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	)	

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Motion for Reconsideration
Submitted by ANC 3G

Advisory Neighborhood Commission 3G respectfully submits this motion for reconsideration of the Decision and Order dated October 12, 2001, 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. As grounds for this motion, ANC 3G contends that the decision contains material inconsistencies and factual errors and omissions. As a consequence, the findings and conclusions are not supported by the record. Our specific assertions of error are summarized below.

ELEVATOR PENTHOUSE

(1) The findings concerning the elevator penthouse structures are materially inconsistent in that they make contradictory findings as to the nature of the rooftop structure housing the elevator machinery.

> Findings 26 and 49 indicate that this rooftop structure is a penthouse. In accordance with these findings, the decision concludes that the penthouse qualifies for the excess FAR for penthouses (Finding 26) and is not subject to the building height limitation (Finding 49). Further, Findings 53 and 54 assert that the elevator penthouse meets the requirement of 11 DCMR § 411.3 concerning placement of penthouses within a single enclosure.
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> In direct contradiction, Finding 56 concludes that the rooftop structures are not penthouses at all but that the elevator equipment is instead an elevator tower housed within an "architectural embellishment." In addition, Findings 56 and 60 assert that the elevator penthouse is not subject to the penthouse setback requirement of 11 DCMR § 400.7.

BZA
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Exhibit No. 57

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(2) The "architectural embellishment" said to contain the elevator penthouse is also described in materially contradictory fashion.

In some findings the architectural embellishment is said not to constitute usable space (Finding 28) and not to constitute habitable space (Finding 50).

In other findings it is conceded that the architectural embellishment has a functional use of housing mechanical equipment (Finding 57), has a dual function (Finding 58), and has a "functional duality" (Finding 62).

A structure that is used for functional purposes and that is conceded to have more than a purely decorative function cannot properly be considered an architectural embellishment within the meaning of the zoning code.

(3) The decision erroneously relies on previous errors made by the Zoning Administrator.

As support for the erroneous conclusion that the elevator penthouse need not comply with some of the penthouse requirements in 11 DCMR § 411, the decision relies on similar rulings by the Zoning Administrator wherein architectural embellishments housing mechanical equipment were not set back from the edge of the roof, as required by 11 DCMR § 411 (Finding 59).

Previous errors by the Zoning Administrator cannot support the BZA's approval of an error in the instant case. Indeed, this pattern of repeated errors in rulings by the Zoning Administrator (none of which, apparently, was previously challenged) argues not for a continuation of mistakes but for an emphatic reversal by the BZA. The BZA should correct the Zoning Administrator's erroneous interpretation and application of these zoning code provisions.

FAR NONCOMPLIANCE – BASEMENT

(4) The decision contains erroneous conclusions concerning the inclusion of a ceiling at the basement level of the building.

Findings 30 and 33 indicate that only 11.9 percent of the lower level constitutes basement space (Finding 30) and that the percentage of basement space calculated by the ANC was incorrect (Finding 33). Further, Finding 33 states that the ANC incorrectly measured from adjacent finished grade to the underside of the slab rather than to the finished ceiling.

Nothing in the building plans submitted to the Zoning Administrator shows a basement ceiling in the lower level. To the contrary, the Longitudinal Building Section included in the record (NANA Volume II, Page 9) clearly shows ceilings on every floor except the basement level.

It was unreasonable and erroneous for the Zoning Administrator to assume the building would include a ceiling at the basement level in the absence of any indication on the building plans that the basement level would include a ceiling and in view of the fact that the inclusion of a ceiling on a basement level is an unnecessary expense that almost all builders choose to forego.

Although an expert witness for Sunrise referred to a basement ceiling, he failed to indicate anywhere on the plans the existence of a ceiling or provide any other basis for his assertion, which constitutes mere speculation. Moreover, this oral testimony was not available to the Zoning Administrator to serve as a basis for measuring the basement perimeter and calculating the building's FAR. It is also telling that neither Sunrise's own architect nor its vice president, both of whom testified under oath, stated that the basement level includes a ceiling.

(5) Taking into account a hypothetical ceiling at the basement level, the building mass still exceeds the 3.5 FAR limit.

Even assuming (contrary to the building plans) that a ceiling were built at the basement level, a substantial portion of the lower level perimeter would still qualify as basement space within the meaning of the zoning code. The grading plan clearly indicates that approximately 20 to 25 percent of the perimeter – not 11.9 percent as asserted by Sunrise and assumed by the Zoning Administrator – is more than four feet above the adjacent finished grade.

Even assuming a hypothetical ceiling, the basement floor area would be 3,000 to 4,000 square feet, not the 2,180 square feet assumed by the Zoning Administrator. Adding the minimal 820 square feet (3000 minus 2,180) to the building mass assumed by the Zoning Administrator (80,870) results in a FAR of 3.54, in excess of the maximum 3.5 (81,690 divided by 23,107 = 3.54).

REAR YARD SETBACK

(6) The decision erroneously denied the existence of an ANC report in this case and ignored the specific factual findings made by the ANC.

The section on page 3 of the decision headed ANC Report states, erroneously, "There is no ANC report in this case."

ANC 3G submitted an ANC report in a letter dated June 25, 2001, to the BZA. The ANC 3G report included a specific factual finding that the rear property line for this building lot "extends along the entire elngthy 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."

(7) The decision fails to accord the findings of ANC 3G the statutorily required "great weight" to which they are entitled.

The Zoning Administrator implicitly found that the rear property line consisted of one short, straight segment extending less than half the full width of the lot. In contrast, the Zoning Administrator implicitly found that the north side property line consisted of seven distinct segments and four 90-degree turns.

These findings are in complete contradiction to the findings of ANC 3G as to the rear property line of this lot and are, on their face, unreasonable. If the ANC's findings are given great weight, as required, the unreasonable determinations of the Zoning Administrator must be set aside and the permit revoked for failure to provide an adequate rear yard setback along the full width of the rear property line.

(8) The BZA decision also ignores the erroneous assessment by the Zoning Administrator as to the side yard setback requirement.

The BZA decision makes no finding as to the north side property line but instead notes only that the building's north wall extends along the boundary line separating the R-5-D and R-2 lots (Finding 43). The decision thus ignores the fact that the north side property line is on the eastern edge of the R-2 lot. As a consequence, a portion of the building is on the north side property line while other portions of the building are set back from the north property line.

Although no side yard is required in and R-5-D zone, where one is provided it must meet minimum setback requirements along its full extent (Finding 37). The BZA decision ignores the fact that north side yard for this property fails to satisfy this zoning code requirement.

For the foregoing reasons, ANC 3G respectfully urges the BZA to correct these errors and inconsistencies, to issue a revised decision reflecting the actual facts in the record of this matter, and to revoke the building permit erroneously issued by the Zoning Administrator.

Respectfully submitted,

Joseph L. Bishop

Joseph L. Bishop
Vice Chair, ANC 3G