Nebraska Avenue Neighborhood Association
5126 Nebraska Avenue, N.W.
Washington, DC 20008

District of Columbia Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, D.C. 20001

October 25, 2001

RE: BZA Appeal No. 16716
5111 Connecticut Avenue, N.W.
Request for Re-review/Further Hearing

Dear Members of the Board:

On behalf of the Nebraska Avenue Neighborhood Association (NANA), an Appellant in the above referenced appeal, this is a request for the Board to re-review, reopen the record and require further hearing on designated issues, as provided in 11 DCMR §3126.2. The instant appeal challenges the issuance of building permit No B435363 to build a community residence facility on this property. The appeal was heard on August 3, 2001. The Board voted to deny the appeal at a public meeting held on Sept 4, 2001 and not to re-review the appeal on October 2, 2001. The order was issued on October 12, 2001 and received by NANA on October 15, 2001.

I. As grounds for further review, reopening the record and/or rehearing, this Appellant states as follows:

A. We have carefully reviewed the record in this case, including transcripts of the public hearings and public meetings at which the case was decided. The record reflects that the Board erroneously :

(1) relied and based its decision on new evidence provided after the public hearing which was not available to Appellants for cross-examination;

BZA
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(2) relied for its decision on erroneous information and testimony, unsubstantiated by evidence, provided by the Office of the Zoning Administrator (OZA) and the Intervener, and shown to be erroneous by evidence from official DCRA files (Testimony Aug 3) which was accepted into the record for case No. 16716;

(3) relied on erroneous interpretations of 11 DCMR presented by the OZA and the Intervener;

(4) relied on claimed "DCRA precedence," for which the city did not present evidence that could be evaluated by the appellants, instead of basing determinations on 11 DCMR;

(5) relied on exhibits provided by the Intervener which were prepared in July, 2001, after issuance of the permit, are not included in DCRA official files, and are in conflict with material in official DCRA files associated with the instant building permit application;

B. We are referencing and submitting new evidence added to the DCRA records for the subject development and which could not reasonably have been presented at the August 3, 2001 hearing.

II. The following briefly summarized the inherent errors in the hearing and decision-making process. Evidence which comprises copies of official DCRA records for building permit application No. 590AA, which was approved and led to Permit No. 16716, will be referred to as "DCRA records."

A. Limitation of basement contribution to FAR by claimed ceiling in the lower level (parking garage). The Intervenor's witness, Mr. Laurenco, testified that there is a ceiling in the basement, 4 feet below the lower surface of the 1st floor slab. The Board accepted existence of this ceiling as reason to deny the Appellants calculation of additional FAR contributed by the basement. This additional FAR contributed by the ground level put the FAR over the 3.5 limit for an R-5-D district. In fact, DCRA records, which show all ceilings at all levels of the building, demonstrate that there is no ceiling in the basement (Exhibit 42: building sections). The OZA failed to provide evidence that the plans show that there is in fact said ceiling in the basement/cellar level and that OZA calculations of the FAR reflect said ceiling. All the information the OZA provided to the Appellants contradicts that finding. Lacking said ceiling, the lower level basement contributes substantially more than required to bring the FAR above 3.5.

B. The main roof contains two structures including an elevator penthouse and combined stair penthouse and utility room. Parties agree that these structures are not set back from the exterior wall. Both the OZA testified that this is required of roof structures (Testimony,August 3, 2001). In new information contained in a letter from OZA to the BZA dated Aug.15, 2001, the OZA reversed its view and relied upon "prededence" to override 11 DCMR 400.7. Three District of Columbia addresses were cited as evidence of the "precedence of this doctrine" that the elevator penthouse is not subject to the setback requirements of Section 400.7(b) (Exhibit 49). The OZA failed to demonstrate the relevance of these three properties and did not present evidence that would demonstrate how these examples would relate to the building permit that is the subject of the instant appeal. The Appellant is entitled to review and cross examine on this new information on which the BZA relied for its Decision.

C. The OZA did not refer roof structure plans to the Office of Planning (OP), as mandatory by11 DCMR §411. It was also claimed that the OZA has not done that for several years (the period after the time Mr. Laurenco was Acting Zoning Adminsitrator) and has an agreement with OP not to do that. The OZA erred in not submitting roof structure plans to the OP and did not substantiate its testimony with documentation presented from the OP. The current OZA has failed to substantiate its own practice.

D. The OZA states that for corner lots, different streets may be used as front for the purpose of determining height versus determining building front. The OZA cites the existence of a standing BZA opinion to that effect (Testimony, page 173). The OZA, however, erred in interpreting that both Connecticut Ave. and Chevy Chase Parkway may be the front of the lot for purpose of determining building front (Testimony, page 172). That interpretation does not follow from the opinion allowing use of one street to measure height and another street as the front of the building. The OZA has failed to present evidence of BZA opinion relating to the interpretation in the instant case. The OZA's determination of the rear year setback is based on the interpretation that the building front for corner lots may be on two streets. This interpretation illogical result--lack of consistency in ability to interpret the rear of lots and/or structures.

III. Additional new Information:
On 9/27/2000, the **OZA assigned a new zoning district of R-5-D to the R-2 portion (former Lot No. 161) of the plat for the new subdivision (Lot 162)** which incorporates the previous Lots 49-57 and 161 into Lot 162. This effectively gives the entire new Lot 162 an R-5-D designation (copy attached). It is therefore unclear how the OZA evaluated the zoning district of the building permit application when approving the subject permit, if he believed the entire lot was zoned R-5-D. The OZA has not provided evidence of its specific method of evaluating the FAR for the basement (for example) to resolve this issue.

