Chevy Chase
Advisory Neighborhood Commission 3G
MAILING ADDRESS: P.O. BOX 6252 Northwest Station Washington, DC 20015

CHEVY CHASE OFFICE
5601 Connecticut Ave. NW
Washington, DC 20015
(202) 363-5803
FAX (202) 686-4366
E-Mail uppernwdc@juno.com

June 25, 2001

Ms. Sheila Cross Reid, Chairman,
Board of Zoning Adjustment
441 4th Street Room 210
Washington DC 20001

Re: BZA Appeal No. 16716 – Appeal of Building Permit No. B435464

Dear Ms. Reid:

ANC 3G has appealed the decision by the Zoning Administrator to issue Building Permit No. B435464 for a building at 5111 Connecticut Ave., N.W. ANC 3G held public meetings on March 26, 2001, and June 25, 2001, which were preceded by proper public notice. At the March 26, 2001 meeting, the ANC voted 6 to 0 (a quorum consisting of 4 Commissioners) to join in the appeal in Case No. 16716. At the June 25 meeting, the ANC voted 6 to 0 with one abstention (a quorum consisting of 4 Commissioners) to adopt this report of the Commission and authorize presentation of the report to the Board of Zoning Adjustment.

A copy of ANC 3G's initial statement joining in the appeal of this matter is attached. (Attachment A) The report in support of this petition follows.

REPORT OF THE COMMISSION

Building Permit No. B435464 authorizes construction of a seven-story, multi-sided building intended for use as an assisted living facility for over 100 residents. ANC 3G appeals the issuance of this building permit on three grounds: (1) the proposed building does not comply with zoning requirements applicable to either an R-5D or an R-5B zone; (2) the proposed use of the building does not comply with applicable requirements; and (3) necessary D.C. agency reviews of the building permit were not obtained, due to misrepresentations and omissions in the building permit application process. These substantial violations should have led to denial of the building permit. The decision of the Zoning Administrator to grant the permit was factually and legally erroneous.

ANC 3G respectfully requests that the Board of Zoning Adjustment revoke the issuance of this building permit, notify the applicant that the permit application is denied, and further notify the applicant that any building to be constructed at this location must comply with the

BZA
Case No. 16716
Exhibit No. 29

Board of Zoning Adjustment
District of Columbia
CASE NO.16716
EXHIBIT NO.29

requirements applicable to an R-5B zone. Under applicable D.C. law, the views of the ANC are entitled to great weight.

I. Noncompliance with the Requirements for an R-5D Zone

The proposed building does not comply with at least three significant requirements of the zoning code relating to the rear-yard setback, the permitted floor area ratio (FAR), and loading dock requirements.

A. Building Setback

In an R-5D Zone, the applicable minimum rear yard setback requirement is the greater of 15 feet or one-third of the building height. See 11 DCMR Section 404.1. The rear-yard setback must extend across the entire rear property line, not just a portion of it.

It is the opinion of ANC 3G that the rear property line for this building extends along the entire length of the rear alley and alley stub, roughly parallel to and the same length as the front property line along Connecticut Avenue, which extends to the corner with Chevy Chase Parkway. However, the plans accompanying the building permit application show a rear-yard setback along only a portion of this rear property line. For a substantial segment of the rear property line, the proposed building will actually extend to the rear property line itself, with no setback provided. This does not comply with the applicable zoning requirement.

B. Floor Area Ratio

The floor area ratio (FAR) for an R-5D zone is 3.5. See 11 DCMR Section 402.4. The applicant submitted gross floor area estimates for each floor of the proposed building totaling 80,870 square feet, which were used by the Zoning Administrator to calculate an FAR of 3.49. However, the applicant's estimates understate the actual gross floor area of several of the building floors. The Zoning Administrator's reliance on the incorrect and understated square footage figures supplied by the applicant was factually and legally erroneous.

ANC 3G finds that the actual square footage of the proposed building is over 86,000 substantially higher than 80,870. Calculating the FAR with the correct square footage produces an FAR of 3.74, well in excess of 3.5, that greatly exceeds the FAR limit for an R-5D zone. See attached calculations (Attachment B).

C. Loading Dock

The applicant is required to include a loading dock in its building. Loading docks must be located on private property and not in public space. However, ANC 3G finds that the building plans submitted by the applicant contain a "sham" loading dock, located at the south end of the building, but that in reality the applicant will use the public alley stub, at the north end of the building, as its loading dock facility. This does not comply with applicable requirements for provision of a loading dock.

