FRANKLIN AREA CITIZENS ASSOCIATION

1962 Virginia Avenue, McLean VA. 22101

VIA Email: Clerk to the Board of Supervisors, Fairfax County, 27 April, 2017

Dear Chairman Bulova and Members of the Board of Supervisors:

As President of the **Franklin Area Citizens Association (FACA),** I am writing on behalf of its approximately 1,400 families to respectfully urge that the Board of Supervisors vote to **deny** Sunrise's Application for a Special Exception.

FACA is part of a coalition of ten citizen groups in the surrounding area. FACA is also a member of the **McLean Citizen's Association** which represents thousands of McLean Falls Church residents who are sharply opposed to the Sunrise Special Exception Application (SE 2016-DR-001). This opposition is based on the fact that **the proposed facility is incompatible with the proposed site and does not satisfy all applicable standards of the law.**

We Support Senior Citizens, and Even Sunrise, but not a Sunrise Facility at this unlawful Location.

Some have attempted to paint those opposed to the Sunrise Application as being anti-senior citizen. To be clear, we are not against senior citizens. We are also not against the business in which Sunrise engages and, in fact, appreciate the housing that it provides to many seniors in appropriate land use situations. Commentary about senior citizens, and commentary about Sunrise as a company, is disingenuous, distracting, manipulative and entirely irrelevant.

What is relevant is whether the usage proposed for the subject land is appropriate. This is easily answered, as the proposed usage is against the law, and there is not a basis for granting a special exception from that application of the law. Thousands of families are opposed to Sunrise's special exception based on the rule of law.

As evidence of the fact that FACA supports senior citizens, we are big supporters of Vinson Hall (VH) which is located within the boundaries of my community. It is one of the largest and most comprehensive complexes for seniors in Fairfax. I have lived at my current address for nearly 50 years and our Community has always supported Vinson Hall since its establishment more than forty years ago. We have also supported VH's continuous expansion to meet the needs of seniors over the years. And, it is important to note that Vinson's Hall's location is quite different from the proposed Sunrise site, since the VH campus acts as a buffer between our community and a large commercial strip, including the Chesterbrook Shopping Center on Old Dominion Blvd.

In contrast, Sunrise covets a site that is not only of insufficient size according to the Zoning Ordinance, but it is also smack in the middle of nothing but a residential community. A Sunrise facility would not buffer anything - rather as described below, it would only disrupt the current residential community and cause more massive traffic problems and delays.

The proposed massive complex is simply incompatible with the neighborhood. It is completely surrounded by a very large and totally residential area. It is also located at an already failed traffic intersection that will increasingly fail because of rapidly increasing Tysons cut-through and surrounding institutional traffic.

Construction of the Proposed Facility is simply Against the Law and Does Not Meet the Special Exception Standards of the Zoning Ordinance.

I am sure you will agree that it is great to have a problem that can easily be solved by reading the law. We have read the law and it is clear that the Sunrise Plan does not comply with the law. It was also very clear to the Planning Commission that the Sunrise Plan does not comply with the law and they voted 10-1 to recommend to this Board that it deny the SE based on the law. In brief, the Commission found that …"the proposed facility is incompatible with the proposed site and does not satisfy all applicable standards."

Prior to the Planning Commission's vote, the McLean Citizen's Association held a dozen hearings over a period of almost three years with Sunrise present. Subsequently, they voted unanimously in July 2016 and again in January 2017, to urge the BOS to **deny** the Sunrise Application on the basis of building mass and insufficient lot size and as being incompatible with the neighborhood as required by the zoning ordinance.

We recognize the members of this Board as expert Judges of the zoning laws and we are respectfully seeking justice under the law which protects the rights of all. As Supreme Court Chief Justice John Roberts said at his confirmation hearing… **"Judges are like umpires. Umpires don't make the rules; they apply them."** He went on to say: **"The role of an umpire and a judge is critical. They make sure everybody plays by the rules. …And I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability. And I will remember that it's my job to call balls and strikes and not to pitch or bat."**

As the Judges or Umpires in this case, you will no doubt review the record or Staff Report. Sadly, the Staff Report is unbalanced and riddled with errors or omissions of fact. And in brief, the staff recommendation is unsupported by the facts and is

plainly wrong in light of the law. (An Appendix to this testimony reviews the Staff Report.)

