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November 5, 2001

BY HAND DELIVERY

Mr. Geoff Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

Re: Sunrise Connecticut Avenue Assisted Living LLC
5111 Connecticut Avenue, N.W. - BZA Appeal No. 16716
Opposition to Motions for Reconsideration

Dear Mr. Griffis and Members of the Board

Sunrise Connecticut Avenue Assisted LLC ("Sunrise") opposes the Nebraska Avenue Neighborhood Association ("NANA") request for re-review, reopening of the record and further hearings dated October 25, 2001 and Advisory Neighborhood Commission ("ANC") 3G's Motion for Reconsideration filed with the Board of Zoning Adjustment ("Board") on October 25, 2001. None of the issues warrants reconsideration or rehearing. Sunrise's response to these issues are briefly summarized here and addressed in greater detail below.

- **FAR CALCULATION** - The Office of the Zoning Administrator had all relevant information regarding the building, including the inclusion of plans that show a ceiling on the basement level, necessary to make a proper calculation of the building's FAR. The Office of the Zoning Administrator and the Board of Zoning Adjustment ("Board") correctly concluded that the building's FAR satisfies the requirements of the Zoning Regulations for the R-5-D District.

- **ROOF STRUCTURES AND REFERRAL TO OFFICE OF PLANNING** – NANA had an opportunity to respond to the information provided by the Zoning Administrator regarding the architectural embellishments on the roof and did not. The Board's order clearly and comprehensively outlines the basis for its agreement with the Zoning Administrator's approval of the building's roof structures.

- **REAR AND SIDE YARD SETBACK** – The Board has received a great deal of information regarding these issues and the Board's order reflects a thorough analysis of the arguments raised by NANA and the ANC and the Board properly supported the Zoning Administrator's decision.

Case # 16716
Exhibit # 62

Board of Zoning Adjustment
District of Columbia
CASE NO.16716
EXHIBIT NO.62

None of the arguments made in NANA's or ANC 3G's requests for reconsideration and additional hearings provide an appropriate basis for reversing the Board's previous decision in this case. Accordingly, the Board should deny the motions for reconsideration and rehearings.

RESPONSE TO NANA REQUEST FOR RE-REVIEW, REOPENING OF THE RECORD AND FURTHER HEARING ON DESIGNATED ISSUES

All of the issues raised by NANA were fully reviewed by the Board and appropriately addressed in its order in BZA Appeal No. 16716A. Moreover, NANA's request for a rehearing should be denied as NANA has not satisfied the requirements of 11 DCMR §3126.6. This Section of the Zoning Regulations requires that:

> No request for a rehearing shall be considered by the Board unless new evidence is submitted *which could not reasonably have been presented at the original hearing.* (Emphasis added.)

NANA has failed to offer any grounds for the new hearing that it has requested. It has failed to offer any new evidence or explain why it was unable to present such evidence at the public hearing in this case on August 3, 2001. Accordingly, NANA's request for a rehearing should be denied.

A. Floor Area Ratio ("FAR") Calculation

NANA ARGUMENT

NANA claims that the building permit plans submitted by the property owner to DCRA did not depict a ceiling in the basement level and thus the basement FAR calculations and total building FAR calculations were erroneous.

SUNRISE RESPONSE

NANA's assumption that the Zoning Administrator did not have all of the information that was necessary to make an accurate calculation of the building's FAR is incorrect. The building permit plans submitted to DCRA include a series of ceiling plans that are included in the 600 level sheets of the building permit application submission, rather than the building section plans.

The Board had before it a significant amount of information regarding the issue of whether the building satisfies the FAR limits for the R-5-D zone. The Board's order ultimately includes 10 findings of fact regarding this issue and in its Conclusions of Law and Opinion, the Board "concludes that the FAR has been properly calculated and fully complies with the 3.5 FAR limit applicable in the R-5-D zone." There is no need for the Board to re-review the

information in the record of this case regarding the FAR calculation. The Board made a correct an appropriate determination based on all relevant information.

B. Elevator Penthouse and Rooftop Mechanical Equipment; Roof Plan Referral to the Office of Planning

NANA ARGUMENT

NANA is concerned with the fact that the Office of the Zoning Administrator made reference to other buildings in the District of Columbia that had similar architectural embellishments on their roofs. NANA requests that the Board reopen the record to "entitle [NANA] to review and cross examine on this new information on which the BZA relied for its Decision."

