning consequences for penthouse setback and single penthouse.

Specifically, in response to NANA's claims in Exhibit A of their May 11, 2004 submissions, under Building Permit B456618:

- The trash enclosure has no zoning consequences. The trash enclosure is an accessory structure and has no effect on loading or delivery. Even if, for the sake of argument, the trash enclosure were found to have an effect on FAR, the building has a surplus FAR (approximately 187 feet) and such a small trash enclosure (approximately 80 feet) would not exceed such surplus. As stated above and elsewhere, the change in location for the trash enclosure was due to a request of the Mayor's Liaison who noted community complaints about the planned location of the trash enclosure.