This is what we believe, using the Chief Justice's baseball analogy, with you, the BOS as the umpires or judges, it should be clear that **Sunrise strikes out with respect to the legal requirement for "at least 5 Acres**." (Section 9-308 (6)). The site is insufficient at 3.7 acres. Sunrise could have selected a legal site long ago that did not require a SE; therefore, Sunrise's "need or hardship" is clearly self-inflicted solely because of its business desires, and as such should not be recognized or tolerated.

Sunrise also strikes out with respect to meeting the requirements of the Comprehensive Plan. In meeting the requirements of the CP Sunrise must comply with all the conditions which it clearly fails to do. Again, Sunrise strikes out and the game should be over. Sunrise seems to take its business plan to purchase an abandoned "church", now a Yoga Studio, as an opportunity to try and get away with Comprehensive Plan violations by use of misleading statements.

But why is Sunrise, after three years, still trying to distract everyone by continuously manipulating its application and "spinning," with misleading statements like …**"You spoke and we listened. Look at all the changes that we made for this Community".** Frustrated residents from the outset continue to tell Sunrise over and over that the Sunrise Plan is unlawful and they want the proposed site to remain residential pursuant to the zoning laws.

Sunrise clearly wants to distract you from the law and simply calling balls and strikes. Let's take a look at some of the changes that Sunrise wants to take credit for and determine if they are really of any benefit to this residential community?

Incredibly, Sunrise has manipulated the law by constructing two long +20 foot high walls simply to hold dirt against the walls of their massive building in order to call two floors "cellars". By partially "burying" their building and claiming two cellars they are trying to make an end run around the Floor to Area (FAR) requirements. The FAR measures intensity, and in this case the intensity is still the same, since some 50 percent of the residents will live in the "cellars". Additionally, the dirt between the walls and the massive building, are used to artificially raise the average grade to "distort" the building's true height which is approximately 45 feet and not the 22 feet Sunrise claims.

Sunrise changed the traffic patterns and added sidewalks and turn lanes as required and then said… look at what we "gave the community". Sidewalks and VDOT turn lanes would be required of any by-right developer building homes on the site. But what Sunrise won't tell you is they will increase traffic volume by <u>two and a half times greater</u> than a By-Right (R-3) development for residential use.

These are only a few of many tricks to “try to appear” compatible with this residential neighborhood. Incredibly, Sunrise’s tricks get them more density in a residential community than is allowed or can be accommodated – especially as we will continue to see more and more Tysons-related traffic and institutional growth. Our community’s existing institutional uses such as schools, churches, etc., are all rapidly increasing and traffic is clogging streets from early morning until late at night. Living with the increasing traffic from Tysons and expanding institutional traffic is already challenging, congested and increasingly dangerous.

To be clear, there are no community benefits from Sunrise, but there are windfall benefits to Sunrise in this transaction. The grant of a SE would provide nothing but a series of negatives for the community.

In summary, for three years, the surrounding communities focused in amazement at the disingenuous efforts of Sunrise to systematically undermine the Zoning Ordinance. Sunrise’s efforts to build a huge commercial facility in the middle of a residential area are clearly incompatible with the character of the community. Sunrise is using tricks and manipulation to distract this Board in the hope you will give them a free pass or call a foul ball a home run. We respectfully ask that you make sure Sunrise plays by the rules. Because based on the Rule of Law, Sunrise strikes out.

A basis for a special exception simply does not exist. The proposed use:

-is not in harmony with the Comprehensive Plan or the zoning regulations,

-is not harmonious with the neighboring residential properties, and will adversely affect their value,

-will be excessively large and high (and should <u>not</u> be viewed as otherwise, simply because two stories of above –grade dirt is held up against it by giant walls in an effort to deceive the Board).

-will create hazards and unduly intensify already (and increasingly) difficult traffic.

Therefore, we respectfully urge you to <u>deny</u> the Sunrise Application for a special exception because Sunrise’s plans for this site cannot legally overcome restrictions clearly stated in the Fairfax County Zoning Ordinance.

Respectfully submitted,

Wallace T. Sansone, President, Franklin Area Citizens Association

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703 536 5073

APPENDIX TO TESTIMONY

This appendix is in addition to the Franklin Area Citizens Association testimony for the BOS hearing on 2 May 2017. Additionally, it provides a brief review of the Staff Report.

In our testimony, we reported the following: **"Sadly, the Staff Report is unbalanced and riddled with errors or omissions of fact. And in brief, the staff recommendation is unsupported by the facts and is plainly wrong in light of the law."**

For example, let's look at how Staff Report describes the Sunrise facility.

