20

BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal of Nebraska Avenue Neighborhood Association From Decision of DCRA Issuing Building Permits B456618 & B454315 with respect to Sunrise Assisted Living Facility Located at 5111 Connecticut Ave, N.W. In R-2 and R-5-B Zone (Square 1989, Lot 162)	))))))	Appeal No. 17127

Nebraska Avenue Neighborhood Association
Response to Sunrise and DCRA 5/4/2004 Submissions
Re: Motion to Dismiss

Dear Chairman Griffis and Members of the Board:

Appeal No 17127 was filed on January 7, 2004 by the Nebraska Avenue Neighborhood Association ("NANA") and ANC 3G (the "Appellants"). On April 7, 2004, the Intervenor, Sunrise Assisted Living ("Sunrise"), filed a Motion to dismiss Appeal No. 17127. At its April 13, 2004 public hearing on the Sunrise motion, NANA demonstrated to the Board of Zoning Adjustment (the "BZA") examples of external changes in the revision permits that have zoning consequences, including modification of the rear of the building and newly added extensions of the building into the required rear yard. The Board requested that Sunrise provide justification for its claim that the permits under appeal contained *only internal changes* and that NANA provide its response to Sunrise's Motion to Dismiss by May 4.

In **NANA's May 4, 2004 submission**, NANA compared plans in two sets of permits: (1) *original and first revision permits* (B435464--March, 2001 & B442149--Jan 2002, respectively) with (2) *recent revision permits* (B456618--Nov, 2003 & B454315--Aug, 2003). We made comparisons using copies of *official plans provided by DCRA*. We provided the Board with copies of the plans we analyzed. In addition, DC-licensed architect Cris Fromboluti provided notarized certification of rear building and rear yard changes that have zoning consequences.

BZA
Case No. 17127
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO. 17214
EXHIBIT NO. 23

In **Sunrise's May 4, 2004 submission**, Sunrise attorneys reversed the position they had taken previously. In both (a) their previous submission and (b) testimony before the BZA on April 13, the attorneys stated that there were only internal changes in the revision permits. In their May 4 submission, they state that there are indeed external changes. However, **they err** in stating that (1) the zoning consequences are to *decrease* the gross floor space (specifically on the 6th floor) and (2) some *changes with zoning consequences were made in response to NANA requests*. Furthermore, they do not state what plans they reviewed. They do not provide copies of plans. They do not certify their analyses. Because of errors in their analysis, we think they are not using final, official plans (see Appendix A).

In **DCRA's May 4, 2004 submission**, DCRA makes substantial errors of fact (see Appendix B).

The current appeal is limited to *changes* in plans in the most recent revision permits, changes that have zoning consequences.

This is not an appeal of the original (B435464, 2001) or first revision permit (B442149, 2002).

Appeal of the original permit (Appeal No. 16716) was upheld in part by *sua sponte* decision of the Zoning Commission. This led Sunrise to submit the first revision permit which was appealed to the BZA (No. 16879). In both Appeals, Appellants pointed out the the Board that permit plans contained self-contradictory and "sham" elements which would not actually be constructed.

Sunrise revised the plans from the first two permits Nos. B435464 and B442149 in April, 2002. "CONSTRUCTION SET" and "04/16/02" are printed on revision permit plans submitted in 2003. However, Sunrise did not actually apply for permits for the revised plans until after construction was almost complete. Then, Sunrise applied for multiple, interrelated revision permits. The revision permits changed various "sham" elements noted in Appeals Nos. 16716 and 16879 to match actual construction.

These changes in the revised plans have zoning implications. This appeal addresses only these new issues.

The Sunrise and DCRA submissions of May 4, 2004 -- errors:

The Sunrise Assisted Living ("Sunrise") submission makes substantial errors of fact. The Shaw Pittman attorneys (the "attorneys") make unsubstantiated assertions in their analyses. There is no certification by architects or officials of Sunrise. No copies of plans are provided to verify what plans were evaluated. The Nebraska Avenue Neighborhood Association ("NANA") is misrepresented repeatedly.[1] We hope we need not be concerned that the Board will be unduly influenced by the non-zoning and non-supported issues presented by the attorneys.[2]

The attorneys stated to the Board on April 13, 2004 that the permits under appeal contained only internal changes. At the hearing, the attorneys held up before the Board what they said was a signed statement from Sunrise architect(s) to substantiate the assertion that there were only internal changes. Presumably the attorneys did not actually submit this document to the Board. The attorneys apparently used it to try to influence the Board to dismiss our appeal on the spot without due consideration.

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[1] The attorneys state incorrectly in their May 11, 2004 submission that changes were made at NANA's request, concluding that "no good deed goes unpunished.." No evidence is offered supporting these allegations that NANA caused Sunrise to change its plans, nor is it true. The attorneys repeatedly cast dispersion on the neighborhood association and use this maneuver to only to gain the sympathy and support of the Board .

[2] We note that Sunrise has used this maneuver before, including stating that NANA and ANC3G will do anything to stop an assisted living facility in their neighborhood, a statement that the Board picked up as fact in its final order No. 16879, dismissing that appeal. In fact, the record shows that this neighborhood has a high density of residences for seniors, handicapped and subsidized individuals and that these have been strongly supported, as pointed out by ANC commissioner Marilyn Holmes. The attorneys' negative and unsubstantiated statements were unduly influential on the Board, in spite of the fact that that ANC and NANA opposition was to excessively dense and unlawful construction which has a negative impact on neighbors.

Our current submission provides direct evidence countering the Sunrise assertion that the gross floor area is *decreased* (Appendix C--Wall Test). This Wall Test was submitted to DCRA by Sunrise. It shows the revised building footprint that (1) is increased over the original footprint and (2) extends into the required rear yard. This evidence discredits one basis for the Sunrise Motion to Dismiss – that there were internal changes only, or at least, that external changes decreased the gross floor space and had no other zoning consequences. [3]

TIMELINESS:

The issue of timeliness was raised by both Sunrise and DCRA. (Our May 4, 2004 submission addressed the principle of administrative *res judicata* or collateral estoppel, the other main legal issue in the Motion to Dismiss.)

Plans submitted by Sunrise as part of its application for the original permit (B435464) were ambiguous and incomplete. The plans did not reflect all of the construction work that Sunrise planned to perform at the site. For example, original plans did not accurately reflect the rear elevation of the building, building footprint, rear yard, loading/delivery space, retaining walls and trash room. The first revision permit (B442149), revised the roof plan but did not realistically reflect a viable elevator penthouse. The Appellants pointed out it was too short to accommodate required elevator equipment and was a "sham."

So, the first two permits were inaccurate and misleading as to what Sunrise intended to build. The permits thereby effectively circumvented the Zoning Regulations by not allowing evaluation of what Sunrise actually intended to build. As previously stated, Sunrise did not apply for permits for revised and corrected plans (corrected with respect to actual construction, not zoning compliance) until 2003, after the building

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[3] The depth of the required rear yard was presented by the Acting Zoning Administrator ("ZA") in the Zoning Calculation sheet (Appeal 17127, Exhibit 2) to be 34 feet (based on ZA's estimated building height of 102 feet at the rear of the building). The revised rear yard is less than 25 feet deep in all areas except the across the two garage exits located in the rear of the building (one for vehicles, one for pedestrians).

construction was almost finished. These revised plans, *all* dated April, 2002 were submitted piecemeal over 5 months in 5 separate permits. The scope of work listed on various permits was inaccurate.[4] This strategy made it difficult for neighbors to find out what the final plans would be.

For its part, DCRA did not provide Appellants access to the set of permits in a timely and complete fashion, in spite of *multiple requests* from both NANA and ANC3G. Therefore to appeal these permits individually under the conditions described above (which would have been required to appeal each within 60 days of issuance), presented an unreasonable hindrance to the Appellants.