SUNRISE RESPONSE

The Board accepted and heard extensive written and oral testimony on the subject of the elevator penthouse and rooftop mechanical equipment. In its Conclusions of Law and Opinion the Board agreed with the interpretations of the Chief of the Zoning Review Branch of DCRA and the Zoning Administrator regarding the appropriateness of the architectural embellishments and rooftop structures on the building.

There is no need for the Board to reopen the record and allow cross-examination on this issue. NANA was already given the opportunity to respond to the Zoning Administrator's submission (dated August 15, 2001) but did not respond to this submission prior to the closing of the record on August 28, 2001. NANA's request to reopen the record to allow cross-examination on this issue should be denied as it has already been given the opportunity to address this issue before the Board.

The Board previously determined that the failure of DCRA to refer the roof plans to the Office of Planning was mere harmless error and does not provide substantive grounds to revoke the building permit. The October 25, 2001 submission of NANA does not include any new or compelling evidence on this issue. Therefore, the Board should uphold its previous determination on this issue and should not grant the request for a new hearing.

C. Rear Yard Setback

NANA ARGUMENT

NANA argued that the Office of the Zoning Administrator made an erroneous decision when it determined both Connecticut Avenue and Chevy Chase Parkway to be the front of the building and thus the Zoning Administrator's decision regarding the rear yard setback of the building was also incorrect.

SUNRISE RESPONSE

NANA's arguments regarding the determination of the front of the building are confused, convoluted and provide no rationale for the Board to reverse its previous determination on this issue. The Board's order includes 12 Findings of Fact regarding the appropriateness of the Zoning Administrator's decisions regarding the rear and side yards for the project. The Board's Conclusions of Law state that the ruling of the Zoning Administrator yields a logical and natural result that is consistent with the intent and meaning of the Zoning Regulations. NANA's request for additional hearings on this issue should be denied.

D. Additional New Information – Surveyor's Plat

NANA ARGUMENT

NANA's October 25, 2001 submission includes additional information that was not previously entered into the record of this case. NANA proposes to introduce into the record of this case a copy of the surveyor's plat for Lot 162, which includes the entire site.

SUNRISE RESPONSE

This evidence should be stricken from the record, as the record in this case was closed on August 28, 2001. Similarly, this information should not be used to grant a new hearing in this case as the Zoning Regulations clearly state that new evidence can only be used if it could not have reasonably been presented at the original public hearing. (See 11 DCMR §3126.6, quoted above).

The information included in the surveyor's plat was available to NANA for more than 10 months prior to the August 3, 2001 public hearing in this case. NANA did not present this information to the Board while the record in this case was open, and it has not made any argument as to why this information could not have reasonably been presented to the Board at the August 3, 2001 public hearing. NANA has once again failed to satisfy the Zoning Regulations requirements for granting a rehearing of this case.

ANC 3G MOTION FOR RECONSIDERATION

ANC 3G's Motion for Reconsideration does not include any compelling or new evidence that warrants a reversal of the Board's previous decision in this case. The Board should reject the ANC's motion for the reasons outlined below.

A. Elevator Penthouse

ANC ARGUMENT

The ANC's Motion for Reconsideration claims that the Board's findings are materially inconsistent and contradictory in regards to the elevator penthouse and roof structures on the building. The ANC also reiterates its argument that an architectural embellishment can not have a functional purpose.

SUNRISE RESPONSE

The Board's Findings of Fact and Conclusions of Law are entirely consistent and well-reasoned. The ANC fails to comprehend that the roof structures that are located on this building include both architectural embellishments and a single penthouse structure as permitted by the Zoning Regulations. The issue of whether an architectural embellishment can also have a functional purpose was thoroughly presented to the Board and addressed by the Office of the Zoning Administrator in its submission to the Board on August 15, 2001. The Board had substantial and substantive information before it when it made its decision on this issue. There is no reason for the Board to reverse its previous decision on this issue.

B. FAR Non-Compliance – Basement

ANC ARGUMENT

The ANC claims that the building permit drawings did not depict a ceiling in the basement level of the building and thus the calculation of the building's FAR was incorrect.