"The assisted living facility is proposed to be a three story building (one story and two levels of cellar space as defined under the zoning ordinance) with a building height of approximately 22.17 feet". (Page 1, second sentence of the staff report)

The Stated Building Height is Misleading

This statement referring to a 22.17 foot building height is misleading, because the staff is simply using Sunrise's unbelievable and incredibly misleading description that the facility is only 22 feet tall. The staff report fails to reveal the gigantic retaining walls that are up to 2 stories and 26 feet tall to "artificially lower" the facility 23 feet by raising the grade with fill dirt between the building and the retaining walls around the facility, which in reality is **45** feet from ground to peak. (Westmoreland Street is 304 feet elevation and the peak of the building is at 349 feet elevation.)

The Cellar Levels are Artificial and Falsely Skew the FAR Intensity Calculation

The staff does not reveal this manipulation of the zoning ordinance to create 2 "cellar" levels and does not address the problem of the 26 foot tall retaining walls being used to artificially inflate the average grade so that the applicant can exclude 2 entire floors from the FAR intensity calculation. The staff fails to reveal that both floors (at least 26 feet high) of Sunrise's "faux cellars" will be fully visible from Westmoreland St. at the entrance to the facility, which is not and cannot be screened.

The staff does not reveal their rationale for excluding the "faux cellars" from FAR and allows the applicant to manipulate the law, whilst allowing the applicant to have 50 percent of the residents living in the "cellars". Aware of the fact developers have

abused the FAR calculation, certain P districts in Tysons now require developers to include cellars in FAR calculations.

The Building’s Massive Square Footage is Incompatible with the Surrounding Residential Neighborhood

The staff does not reveal the massive square footage of the facility anywhere in its report. We estimate it to be approximately 72,000 sq. ft. and ask how the staff can find this gigantic facility “compatible” with surrounding 1-2 story homes of 2,000 sq. ft.

The Neighborhood Cannot Tolerate this Additional Institutional and intense Usage

Another major omission by the staff is the failure to address Comp. Plan Objective - **regarding the cumulative effect of institutional uses.** Institutional uses in the neighborhood are saturated, for example, traffic around neighborhood schools is increasing rapidly - Chesterbrook, Haycock, Kent Gardens and Lemon Road Elementary, along with Longfellow MS and McLean HS, all are experiencing record growth. Additionally, religious institutions have expanding day or Montessori Schools. For example, Temple Rodef Shalom’s congregation has doubled in the last decade. And there is the increasing volume of cut through traffic to and from Tysons. **Our community also supports nearby senior housing and care at Chesterbrook Residences, Powhatan Nursing Home and Vinson Hall which is one of the largest complexes in Fairfax County. And there are 30 similar facilities within a 10 mile radius.**

The staff report does not illustrate how the proposal is in harmony with the Comprehensive Plan. The report simply does not address the section of the Comprehensive Plan that requires infill in the Kirby district to be of primarily single family homes.

The report does not address the "**intensity"** issue from the Comp Plan - which requires compatible use, type, and intensity. The proposed use is more intense than the failed church but the staff does not compare the intensity of the proposed use to R-3 single family homes, which is required by the Comp Plan. The report does not analyze the proposed facility in terms of dwellings per acre or any other metric for intensity. They could have looked at du/acre or beds-per-acre. Based on beds-per-acre, this proposed facility will be the 2nd densest facility in Fairfax County. **And will increase traffic volume by two and a half times greater than a by-right residential development.**

Ingress and Egress to the Facility will Present a Dangerous Situation

There is a clear and present danger with heavy traffic in the area and the staff does not address the negative effect of permitting the entrance on Westmoreland. It is a total redesign of Westmoreland from Poole Lane to Youngblood Street for the benefit of a developer and it creates a clear and growing traffic hazard for all the surrounding neighborhoods.

Additionally, the staff does not address the safety reservations that VDOT has, such as meeting the required safety sight distances at this location. The staff report suggests the changes to Westmoreland and the neighborhood are improvement; they are clearly not.