CONCLUSIONS OF LAW AND OPINION:

We conclude that the Appeal was timely with respect to all revision permits appealed following the BZA's own decision in Appeal No. 16405. The D.C. Court of Appeals (agreeing with the BZA) determined that potential appellants are not put on notice until all permits determining the scope of work have been issued (*Sisson v. District of Columbia BZA*. 805 A.2d 964,974 (D.C. 2002). Delay in filing the instant appeal was not unreasonable given the facts that (1) permits were ambiguous and incomplete and (2) Sunrise applied for separate building permits for individual floors or groups of 2 or 3 floors in each permit. The appeal of the group of revision permits is therefore timely, based on final permit issued on November 7, 2003.

CONCLUSION:

Sunrise and DCRA have not met the required burden of proof meriting dismissal of this appeal. Substantial evidence demonstrates specific plan changes in the revision

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[4] We consulted with Mr. Ali, head of structural review and Mr. Douglas, head of the permit records office, about discrepancies between the stated scope of work and the changes actually shown on revision compared to original plans. Both officials said that what was approved and allowed by the revision permits was the actual changes in the plans, not the just the notation of changes or scope of work on the applications.

permits that have zoning consequences.

We ask that the Board conduct a hearing of permits under appeal, as required by 11 DCMR §3112.8. If deviations from zoning regulations are found in plan revisions (changes from previous plans only), we request that Sunrise be required to seek all appropriate variance and/or special exception relief required by law.

Respectfully submitted,

Anne Page Chiapella — May 11, 2004

Anne Page Chiapella, President — Date

Nebraska Avenue Neighborhood Association

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2004 a copy of this appeal was mailed first class postage prepaid or hand delivered to the following:

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Anne Page Chiapella
(Signed)

May 11, 2004
(Date)

APPENDIX A

EXHIBIT A

DETAILED RESPONSE TO SUNRISE MAY 4, 2004 SUBMISSION

I. ACTUAL PURPOSE OF THE APPEAL:

This current appeal **challenges a limited number of changes made by the revision permits that have zoning consequences.** We are not re-appealing plans presented in the original permit (B435464) application or first revision permit (B442149).

Cris Fromboluti[1] offered a suggestion of moving two alley light poles which could alleviate one of the zoning irregularities alleged in the appeal.

The proper means of addressing the zoning irregularities would be for Sunrise to apply for required variance and/or special exception relief. Mr. Fromboluti suggests that moving the poles could solve part of the problem created by the revisions in Permit B456618, lack of service/delivery space. In fact, in its original proposal to ANC3G, *Sunrise itself proposed moving of the same light poles as Mr. Fromboluti now proposes.* This proposed change could solve a zoning compliance problem (lack of a delivery/loading space).

Purpose of the Sunrise strategy: The effect (and likely *purpose*) of Sunrise submitting the revision permits *after* constructing the building was to circumvent the zoning regulations.

The final revised plans were dated April, 2002. This date was before the hearing on Appeal No. 16879. Had those revised plans been available, they would likely have influenced the outcome of the appeal. However, Sunrise chose to build first and apply for the permits later. Now they, imply (only to influence the Board with a nonzoning issue) that the current appeal is too late because there are residents in the building--a non-zoning issue.

II TIMELINESS OF APPEAL No. B454315

Sunrise filed after-the-fact of construction revision permits. In July-November, 2003, it filed multiple revision permits for the same batch of revision plans, dated 04/06/02. Sunrise used this maneuver to circumvent the zoning regulations and impede appeal of legitimate, newly-created zoning irregularities (which were not the subject of previous appeals). Sunrise and DCRA should not be heard to complain about appeal of these permits and construction based on applications that were not filed in a lawful and timely fashion.

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[1] Cris Fromboluti is a licensed architect in the District of Columbia and qualified expert witness before this Board.

III. DISCUSSION OF WORK AUTHORIZED BY THE PERMITS:

After testifying at the hearing on May 13, 2004 that there were *only interior changes* in these revised plans, Sunrise attorneys now admit there were also exterior changes.

Sunrise's attorneys provide discussion of selective parts of some plans. There is no supporting documentation. Sunrise does not state what plans it uses in its analysis (official or unofficial plans; dates of plans, etc.). Sunrise does not certify its analysis. Various points made in the Sunrise attorneys' analyses do not match *official plans* provided by to us by DCRA. The Sunrise analysis was neither accurate nor necessarily of officially approved plans. Various statements by Sunrise attorneys that the NANA influenced or requested various changes is false, as described above. No evidence is provided regarding numbers of residents living in the building. Furthermore, these are non-zoning issues intended to manipulate the Board.[2] The May 4 submission is little more than "hear say" submitted by Sunrise attorneys unsupported by actual evidence.

Permit B454315

- No approved plan shows the reduction in gross floor area on the 6th floor claimed by Sunrise. No zoning consequences.
- Deletion of 7th floor external balconies (porches). *Removal of enclosures around the south stairwell has* ***zoning consequence*** *for 7th floor roof penthouse setbacks.*
- Conversion of a resident bathroom to a common use toilet *and (**not mentioned by Sunrise**) addition of a resident bathroom* replacing the bathroom converted to a common use toilet (no zoning consequence).
- Installation of planters and cabinets and movement of doors (no zoning consequences)
- Elimination of roof over two covered balconies (enclosing south stairwell and south stairwell penthouse --*no reduction* in gross floor area as these porches were not counted in gross floor area; **zoning consequence for penthouse setback and single penthouse**, BZA hearing Aug. 3, 2001, transcript pp 159, 164, 165)
- Relocation of heat pump loop piping in sixth floor ceiling -- (no zoning consequence).

Numerous changes on official plans are not listed by Sunrise. This and discrepancies between Sunrise items and official plans leads to the conclusion that Sunrise did not use official plans in their analysis.

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[2] Appellants pointed out that the building did not contain all required means of egress (emergency exits for residents) and did not meet various other requirements of Building Codes. Sunrise strongly protested that Life-safety and Building Code noncoompliances were not addressed in the Zoning Code and could not be considered by the Board in evaluating appeals (BZA Public Hearing, 8/3/2001, transcript pp. 91). It is ironic that after not supplying residents the full complement of safety, Sunrise now wants to use residents to influence the Board to accept their Motion to Dismiss.

Errors by Sunrise which mislead the Board as to NANA's actions:

(1) NANA did not argue against the original location of the trash enclosure because of potential blockage of the alley stub, as stated by Sunrise.
(2) NANA did not meet with the Mayor's community liaison member assigned to the project and request him/her to ask Sunrise to move the trash because of potential blockage of the alley stub. The "no good deed goes unpunished" statement misleads the Board regarding NANA participation. Sunrise acted in its own self-interest in making the revisions.

Permit B456618

- The so-called trash enclosure is inaccurately described. It a full room (floor, roof, 10-ft tall walls, 2 doors) integrally constructed with the building. It is 10 feet wide and extends into the required rear yard 9.5 feet. It's floor and doors (not its roof) are at external grade (alley) level. (Zoning consequences -- gross floor area/FAR, rear yard requirements, loading/delivery space requirements).
- Removal of an interior stair (no zoning consequences).
- Door added next to the trash enclosure (after removal of retaining wall in this location (**zoning consequences** due to lowering adjacent grade); modifying vehicle entrance ("roll" door) into garage (no zoning consequences).
- Change of interior partitioning walls (no zoning consequences).
- Adjustment of the foundation (not obvious on plans).
- Relocation of stairway door (no zoning consequences).
- Sunrise attributes an alleged request by DCRA permit reviewer to mark on plans "there is no room under the stairs" to "NANA's repeated allegations that the stairs covered usable space." This hearsay claim is unsubstantiated and untrue. Sunrise repeatedly to uses unsubstantiated attributions to NANA to justify plan revisions that may have zoning consequences.
- Retaining notes that a wall was added in the south side yard. However, Sunrise does not mention addition and deletion of other retaining walls, including deletion of retaining walls formerly used to raise adjacent grade at the rear of the building. These deletions have **zoning consequences** for gross floor area and FAR).
- Interior room revision (no zoning consequences).
- Balconies deleted (no zoning consequences as they were not included in gross floor area).

