BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In Re: 5111 Connecticut Ave., N.W. Square 1989, New Lot 162 Previous Lots 49-57 & 161	)	BZA Appeal No. 16716
Appeal of:	)	
Nebraska Avenue Neighborhood Association	)	
Advisory Neighborhood Commission 3G	)	

Proposed Findings of Fact
Submitted by ANC 3G

Advisory Neighborhood Commission 3G respectfully submits these proposed findings of fact in BZA Appeal No. 16716, an appeal of a decision by the Zoning Administrator to issue a building permit to Sunrise Assisted Living Facility to construct a building at 5111 Connecticut Avenue, N.W.

I. The 8th Floor Penthouse Does Not Comply with Applicable Zoning Requirements

1. All penthouses and mechanical equipment for the proposed Sunrise building are required to be placed in one enclosure. See 11 DCMR § 411.3.

2. A penthouse for mechanical equipment or an elevator on the proposed building is required to be set back from exterior walls a distance at least equal to its height above the roof upon which it is located. See 11 DCMR § 400.7.

3. A penthouse on the proposed building cannot exceed eighteen feet six inches (18 ft. 6 in.) in height above the roof upon which it is located. See 11 DCMR § 400.7.

4. The Zoning Administrator was required to submit roof plans for the proposed building to the Director of the Office of Planning for review and report before taking final action on the plans. See 11 DCMR § 411.10.

5. Sunrise's proposed building includes two penthouse-like structures on the 8th floor: one to house mechanical equipment and one to house elevator machinery. See NANA Volume I, page A-14 – Main roof plan.[1]

6. A 12-foot high roof structure along the perimeter of the eighth floor touches both penthouse-like structures but does not shelter, enclose, or cover them, or serve as a roof over them, as it is below the top of the structures. This non-utilitarian embellishment does not render the physically distinct and separate structures a single structure.

7. The elevator structure on Sunrise's proposed building is not set back from the exterior building walls; it is flush with the exterior building wall at the rear of the building.

8. The wall that encloses the elevator structure – and that is flush with the exterior building wall – is a functional wall that serves to enclose and support the elevator mechanical equipment structure. The wall is not an architectural embellishment.

[1] References are to the appendices filed by the Nebraska Avenue Neighborhood Association (NANA).

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9. Alternatively, to the extent the wall is considered to be an architectural embellishment, it is also a part of a penthouse-like structure whose location and siting on the building do not comply with applicable zoning regulations.

10. The actual height of the elevator structure on Sunrise's proposed building, as measured by the developer's submitted drawings, exceeds 20 feet. See NANA Volume II, page 9 – Longitudinal building section. See NANA Volume I, page A-4 – Rear elevation.

11. The Zoning Administrator did not submit Sunrise's proposed roof plans to the Director of the Office of Planning for review and report before taking final action on the plans.

II. The Zoning Administrator Erred in Calculating the Building Floor Area Ratio (FAR)

A. FAR Noncompliance – 8th Floor

12. The increased floor area ratio for penthouses, allowed by 11 DCMR § 411.7, does not apply to structures that do not comply with the requirements of 11 DCMR § 400.7.

13. For the reasons set out above, the 8th floor penthouse-like structures do not comply with the requirements of 11 DCMR § 400.7.

14. The 8th floor penthouse-like structures have a combined floor area of approximately 1,682 square feet. See ANC Report Attachment B – FAR calculations.

15. The Zoning Administrator should have but did not count the floor area of the 8th floor penthouse-like structures in calculating the building's FAR.

B. FAR Noncompliance – 3d Floor

16. In accordance with 11 DCMR § 199.1, FAR calculations must include the gross floor area of a building, including the area of outside balconies that project more than six feet from exterior walls, and also including enclosed living space used to shelter and enclose persons.

17. The 3rd floor balcony projects more than 6 feet from the exterior walls of the building. See NANA Volume II, page 7 – 3d floor plan.

18. The 3rd floor balcony is fully enclosed by masonry walls, lattice walls, and a lattice roof and is to be used for the shelter and enclosure of persons residing in the building. See NANA Volume I, page A-2 – Front elevation.

19. The 3rd floor balcony has a floor area of approximately 940 square feet. See ANC Report Attachment B – FAR calculations.

20. The Zoning Administrator should have but did not count the floor area of the 3rd floor balcony in calculating the building's FAR.

C. FAR Noncompliance – Basement

21. In accordance with 11 DCMR § 199.1, FAR calculations must include the gross floor area of a basement, meaning that portion of a story the ceiling of which is four feet or more above the adjacent finished grade.

22. The developer's building plans do not indicate any ceiling in the basement level. It was unreasonable and erroneous for the Zoning Administrator to assume the building would include a ceiling at the basement level.

23. The first floor elevation is 304.18 feet above sea level. See NANA Volume I, page A-5 – Grading plan.

24. Subtracting one foot for the first floor slab, the basement level ceiling height is approximately 303 feet above sea level.

25. Approximately 170 feet of the basement perimeter is at a height of 299 feet above sea level, which means that the corresponding ceiling height is more than four feet above the adjacent finished grade. Even if the building includes a basement ceiling, close to 170 feet of the basement perimeter has a corresponding ceiling height more than four feet above the adjacent finished grade.