II. Noncompliant Proposed Use

The initial building permit application, submitted in July 2000, indicated that the proposed use of the building was residential. A subsequent submission, filed in February 2001, claimed that the building was to be a community-based residential facility (CBRF) for the handicapped, and further claimed that such a use was permitted as a matter of right in an R-5D zone. The materials submitted by the applicant indicate that the building is to have a restricted ward for Alzheimer's patients and will house over 100 residents.

ANC 3G finds that a CBRF in an R-5 zone may be built as a matter of right only to house 7 to 15 persons. Larger facilities such as this proposal must qualify under the neighborhood need/proximity test of 11 DCMR Section 350.4(f) and must undergo review and approval under the special exception process, 11 DCMR Section 358. This finding is supported by a memorandum from Andrew Altman, Director, Office of Planning, to Mr. Denzil Noble, Acting Zoning Administrator (Oct. 24, 2000). The applicant has failed to seek or secure a special exception for a large-scale CBRF, in violation of these requirements.

In addition, and in any event, the applicant fails to qualify as a CBRF. Under applicable regulations defining these facilities, residents must be cognizant of time and place. ANC 3G finds that Alzheimer's patients are not cognizant of time and place, and therefore that a structure designed to house such patients does not qualify as a CBRF.

Finally, the applicant's application proposes to provide a mere 17 parking spaces for this facility housing over 100 residents. In its initial application, the applicant claimed a residential use.[1] Subsequently, the applicant claimed it was building a CBRF. However, when a CBRF houses more than 35 residents, the necessary parking must be determined by the Board of Zoning Adjustment. The applicant has neither sought nor obtained approval for the lesser amount of parking proposed in conjunction with the permit application.

III. Noncompliance with the Requirements for an R-5B Zone

Last year, ANC 3G petitioned the Zoning Commission to revise the zoning for a three-block area including the property at 5111 Connecticut Ave., N.W. The matter was set down for a hearing on October 16, 2000. On June 11, 2001, the Zoning Commission voted to rezone the subject property from R-5D to R-5B.

[1] Parenthetically, parking for residential apartment buildings must be provided in a ratio of one parking space for each three units, which would require at least 33 spaces. The application should have been denied on this basis.

The applicant in this instance is required to comply with the R-5B zoning that was the subject of the Zoning Commission hearing and that has now been adopted by the Commission. Although applicants may take advantage of existing zoning in some circumstances, the applicant here did not meet the requirements to be "vested." In order to be vested, the applicant must file a complete permit application before a matter is set down for rezoning by the Commission. The completeness of an application is judged by 11 DCMR Section 3202.5, which requires submission of all "plans and information, which are required to permit complete review of the entire application under any applicable District of Columbia regulations."

The applicant's initial application was not complete within the meaning of Section 3202.5. As noted above, the initial application stated that it was for residential use; there was not a proper filing for use as a CBRF until February of 2001. As a consequence, the applicant is required to comply with the requirements for an R-5B rather than an R-5D zone.

As noted above, the applicant fails to satisfy the requirements for an R-5D zone, and even more flagrantly fails to meet the requirements for an R-5B zone.

IV. Misrepresentations and Omissions Led to Incomplete Reviews

The instant building permit is fatally flawed because it was issued based on the applicant's misrepresentations, and other omissions of information, which led to circumvention of required D.C. agency reviews. As one example, the applicant's Environmental Impact Screening Form asserted that the proposed building was 23 feet in height, when in fact it is a seven-story structure of at least 90 feet in height.

As a second example, the applicant's initial application stated, falsely, that the existing land was vacant. This misrepresentation permitted issuance of a raze permit that otherwise would be prohibited by 14 DCMR Section 4400.2 (which prohibits demolition of permanent housing for replacement with a transient residence of the sort proposed by the applicant).

As a third example, the applicant's initial filing claimed the building was to be for residential use but a later filing claimed it was to be for used as a CBRF. This extremely belated admission by the applicant had the effect of allowing the application to evade review by the Health Department, which would have identified the deficiencies described above in the proposed CBRF use.

As a fourth example, the Department of Public Works never received a plat map and thus its review of traffic issues failed to take into account the building's likely effect on the extremely narrow and overtaxed residential alley behind the property.

V. Conclusion

Based on the foregoing, ANC 3G respectfully requests appropriate relief from the Board of Zoning Adjustment, including the following: (1) revoke the issuance of this building permit, (2) notify the applicant that the permit application is denied, and (3) notify the applicant that any building to be constructed at this location must comply with the requirements applicable to an R-

5B zone. Under applicable D.C. law, the views of the ANC, as set forth above, and this written report, are entitled to great weight. See 11 DCMR Section 3115.2.