Conclusions: Sunrise now agrees that there were external changes to the plans. However, Sunrise did not provide a full and accurate review of *official plans* in presenting their conclusion that the external changes only decrease gross floor area. This is an err. Sunrise also did not certify the review. Sunrise further misleads the Board by inaccurately claiming that NANA requested (or caused) revision of plans, especially revisions with zoning consequences. Sunrise attempts to influence the Board in their favor with inaccurate statements and non-zoning issues. We ask that the Board base its decision on the preponderance of evidence and not dismiss this appeal.

same or substantially similar claim. Rhema, 515 A.2d at 193; Towles, 578 A.2d at 1130-31. However, the applicant can show the Board that "claim preclusion (*res judicata*) does not apply by demonstrating that, because of changed circumstances, the application for the same or a substantially similar special exception or variance no longer can be characterized as the same claim." Id.

Here, of course, NANA's prior appeals concerned different building permits from the revised permits challenged in this appeal, so this appeal does not involve the same matter as was before this Board in NANA's prior appeals. Moreover, the revised permits challenged in this appeal could not have been the subject of NANA's prior appeals inasmuch as these permits were issued from July-September 2003, long after NANA's prior appeals were filed and resolved by this Board. Nonetheless, Counsel for Sunrise asserts that these revised permits "were routine, construction-related modifications that affected only the building's interior and had no effect on building height, FAR, rear yard setback, etc." However, Sunrise submitted no supporting documentation in support of counsel's assertion that each of these revised permits involved work that had no effect on zoning issues.

At the hearing on April 13, 2004, NANA agreed to limit its appeal to two of the six permits: Permit B456618, issued on November 7, 2003, authorizing Sunrise to "Revise 1-3d floor and garage," and Permit B454315, issued to Sunrise on August 25, 2003, to "Revise permit # B435464 per drawings on 7th floor. Attached are statements prepared by Anne Page Chiapella and licensed architect Christopher Fromboluti, both of whom have undertaken a review the revised plans associated with Permits B456618 and B454315, and the plans associated with project that was authorized by the previous permits. As their statements, and the plans themselves plainly demonstrate, Permits B456618 and B454315 make a number of changes that have material zoning consequences in that they are responsible for the project's failure to comply with numerous applicable zoning requirements, including FAR, rear yard setback. Accordingly,

principles of administrative *res judicata* or collateral estoppel do not bar this Board from undertaking a review of the revised permit to determine whether the changes to the building plans effectuated by the revised permits render the building noncompliant with the zoning regulations.

The only zoning violation alleged in this appeal that was not the result of a changes made in the revised building permits is the zoning violations revealed in the Wall Test, attached as Exhibit page 17 to this Appeal. *See* Chiapella Declaration, ¶ 6. This Wall Test was certified by the Zoning Administrator's office on January 10, 2003, and therefore could not have been the subject of NANA's prior appeals in BZA Appeal No. 16716, filed on March 16, 2001, and BZA Appeal No. 16879, filed on March 19, 2002, since the Wall Test identifying this zoning violation had not yet been conducted. NANA did file a timely appeal of this Wall Test in BZA Appeal 17010, in which appeal NANA pointed out that the Wall Test revealed that the building footprint encroached on the R-2 zone, with the result that the project did not comply with occupancy restrictions on CBRF uses in the R-2 zone (11 DCMR §300.2), consistent with applicable principles governing split-zone uses. Ironically, the BZA dismissed this appeal without a hearing or final determination, stating "this appeal will not be considered at this time as your appeal as [sic] been determined to be premature." See Letter Dismissing BZA Appeal No. 17010 (March 14, 2003). Consequently, the earlier proceeding was *not* the essential equivalent of a judicial proceeding, since no adjudication in fact took place because these issues. Accordingly, principles of administrative *res judicata* are not applicable to bar litigation of issues raised by this Wall Test.

Rather than substantiate the conclusory allegation that the revisions to the building plans "had no effect on building height, FAR, rear yard setback, etc.," Sunrise devotes the bulk of its argument to heated rhetoric describing NANA's appeal as a "desperate effort" and a "rehashing old arguments." In fact, however, NANA's filing of this appeal is hardly as

outrageous as Sunrise's actions in seeking the revised building permits that are the subject of this appeal. It is important to remind this Board that in BZA Appeal 16879, NANA appealed a revised permit B442149 sought by Sunrise, alleging that the elevator depicted in this revised permit could not be built because it did not satisfy the requirements of the Construction Codes, and that a Code-compliant elevator would result in the building exceeding the applicable FAR.. Sunrise, in response, claimed that it intended to build the elevator in accordance with that permit. See Transcript in BZA Appeal 16879 (June 18, 2002). Relying on this representation, this Board agreed that the issues raised by NANA related to the Construction Code, over which this Board lacked jurisdiction, and dismissed NANA's appeal with regard to those issues. Now, Sunrise has done exactly what it told the Board it would not do, and has revised its building so as to comply with the Construction Code, and as a result, has exceeded the applicable FAR. Sunrise cannot now argue that FAR issues concerning the elevator penthouse are barred by administrative *res judicata*, since this issue was dismissed by the Board based on lack of jurisdiction. Indeed, Sunrise itself should be estopped from raising any defenses of issue or claim preclusion or administrative res judicata, based on principles of judicial estoppel from repudiating their prior testimony that they would not seek to revise the permit respecting the elevator penthouse. See Lassiter v. District of Columbia, 447 A.2d 456, 471 (D.C. 1982).

Conclusion

For the foregoing reasons, Sunrise's motion to dismiss should be rejected.

Respectfully submitted,



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Attorney for NANA

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2004, a copy of the above statement was mailed first class, postage prepaid or hand delivered to the following:

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Washington, D.C. 20015

Anne Page Chapella — 5/4/04

(Signed) (Date)

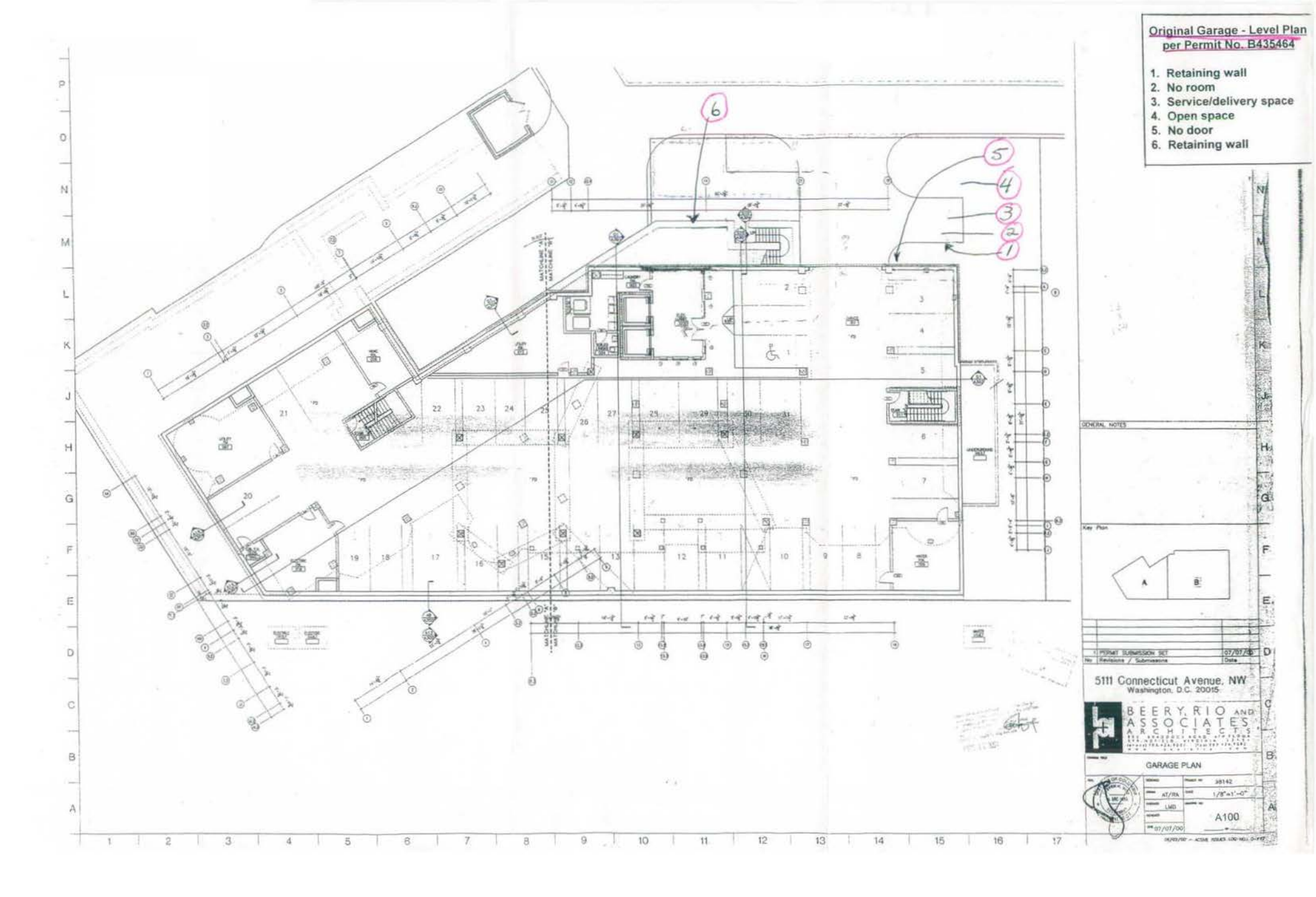
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