The Sunrise Facility will compete with County-Provided Low Income Housing, and Jeopardize the needs of Our Low Income Neighbors

The staff report does not reveal the recommendations of Fairfax County's Long Term Care Coordinating Council to the Health Care Advisory Board (HCAB) that the Sunrise's SE be disapproved. In a letter to the HCAB they stated: **"We believe there are good reasons to recommend to the Board that it not approve this special exception. An approval will conflict with the efforts of Fairfax County to assure that some of its very low income and low income residents will receive the assisted living health care as it envisioned its support of Chesterbrook Residents would provide for the future."** Approval would subvert and divert comprehensive healthcare for the area proposed. Three (3) million dollars in taxpayer grants and investments by Fairfax County to provide assisted living for low income residents would be in jeopardy if Sunrise were permitted to go into competition with Chesterbrook Residences, a few hundred feet away.

The Required 5 Acres, is a Legal "Minimum", Not a Standard to be Discussed and Reviewed on a case by case Basis

The staff completely misconstrues the intent of the 5-acre minimum lot size ordinance as reflected in the plain language of the law and in the verbatim "legislative history" of the ordinance. The PC and BOS established this bright line rule to prevent large, intensive facilities exactly like this one from ever being built on small lots surrounded by single family homes. The PC verbatim is definitive about the purpose of this law and the Commissioners did not suggest the 5-acre law should be "reviewed on a case-by case basis." "Case-by-case" is an incorrect interpretation of the law.

* * * * *

In an effort to understand why the staff report is so deficient and misleading we called Mr. Shahab Baig, Branch Chief, in the Division of Site Development and Inspections Division (SDID) on 17 March 2017 requesting an explanation since his office will ultimately review and approve the site plan should the BOS approve the SE Application. Mr. Baig said he would contact DPZ, the authors of the staff report. The following email dated 19 March was sent to remind Mr. Baig of our questions and concerns.

Greetings Shahab,
As a follow up to our conversation, here in brief is the question we discussed regarding Sunrise:

The Staff recommended last August (2016) that Sunrise's Application for a Special Exception not be approved since it was "...not viable in part due to the extensive grading and the creation of a project which is not in character with the neighborhood"... and now how can the staff recommend approval of a plan that is worse?

As a result of the Staff decision in 2016 to not recommend approval, Sunrise revised its plan. Sadly, its grading and zoning manipulations are even more extensive than before. In brief, the building is 45 feet tall and there are two retaining walls as high as 28 feet (much greater height as before) and running a total of more than 500 feet. The purpose of the walls is simply to manipulate the zoning law, by artificially holding dirt against the building high enough to create two "faux cellars" out of two of the three floors in the building.

It appears that staff is wrongly interpreting the law to allow such extensive grading. And they are also wrongly finding that the "faux cellars" don't count in the FAR calculation, even though 50 percent of the residents will live in the cellars. In truth, these are not cellars, since the FAR measures the "intensity of use" which is the same as it was when these "cellars" were floors before they piled dirt against the walls of the building. Despite this fact the staff is wrongly concluding that the Sunrise plan, with its manipulation of the law, now "complies" with the zoning Ordinance? Yet, in August 2016 the staff concluded otherwise with less extensive grading?

The staff seems to think they can "rewrite" the law, instead of properly enforcing it. We respectfully disagree with the staff since it appears that they have not properly respected the intent of the law. There is simply no rationale or law that the staff has pointed to, in order to confirm that their interpretation is what the General Assembly intended when they wrote the law.

In summary, the staff has wrongly interpreted the law to allow "faux cellars" to be created in order to reduce a building's FAR to comply with the zoning ordinance. And to allow the building's height to be misleadingly reported at only 22 feet (and not the true height of 45 feet) based on manipulating the artificial grade with long, high retaining walls. We respectfully ask what is it in the law that gives the staff the right to assume such seemingly preposterous conclusions.

We look forward to hearing from you as soon as possible since the PC is preparing to make its decision on 29 March.

With best wishes and many thanks,
Wally

So what did we learn? The staff's response below dated 24 March is troubling since bad facts make bad recommendations. For example, staff continues a major error by stating erroneously that the applicant "...eliminated the retaining walls". That is clearly incorrect. And based on this and other bad facts it appears the staff is erroneously recommending approval of the SE. In order to clarify the staff's response we sent the following email.

From: Wallace Sansone [mailto:sansonewt@gmail.com]
Sent: Monday, March 27, 2017 10:18 AM
To: Lewis, Camylyn M <Camylyn.Lewis@fairfaxcounty.gov>
Cc: Baig, Shahab <Mirza.Baig@fairfaxcounty.gov>
Subject: Sunrise - One Quick Question

Dear Ms Lewis,

I tried to call you this morning and left a message, perhaps responding by email will be more convenient?