ANC 3G hereby authorizes Marilyn Holmes, Joseph Bishop and or Allen Baech to present this report to the Board.

Joseph L. Bishop/ars

Joseph L. Bishop
Vice Chair
ANC 3G

Attachments

Cc: Councilmember Kathy Patterson
Councilmember Adrian Fenty
Ms. Jerrily Kress

Attachment A

Chevy Chase
Advisory Neighborhood Commission 3G
MAILING ADDRESS: P.O. BOX 6252 Northwest Station Washington, DC 20015

CHEVY CHASE OFFICE
5601 Connecticut Ave. NW
Washington, DC 20015
(202) 363-5803
FAX (202) 686-4366
E-Mail uppernwdc@juno.com

April 9, 2001

Mr. Robert Sockwell
Chairman, Board of Zoning Adjustment
441 4th Street, N.W. Room 210
Washington DC 20001

RE: BZA Appeal 16716 Building permit B435464 (seven story structure at 5111 et al Connecticut Avenue, N.W.)

EXPEDITED CONSIDERATION REQUESTED

Dear Mr. Sockwell:

At ANC 3G's publicly announced meeting of March 26, 2001, the Commission voted 6 - 0 (a quorum being four) to join in the appeal contesting the Zoning Administrator's decision to issue building permit number B435464. The Nebraska Avenue Neighborhood Association filed the appeal on March 16, 2001. ANC 3G asks that filing fees be waived for the ANC as well as for the Nebraska Avenue Neighborhood Association. Additionally, to minimize disruption and expense for all affected persons, we respectfully request that the consideration of this appeal be expedited.

The above-cited building permit was issued in early March, despite oral and written objections from ANC 3G and the Nebraska Avenue Neighborhood Association. ANC 3G and the Association identified numerous deficiencies in the permit application and pointed out serious violations of the Zoning Regulations. We believe that issuance of the building permit under these circumstances constitutes legal error and we therefore ask the Board of Zoning Adjustment to reverse the Zoning Administrator's erroneous decision to approve the permit.

Our appeal is based on the following grounds:

(1) The building permit allows construction of a building that violates the rear yard setback requirements for an R-5D zone, which is the current zoning classification for this property. A rear setback in an R-5D zone must be one foot for each three feet of building height, but the applicant's building meets the setback requirement only for one portion of the rear property line rather than for the entire rear property line.

(2) The building permit allows construction of a building that violates the FAR requirements for an R-5D zone, which is the current zoning classification for this property. The FAR calculations by the Zoning Administrator erroneously included a 4,000 square foot R-2 lot.

(3) The building permit was granted despite the building's failure to comply with the R-3 zoning requirements for building height, FAR, and density. The R-3 zoning requirements apply to this building

permit because no complete application was filed for the permit until February 2, 2001, well after the October 16, 2000 decision of the Zoning Commission to hold a hearing on ANC 3G's July14, 2000 written petition for down zoning of this property from R-5D to R-3.

4) The building permit was granted for an assisted living and/or community-based residence facility, even though no special use permit was sought or approved permitting the applicant to operate such a facility at this location, as is required.

5) The building permit was approved in violation of the restrictions on commercial use in an R-5D zone and without evidence of a real (as opposed to a sham) loading dock facility.

The Zoning Administrator's decision to grant this building permit in violation of the foregoing requirements was legally erroneous, violated the Zoning Regulations, and should be reversed. ANC 3G appoints Marilyn Holmes and/or Joe Bishop as our representative for any hearing on this appeal. We also request that this matter not be set for a hearing during the time period July 5 to 13, 2001.

Sincerely,

Joseph L. Bishop

Joseph L. Bishop
Vice-Chair ANC 3G

Cc: Councilmember Kathy Patterson

Attachment B

FAR CALCULATIONS – 5111 Connecticut Ave., N.W.

Basement

Square footage = 16,054

Perimeter = 540 feet
Perimeter 4 feet above grade = 170 feet

170/540 = 31.5%

31.5% x 16,054 = 5,057

3d Floor

Square footage without balcony = 11,914

Balcony square footage = 940

8th Floor

Square footage, utility room = 828

Square footage, elevator machine room = 854

Total square footage = 1,682

Errors in Calculation of FAR

	Counted by DC	Should Be Counted	Difference
Basement	2,180	5,057	-2,877
3d Flr Balcony	-0-	940	-940
8th Floor	-0-	1,682	-1,682
Building Total	80,870	86,369	-5,499

Correct FAR Calculation:

86,369/23,107.51 = **3.74**