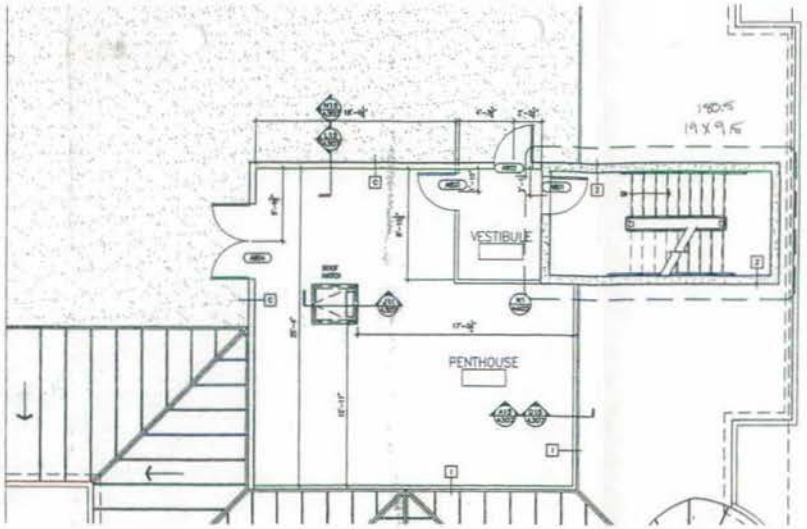
Anna Page Chiazilla — 5/4/04

Signed — Dated

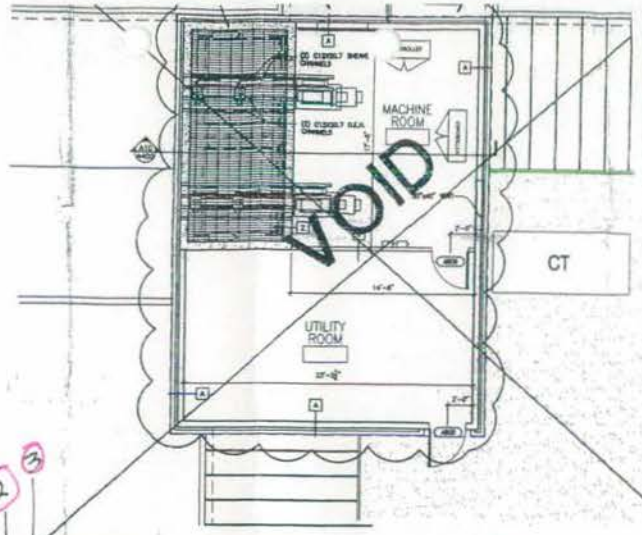
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EXHIBIT 1

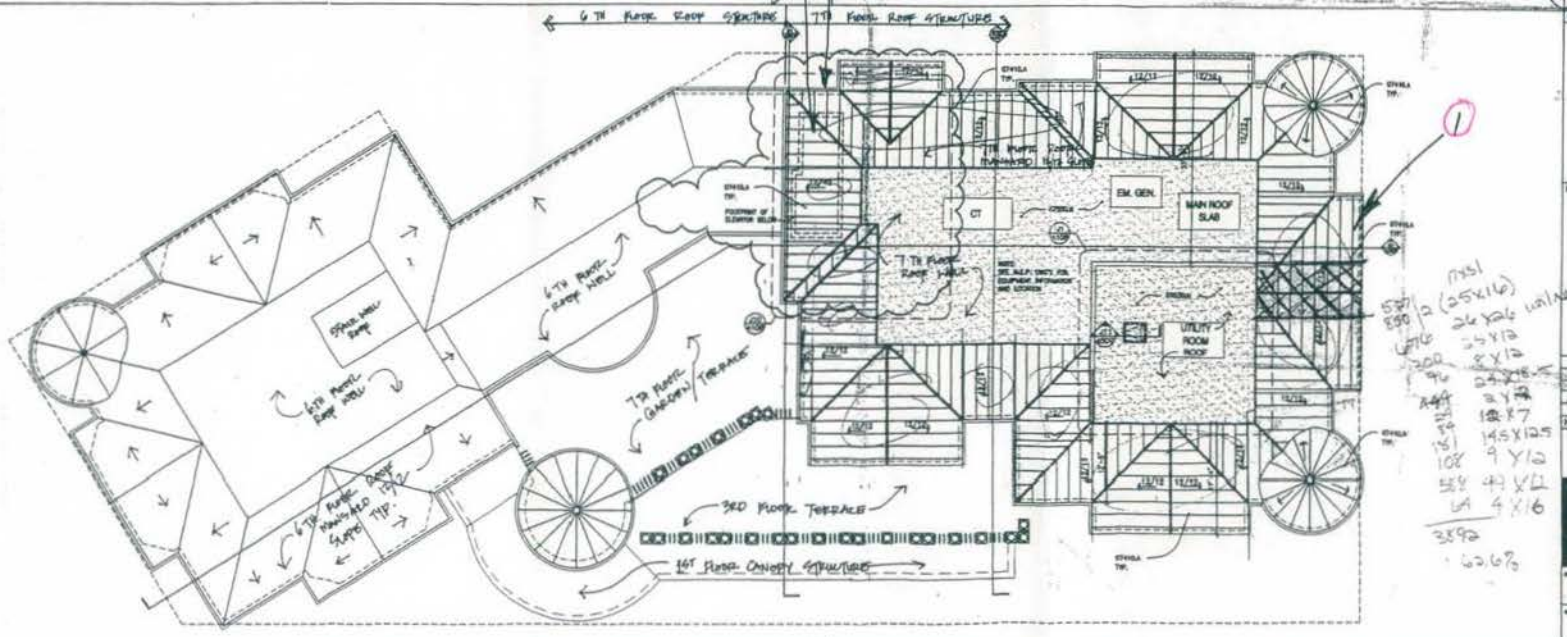

Original Garage - Level Plan
per Permit No. B435464
1. Retaining wall
2. No room
3. Service/delivery space
4. Open space
5. No door
6. Retaining wall
GENERAL NOTES
Key Plan
1 PERMIT SUBMISSION SET 07/07/00
No Revisions / Submissions Date
5111 Connecticut Avenue, NW
Washington, D.C. 20015
BEERY, RIO AND ASSOCIATES
ARCHITECTS
GARAGE PLAN
AT/RK
1/8"=1'-0"
LMD
A100
07/07/00