Thank you for your email, however your response to our question is very puzzling. We asked a straight forward question in our message; here it is for your easy reference and convenience:

"**The Staff recommended last August (2016) that Sunrise's Application for a Special Exception not be approved since it was "...not viable in part due to the extensive grading and the creation of a project which is not in character with the neighborhood"... and now how can the staff recommend approval of a plan that is worse?**

Your response boils down to a part of one sentence, the rest is irrelevant.

"... DPZ Staff did not support the initial layout with the access from Kirby Road because of all the retaining walls and the looming impact on the neighborhood. Therefore the applicant changed the layout to be from Westmoreland and to eliminated the retaining walls."

This is very puzzling, since the indisputable facts are (1) the retaining walls have not been eliminated, (2) there is still extensive grading, and (3) the looming impact on the neighborhood still exists, along with many other violations of the law which we have previously highlighted. Therefore, we respectfully ask how this plan can be better than the plan the staff rejected in August?

We look forward to your earliest response in time for submission to the Planning Commission.

With best wishes and many thanks,
Wally

Ms. Camylym Lewis in SDIS referred our questions to Ms. Cathy Lewis in DPZ. Ms. Lewis's complete one sentence response today (27 March) is as follows: "The revised layout eliminates the previously-approved massive retaining walls that were proposed along Westmoreland Street."

Despite Ms. Cathy Lewis's response, the long, high retaining walls are still clearly being used to manipulate and lower the FAR intensity. If Sunrise has to manipulate the FAR, it proves their facility is too large at 72,000 sq. ft. to be compatible with the neighborhood. Additionally, as previously described the retaining walls are being used to artificially raise the grade alongside Sunrise's 45 foot building, in order to (erroneously) claim the building is only 22 feet. The staff argues the height is lower and therefore the facility will not be as looming. But it ignores the fact that the slightly lower height is offset by the reduced setbacks, placing the facility closer to the road and making it loom over the neighborhood all over again.

The Sunrise plan is now worse than all previous plans. This is astounding, since the indisputable facts are (1) the retaining walls have not been eliminated, (2) there is still extensive grading, and (3) the looming impact on the neighborhood still exists. So how can this plan be better than the plan the staff rejected in August 2016? A detailed letter was submitted to the Planning Commission on 8 March by numerous neighborhood and community associations representing thousands of residents in the immediate area. And in testimony on that date, Mr. John Neumann highlighted the reasons why the Sunrise application fails to meet at least the first 4 General Standards for a Special Exception (i.e., "General Standard No 1: Not in harmony with the Comprehensive Plan. General Standard No 2: Not in harmony with the purpose

& intent of Zoning Regulations. General Standard No 3: Not in Harmony with Neighboring Properties. General Standard No 4: Hazardous to Existing Traffic in the Neighborhood".) These are set forth in the zoning ordinance (9-308(6), incorporating by reference the 5-acre minimum lot requirement (9-308(6) and clearly show that the Sunrise Application should be denied.

Additionally, the Mclean Citizens Association representing thousands of residents held nearly a dozen hearings with Sunrise present over the last three years on Sunrise's various proposals and twice Resolved **"…that on the basis of the building mass and the insufficient lot size for use and as required by the Fairfax County Zoning Ordinance, the McLean Citizens Association opposes SE Application SE 2016-DR-001 as being incompatible with the neighborhood and urges the Board Of Supervisors to deny the Application."**

Finally on 29 March the Planning Commission concluded that the Sunrise application did not meet the standards required for a special exception and recommended that the BOS deny the Sunrise application. Dranesville Planning Commissioner John Ulfelder, said: "… the intensity of Sunrise's proposed use is orders of magnitude greater than the small church currently in that location. Vastly increasing the intensity of the institutional use on this property – one that is surrounded on all sides by single-family residential development – would not serve to protect and enhance these neighborhoods".

In summary, for three years, the surrounding communities representing thousands of families focused in amazement at the disingenuous efforts of Sunrise to systematically undermine the Zoning Ordinance. Sunrise's efforts to build a huge facility in the middle of a residential area are clearly incompatible with the character of the neighborhood. Sunrise is using tricks and manipulation to distract the Board in the hope you will approve based on the bad facts and the erroneous recommendation of the staff. We respectfully ask that you make sure Sunrise plays by the rules. Because based on the Rule of Law this application should be denied.

Respectfully submitted,

Wallace Sansone, President, Franklin Area Citizens Association

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