PROPERTY OWNER RESPONSE

As previously discussed, the building permit plans submitted to DCRA include a series of ceiling plans that are included in the 600 level sheets of the building permit application submission. During the public hearing process, the Office of the Zoning Administrator, the property owner's architect and the property owner's zoning expert all testified that the FAR calculations for the building were properly made and that the building fully conforms with the FAR limitations of the R-5-D. The Board should affirm its previous decision on this issue.

C. Failure to Give Great Weight to the ANC's Position

ANC ARGUMENT

The ANC claims that the Board failed to give the findings of ANC 3G the statutorily required "great weight" to which they are entitled.

SUNRISE RESPONSE

The ANC makes this argument in part by quoting only a portion of the Board's order. The ANC's Motion for Reconsideration states: "The section on page 3 of the decision headed ANC Report states, erroneously, 'There is no ANC report in this case.'" (ANC 3G Motion for Reconsideration at page 3.). Interestingly, the ANC's Motion fails to include the next sentence of the Board's order which states: "ANC 3G presented testimony and argument at the hearing." (BZA Appeal No. 16716A at page 3). The ANC's position that the Board failed to give great weight to the ANC's views in this appeal is absurd. The Board was well aware of the ANC's position in this case, as it noted on the very first page of the Order that the ANC was a party to the appeal.

The Board's order in this case clearly gave "great weight" to the ANC's position. The District of Columbia Court of Appeals has determined that: "The BZA is . . . required to give 'great weight' to the concerns of Advisory Neighborhood Commissions," the Court explained that the agency may ultimately accept or reject the ANC's views:

> An agency must elaborate, with precision, its response to the ANC issues and concerns . . . . [T]he agency must articulate why the particular ANC itself, given its vantage point, does—or does not—offer persuasive advice under the circumstances . . . . [W]e believe that 'great weight' implies explicit reference to each ANC issue and concern as such, as well as the specific findings and conclusions with respect to each.

Glenbrook Rd. Ass'n, 605 A.2d at 34 (quoting Kopff v. D.C. Alcoholic Beverage Control Board, 38 A.2d 1372, 1384 (D.C. 1977). The BZA "is not obliged to follow the ANC's recommendations or adopt its views." Draude v. District of Columbia Board of Zoning Adjustment, 582 A.2d 949, 953 (D.C. 1993).

The BZA's order in this case fully satisfies the legal requirements established by the District of Columbia Court of Appeals. The Board's 17-page order, includes 73 Findings of Fact, and Conclusions of Law that detail its reasoning and decision on each of the issues raised by the ANC. Moreover, the order includes the following language:

> The Board has addressed each of the issues raised by the appellants and the ANC, and explained, in each instance, why it agreed or disagreed with the specific positions taken

by these parties. The Board thus gave great weight to the issues and concerns raised by the ANC in this appeal. (BZA Appeal No. 16716A at p. 15).

The Board gave the ANC's positions the statutorily required "great weight" and the ANC's motion for reconsideration on this issue should be denied.

D. Rear and Side Yard Setback

ANC ARGUMENT

The ANC's arguments regarding the building's rear and side yard's are mere recitations of the arguments that were made during the public hearing and were included in the record of this case.

SUNRISE RESPONSE

The Board's order includes 12 Findings of Fact regarding the appropriateness of the Zoning Administrator's decisions regarding the rear and side yards for the project. The Board's Conclusions of Law state that the ruling of the Zoning Administrator yields a logical and natural result that is consistent with the intent and meaning of the Zoning Regulations. The ANC's arguments should be denied and the Board should affirm its previous decision on this issue.

CONCLUSION

The Board's decision evidenced in BZA Appeal No. 16716A clearly and thoroughly outlines the reasoning for its decision to deny the appeal of NANA and ANC 3G. We respectfully request that the Board deny these requests so that the Sunrise can proceed with its development of this project.

Very truly yours,

Maureen E. Dwyer

Allison C. Prince

Paul A. Tummonds, Jr.

cc: See attached Certificate of Service

Certificate of Service

I hereby certify that a copy of the foregoing Opposition to Motions for Reconsideration, was delivered by hand on this 5th day of November, 2001, to the following:

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