J1 UTITITY ROOM PLAN



J10 MACHINE ROOM PLAN



A1 ROOF PLAN

Roof Plan
per Permit No. B442149

1. Roof over porches and south stair
2. Original elevator penthouse footprint
3. Roof fully enclosing elevator penthouse

GENERAL NOTES

Key Plan

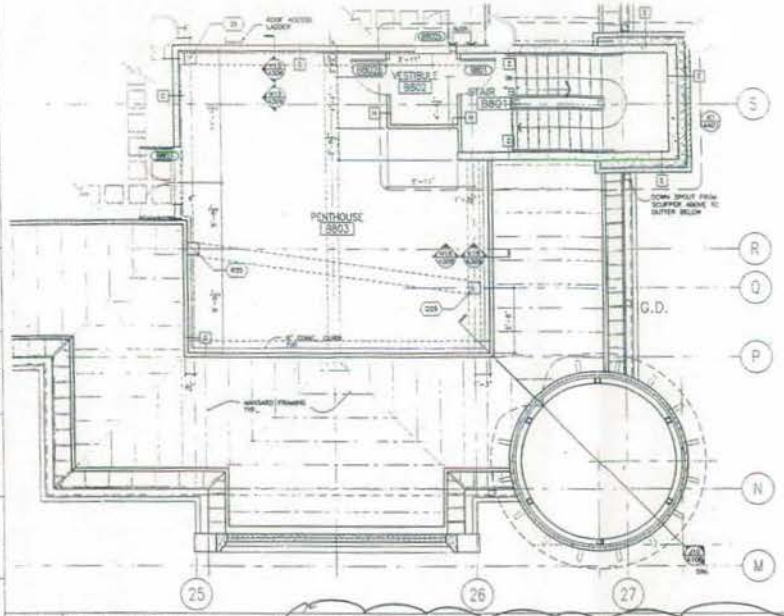
No.	Revisions / Submissions	Date
	ELEVATOR REVISION	11/29/01
	PERMIT SUBMISSION SET	07/07/00

5111 Connecticut Avenue, NW
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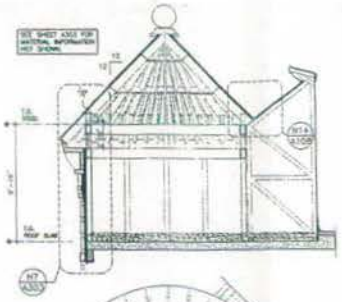
ROOF PLAN

PROJECT NO.	98142
DRAWN BY	RA
SCALE	1/8"=1'-0"
CHECKED BY	LMD
DATE	07/07/00
DRAWING NO.	A108



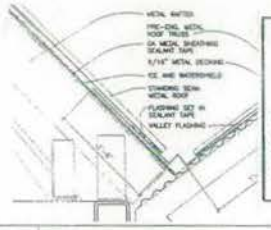
J1 PENTHOUSE PLAN

Plan slid up the sheet for clarity and show turret at larger scale
T. Lapin 8-14-07

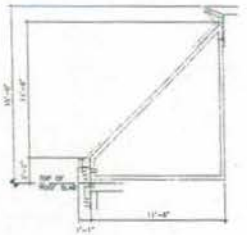


J10 TURRET MANSARD CONNECTION

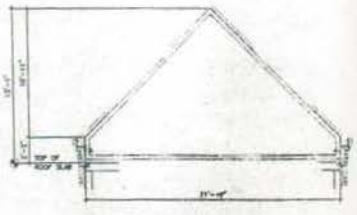
Machine room plan relocated to A402 Detail K-15 per mod set 8/14
T. Lapin



N14 VALLEY FLASHING DETAIL



J14 TYP. ROOF TRUSS SECTIONS



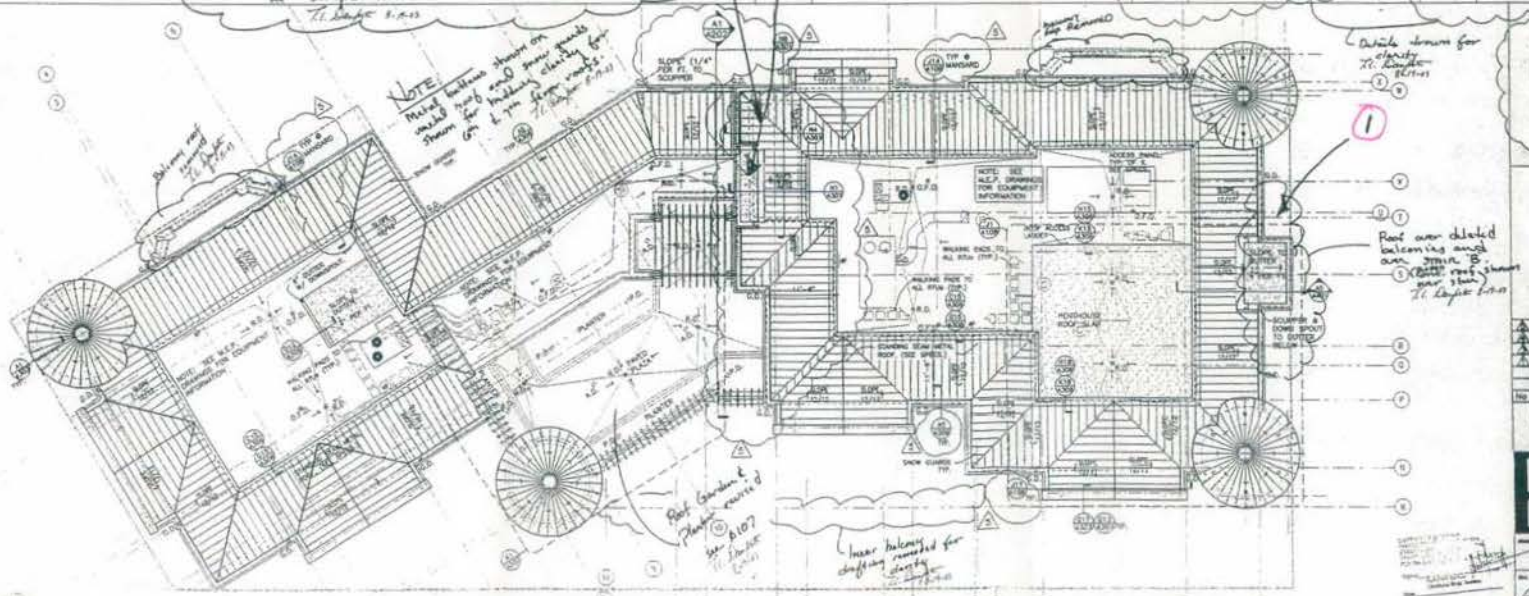
J17 ROOF TRUSS SECTION ◆ GABLES

Revised Roof Plan
per Permit No B454315

1. Deleted roof
2. Revised elevator penthouse footprint
3. Revised roof

2

3



A1 ROOF PLAN

GENERAL NOTES

1. REFER TO MECHANICAL DRAWINGS FOR HVAC DETAILS
2. SEE DRAWING A305 FOR ROOF DETAILS
3. SEE THE DRAWING AND DRAWING A301 FOR SCHEMATIC TRUSS PROFILE DRAWINGS
4. REFER TO M.E.P. DRAWINGS FOR EQUIPMENT INFORMATION

No	Revisions / Submissions	Date
1	CONSTRUCTION SET	04/18/08
2	ADDENDUM NO. 4	09/10/08
3	ADDENDUM NO. 3	08/28/08
4	ADDENDUM NO. 1	08/19/08
	BID / CONSTRUCTION SET	07/09/08
	PERMIT SUBMISSION SET	07/07/08