26. The building plans show a cement patio and a retaining wall resembling a planter box at the rear of the building adjacent to the basement level. These building structures do not alter the finished grade of that area of the property. See NANA Volume II, pages 8-10 – Cross-section.

27. The entire basement perimeter is approximately 540 feet, and the basement level has a floor area of approximately 16,054 square feet.

28. The Zoning Administrator included only 2,180 square feet for the basement floor area in calculating the building's FAR.

29. The Zoning Administrator should have included approximately 5,057 square feet for the basement floor area (170 divided by 540, or 31.5%) in calculating the building's FAR. See ANC Report, Attachment B – FAR calculations

D. FAR Noncompliance – Summary

30. The building's gross floor area includes approximately 5,057 square feet for the basement floor area, 1,682 square feet for the 8th floor structures, and 940 square feet for the 3rd floor balcony. See ANC Report, Attachment B – FAR calculations.

31. The building's total gross floor area is approximately 86, 369 square feet. The gross area of the building lot is approximately 23,107.51 square feet.

32. The building FAR is 3.74 (86,369 divided by 23,107), which exceeds the maximum FAR of 3.5 permitted in this zoning district. See ANC Report, Attachment B – FAR calculations.

33. The Zoning Administrator erred by including only 2,180 square feet for the basement floor area in calculating the building's FAR, and by failing to include any floor area for the 8th floor structures and the 3rd floor balcony.

34. The Zoning Administrator erred by calculating the building gross floor area as 80,870 square feet and by calculating the building's FAR as 3.49.

III. The Building Exceeds the Maximum Building Height in this Zoning District

35. The maximum building height permitted in this zoning district is 90 feet from the curb at the middle front of the building to the highest point of the building roof. See 11 DCMR §§ 199.1 and 400.1.

36. The curb at the middle front of the building is approximately 302.5 feet above sea level. See NANA Volume I, page A-5 – Grading plan.

37. The height of the building is approximately 96 feet above the 303.25 foot first floor slab measurement shown on the Longitudinal building section. Therefore, the height of the building is approximately 97 feet above the 302.5 foot level of the curb at the middle front of the building. See NANA Volume II, page 9 – Longitudinal building section.

IV. The Zoning Administrator Erred in Designating the Rear and Side Property Lines

38. Sunrise's proposed building fronts on Connecticut Ave., N.W. It does not front on Chevy Chase Parkway.

39. The rear property line of the building is the full width of the lot, extending from the side property line on the south side along the entire length of the rear alley and alley stub. The rear property line is roughly parallel to and the same length as the front property line along Connecticut Ave. See NANA Volume I, page A-1 – Site plan; NANA Volume I, page A-5 – Grading plan.

40. The building does not have the required setback along a portion of the rear property line abutting the alley stub.

41. The north side property line of the building extends along Chevy Chase Parkway, along the side lot facing Chevy Chase Parkway, and along a small portion of the main alley before it intersects the alley stub. See NANA Volume I, page A-1 – Site plan; NANA Volume I, page A-5 – Grading plan.

42. Alternatively, and to the extent the north side property line is considered to include the property line abutting the alley stub, the building does not have the required setback along the portion of the side property line abutting the alley stub.

43. The Zoning Administrator erred in designating the building's rear property line as extending along the main alley but not the alley stub, which is a portion of the property perimeter less than half the full width of the lot.

44. The Zoning Administrator erred in designating the building's north side property line as extending along the entire alley stub, a portion of the main alley, and the side lot facing Chevy Chase Parkway, which is a portion of the property consisting of seven segments and including four 90 degree turns.

45. The Zoning Administrator erred in issuing a building permit for a proposed building that does not meet the required rear and side yard setback requirements.

V. The Zoning District Applicable to this Property is R-5-B, Not R-5-D

46. Sunrise did not file a complete and sufficient building application in July of 2000. Missing from the application were a specification of the building's intended use and an indication of the distance of the penthouse structures to all edges of the main roof. See NANA Volume I, page E1 – D.C. Plan Correction List; NANA Volume I, page E2 – D.C. Letter re building permit application deficiencies. See NANA Volume I, page D-1 – Initial building permit application.

47. Officials in the Building and Land Regulation Administration identified several material deficiencies in Sunrise's building permit application. See NANA Volume I, page E-1 – Plan correction list; NANA Volume I, page E-2 – DCRA letter.

48. Sunrise filed a revised building permit application on February 5, 2001. The revised application contained materially different information than had been included in the initial application. See NANA Volume I, page E-6 – Revised building permit application.

49. Sunrise's revised building permit application was filed after the Zoning Commission had set down for a hearing on October 16, 2000 a petition to rezone the property from R-5-D to R-5-A or R-5-B. See NANA Volume II, page 22 – Time line of proposed use of the building.

50. The zoning classification applicable to Sunrise's proposed building is R-5-B, which is the zoning classification for the property determined by the final decision of the Zoning Commission. Sunrise may carry out work authorized by the permit only in accordance with the requirements of the R-5-B zoning classification.

51. The building permit issued is for a proposed building that does not comply with the R-5-B zoning classification. The proposed building height and FAR exceed the maximum levels for an R-5-B zone.

52. The Zoning Administrator erred in issuing the building permit for Sunrise's proposed building.

Respectfully submitted
ANC 3G