The OZA's references to use of CAD software and the perimeter method (testimony August 3, 2001) does not substantiate the method of calculating basement contribution to FAR. The OZA's attested to percentage (11.9%) does not agree with those in DCRA records (Exhibit No. 42). The OZA failed to present and justify the basis of its evaluation of FAR actually used in passing the permit of the instant appeal, especially in light of the OZA action to sign off on the lot as entirely R-5-D zoning district.

IV. The impact of changing the interpretion of the Zoning Regulations on future development throughout the District of Columbia: The Board must be cognizant of the effect of its ruling on the application on the Zoning Regulations across the city. For example, there are vast numbers of corner lots bordering on two streets for which there would be great confusion when both streets are defined as the front of the lot and building. The standing BZA opinion regarding the different fronts for the purpose of determining height and front of the building does not cover this situation. This decision sets a new precedent.

V. Impact of the OZA incorrectly assigning new zoning districts to plats for new subdivisions: The board must also be cognizant of the effect of the OZA assigning new zoning district to plats prepared by DCRA. The information on certified copies the official plat from the surveyor's office is what zoning officials rely on in evaluating compliance with zoning regulations. The BZA would be setting new precedent by allowing or even appearing to allow OZA reliance on such documents in evaluating zoning compliance.

We therefore request the BZA to review, reopen the record, and schedule further hearing on the application, pursuant to 11 DCMR §3126.2. We believe that the following 3 issues are areas which the Board should address further through additional testimony and reevaluation:

1. FAR;
2. Roof structures, (setbacks and plan referral);
3. Rear yard setback.

Such hearing and reevaluation should address these issues in order for the Board to assess whether its present decision should stand.

Yours truly,

Anne Page Chiapella

Anne Page Chiapella, Ph.D.
President, Nebraska Ave. Neighbor Assn.

Attachments: Copy of new subdivision plat
List of errors

Cc: Michael Johnson (Zoning Administrator)
Marueen Dwyer (for Sunrise)
ANC-3G

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there [illegible]no pending suits or actions that affect title [illegible]property; that parties to any deeds of trust have hereon [illegible]their assent; and that there are no int[illegible]r claims affecting title to the property other than such dee[illegible]ust. The undersigned hereby combine [illegible]d thru 57, Square 1989 (Book 77 Page 79) and Lot 161, Square 1989 (Book 170 Page 26) into one Lot and request that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES	OWNERS
	SUNRISE CONNECTICUT AVENUE ASSISTED LIVING, LLC BY: SUNRISE DEVELOPMENT, INC,ITS SOLE MEMBER
	HARLEY D. COOK - EXECUTIVE VICE PRESIDENT
	SEAN P. M. AMBROSE - VICE PRESIDENT
	LOUIS REYES
	SUNNY REYES
	DIANA W. McKINNEY
	HELEN K. DYER
	WILLIAM R. DYER

Subscribed and sworn before me this 13th day of September 20 00

Notary Public

My Commission Expires: Melanie A. Fence Notary Public Commonwealth of Virginia My Commission Expires Nov. 30, 2002

NUMBER OF TRUSTS: 0

ASSENT BY TRUSTEES:

SURVEYOR'S OFFICE, D.C.

Made for: WILKES, ARTIS, HEDRICK & LANE

Drawn by: L.E.S. Checked by: F.S

Record and computations by: F. SLEEM

Recorded at: 8 55 AM September 29 2000

Recorded in Book 194 Page 37 S.O. 9826

Scale: 1 inch = 30 feet File No.

DEPARTMENT OF FINANCE AND RE

9/

I certify that the following statements relating to this subdivisi

1 Ownership agrees with our records: 9/25

2 Real estate taxes are paid to: 9/30/

3 There are no unpaid assessments: 9/25/0

Associate Director, Office of Real P

I acknowledge for the owners that this is not a tax certificate by D.C. Code Section 47-405.

DEPARTMENT OF CONSUMER AND REGULATORY A

9/27

I certify that this subdivision complies with all applicable provisions o Zoning Regulation of the District of Columbia.

Zoning District: R-5-D

10/18/00

BY Zoning Adminis

27 Sept

N/a

HISTORIC PRESERVATION

OFFICE OF THE SURVEYOR

September 29

I certify that this plat is correct and is hereby recorded.

Surveyor, D.C.

ERRORS IN PROCESSING 590AA

DCRA/OZA committed numerous errors which speak to the reliability of the review process for Building Permit Application No. 590AA. Errors are documented in Exhibit 28, Appendix D–Application 590AA, or as otherwise noted. Errors include:

- Acceptance of the application and fee without clearance to file plans, including Zoning
- Acceptance of the application for processing without a 11 DCMR-approved use designation . Note that the application was not approved by zoning officials until after resubmission, Feb. 5, 2001.
- Accepting the application without the required plat (Exhibit 48)
- Assigning wrong zoning district (R-5-E) on the initial application
- Accepting application with crossed out and altered information
- Assigning wrong zoning district on new subdivision plat (attachment)
- Accepting Environmental Screening Impact Form with obviously inaccurate information (Exhibit 28, Appendix F)
- Not requiring applicant to answer all Plan Correction List Items (Exhibit 48, Appendix E, page 1: 11-16-01: Show penthouse setback)
- Fire Prevention Plan Review approval of plan lacking 2 required emergency exits (Exhibit 28, Appendix E, page 6: Revised 590-AA application)
- Structural Eng. approval of plan lacking 2 required emergency exits (Exhibit 28, Appendix E, page 6: Revised 590-AA application)