5111 Connecticut Avenue, NW
Washington, D.C. 20016

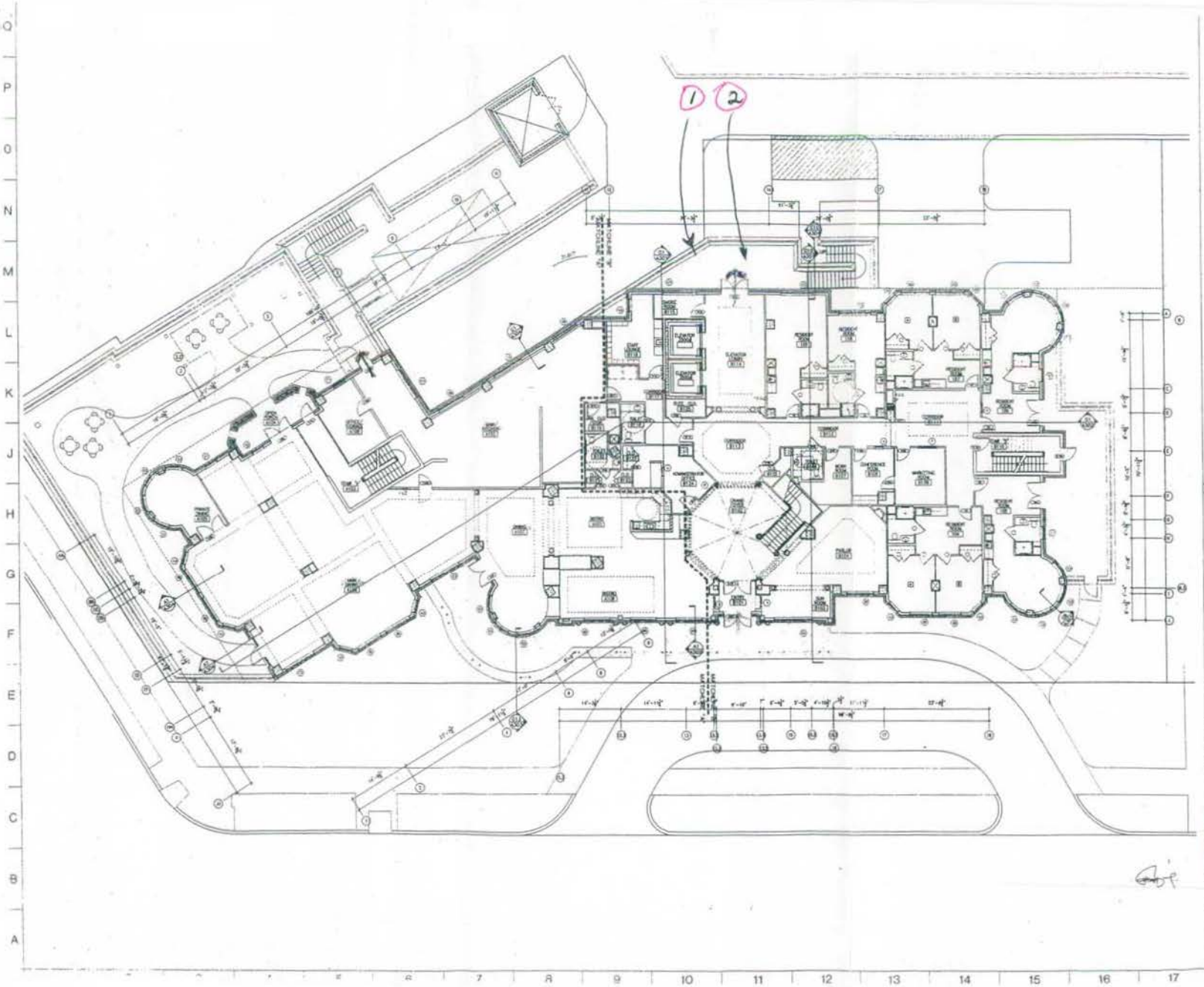
BEERY, RIO AND ASSOCIATES
ARCHITECTS

ROOF PLAN

A108

07/07/08

EXHIBIT 2



Original 1st Floor Plan per Permit No. B435464

1. Retaining Wall
2. No open porch

GENERAL NOTES

Key Plan



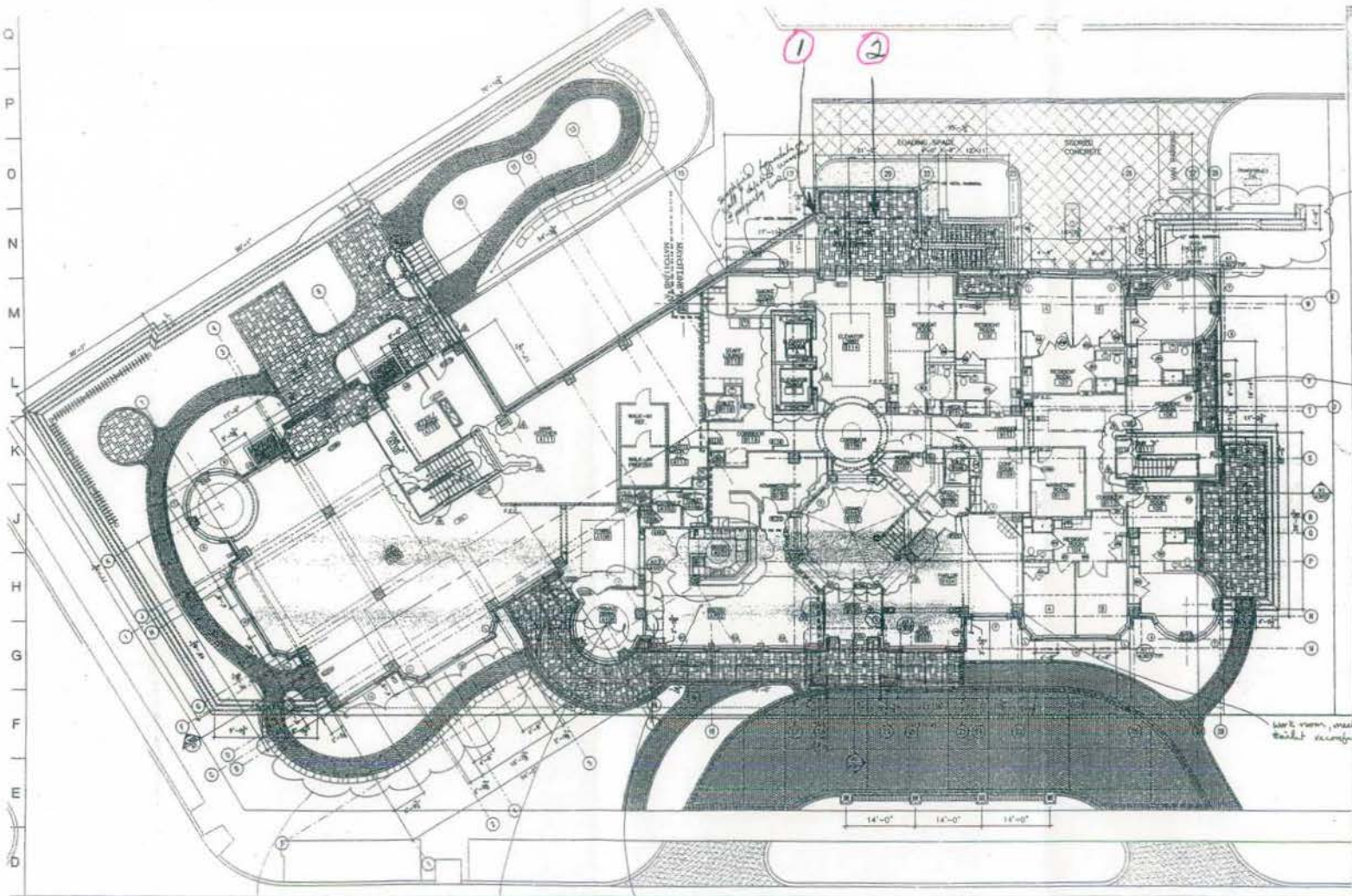
No.	Revisions / Submissions	Date
1	PERMIT SUBMISSION SET	07/07/

5111 Connecticut Avenue, NW
Washington, D.C. 20015

BEERY, RIO AN
ASSOCIATES
ARCHITECT

FIRST FLOOR PLAN

DRAWN	AT
CHECKED	LMD
DATE	07/07/00
PROJECT NO.	95142
SCALE	1/8"=1'-0"
DRAWING NO.	A101



Revised 1st Floor Plan per Permit No. B435464

1. Deleted retaining wall
2. 1st Floor Open Porch

GENERAL NOTES

1. REFER TO SHEET L-1 FOR EXTENT OF STAMPED AND SCORED CONCRETE.
2. SLOPE PAVEMENT TO FLOOR DRAINS TO STORMWATER MANAGEMENT STRUCTURE BELOW.
3. SEE CIVIL DWGS. FOR STRUCTURE DRAINAGE AND ACCESS PANELS.
4. LOCATE ACCESS PANELS TO THE SOUTH SIDE OF THE TERRACE, OUT OF CURBS, WALKWAY.

Key Plan

1	CONSTRUCTION SET	04/16/02
2	ADDENDUM NO. 4	09/10/01
3	ADDENDUM NO. 3	08/28/01
4	ADDENDUM NO.	08/10/01
	BID / CONSTRUCTION SET	07/09/01
	PERMIT SUBMISSION SET	07/07/00
No.	Revisions / Submissions	Date

5111 Connecticut Avenue, NW
Washington, D.C. 20015

BEERY, RIO AND ASSOCIATES ARCHITECTS

FIRST FLOOR PLAN

DRAWN	AT
CHECKED	LMD
REVISED	
DATE	07/07/00
PROJECT NO.	9814C
SCALE	1/8"=1'-0"
DRAWING NO.	A101

A13 PLAN DETAIL

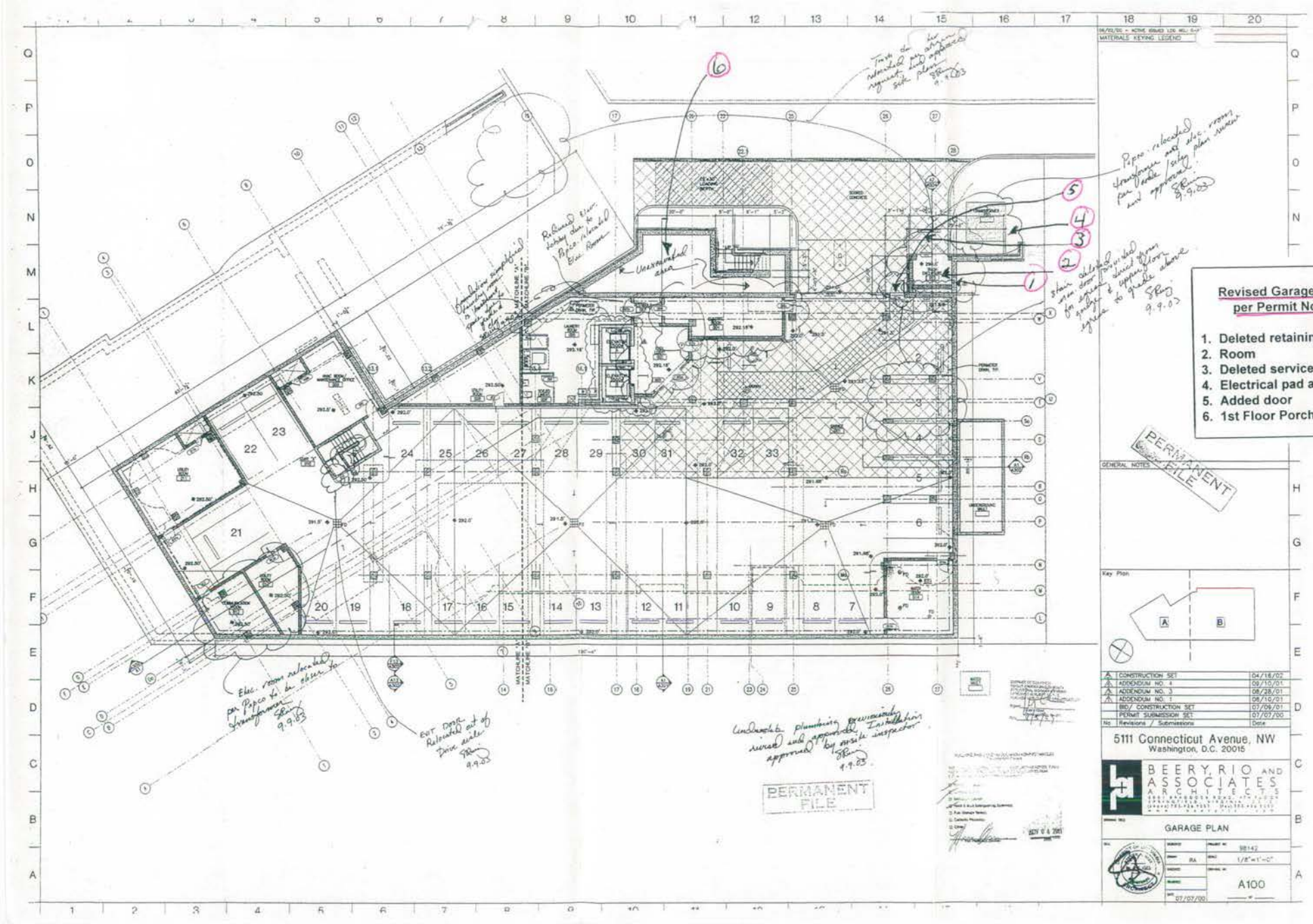
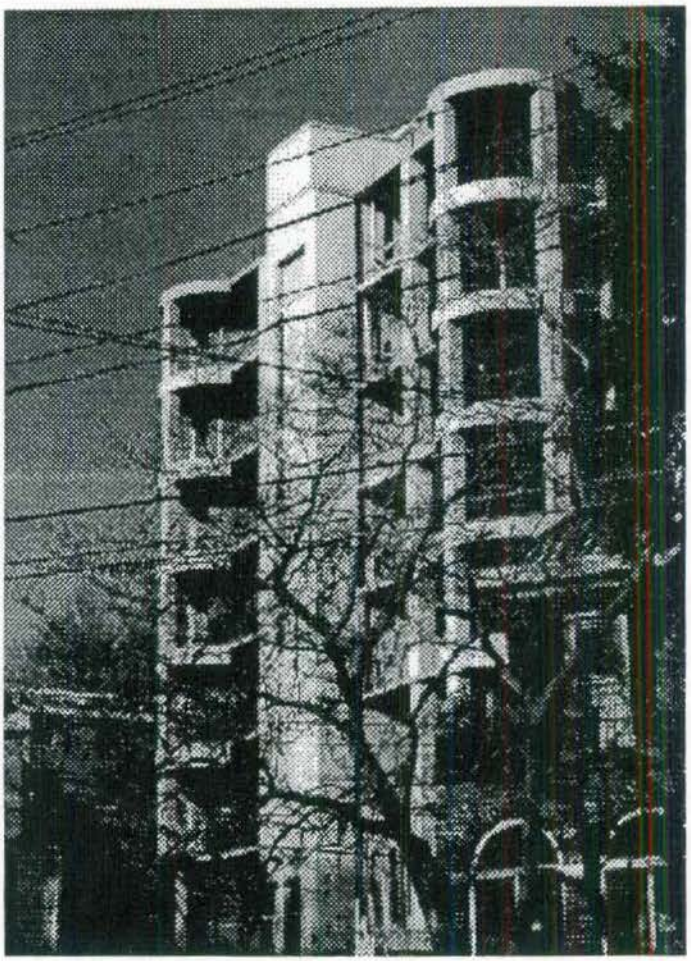
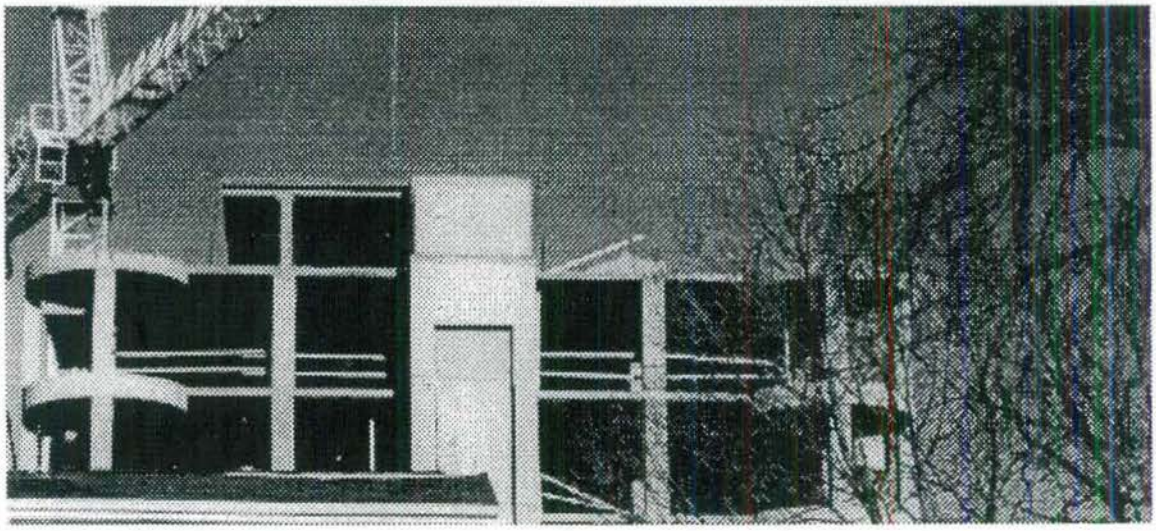

Revised Garage - Level Plan
per Permit No. B456618
1. Deleted retaining wall
2. Room
3. Deleted service/delivery space
4. Electrical pad and retaining wall
5. Added door
6. 1st Floor Porch
PERMANENT FILE
GENERAL NOTES
Key Plan
CONSTRUCTION SET 04/18/02
ADDENDUM NO. 4 09/10/01
ADDENDUM NO. 3 08/28/01
ADDENDUM NO. 1 08/10/01
BID/ CONSTRUCTION SET 07/09/01
PERMIT SUBMISSION SET 07/07/00
No Revisions / Submissions Date
5111 Connecticut Avenue, NW
Washington, D.C. 20015
BEERY, RIO AND ASSOCIATES ARCHITECTS
GARAGE PLAN
98142
1/8"=1'-0"
A100
07/07/00
PERMANENT FILE

EXHIBIT B.5

B5

View of South Stairwell with Roof Penthouse on top





The south roof penthouse has no setback from the exterior wall.

C

941 North Capitol Street, N.E., Suite 9406,
Washington, D.C. 20002

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS - Office of the General Counsel

Fax

To:	Geoffrey Griffis, Esquire Board of Zoning Adjustment	**From:**	Lisa A. Bell Senior Counsel
Fax:	727-6072	**Page(s):**	6, INCLUSIVE
Phone:	727-6311	**Date:**	May 4, 2004
Re:	BZA Appeal No. 17127	**CC:**	

EXHIBIT 3

C H R I S T O P H E R F R O M B O L U T I

26 April 2004

RE: BZA APPEAL NO. 17127. 5111 CONNECTICUT AVE. NW.

Dear Sirs,

I am the ANC Commissioner for the neighborhood in which Sunrise is located and am also a D. C. registered architect who has practiced here for 27 years. My District of Columbia Architects License was issued in 1977 and my registration number is ARC2715.

This memo was requested by the Nebraska Avenue Neighborhood Association and represents my professional opinion as to the changes made at the Sunrise Development at 5111 Connecticut Avenue, NW. I observed what I was told were the permit plans for the Sunrise project that were submitted for permit in May, 2002. I have also observed the completed building in April, 2004.

In my professional opinion the following changes between the plans that I originally observed and the as built condition are in conflict with the zoning regulations:

1) A pedestrian access door and a trash room have been added at the garage level. In the original plans, the area that now contains these two features were shown as earth mounded 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.

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

3) An electrical transformer, that was not shown on 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.

If you have any questions please fee free to contact me.

Christopher Fromboluti, AIA
Commissioner 3G07

District of Columbia : SS
The foregoing instrument was acknowledged before me
this 30 day of April, 2004
by Christopher Fromboluti
Jennifer L. Daffney, Notary Public, D.C.
My commission expires August 14, 2008

5312 38TH STREET, NW WASHINGTON, DC 20015

EXHIBIT B
DETAILED RESPONSE TO DCRA May 4, 2004 SUBMISSION

The Department of Consumer and Regulatory Affairs ("DCRA") makes numerous errs in its May 4, 2004 submission to the Board of Zoning Adjustment (the "Board").

(1) DCRA errs in stating that the Board "heard the appeal" on April 13, 2004. It heard the Motion to Dismiss the appeal. The Board determined that it would first hear the Motion to Dismiss and reschedule the appeal hearing if the Motion was denied.

(2) The appeal was based on new permit designs, not new issues (presumably meaning zoning code sections), as stated by DCRA. The Appellants pointed out to the Board in the first two appeals that the original plans were "sham" and would not be built as permitted (BZA Public Hearing on 6/18/02, transcript pp 39; BZA Public Hearing on 6/18/02, transcript pp 108, 109, 113). Board members Griffis and Mitten pointed out that it would be "violating the law" to build not according to *approved* plans (BZA Public Hearing on 6/18/02, p. 115). Sunrise testified that it would build according to the approved plans (BZA Public Hearing on 6/18/02 pp. 111-112). Sunrise built, not according to the approved plans and, after the fact, came back to DCRA with 5 new permit applications. Some alterations in plans these permits have zoning consequences. These **newly permitted plan revisions** are the basis of Appeal No. 17127 and are not barred from appeal by *res judicata* and collateral estoppel.

(3) Not only was Sunrise issued 7 building permits (6 of which were revision permits, 5 of which were issued *after construction*) for the same building project but was also issued dozens of accessory permits. It is noteworthy here that construction for the changes in the last 5 permits was not in accord with issued permits and therefore unlawful at the time of construction. This construction is not protected from appeal after the permits are issued.

(4) DCRA errs in claiming that the appeal was filed more than one and a half years after issuance of permit B454315. All 5 of the most recent revision building permits were issued after July, 2003, and *after* construction reflecting the changes in the permits.

(5) DCRA argues that the revision permits are "intertwined with the original permit issued on this project" [No. B435464], and therefore the revision permits are precluded from appeal by the Boards decisions on the appeal of B435464. By the nature of *revision* permits, they are "intertwined" with the parent permit. Revisions and unlawful construction deviating from the parent permit that have zoning consequences are not protected by the decision on the parent permit. DCRA points out that an issue "that either was or might have been raised in the first proceeding" is precluded from further appeal. Revised plans that have

zoning consequences (for example change in footprint and FAR) that could not have been raised previously (because they had not been submitted for permit) are not excluded from appeal. We are only appealing *changes* made in the revision permits.

(6) DCRA argues that issuance of the revision building permits "brought the building into compliance" and therefore cannot be appealed. Yes, the revision permits brought the actual construction more closely into conformity with approved plans. Our appeal alleges that the revised plans are not in compliance with *zoning regulations*. The specific *revisions* that have zoning consequences are the basis of this appeal.