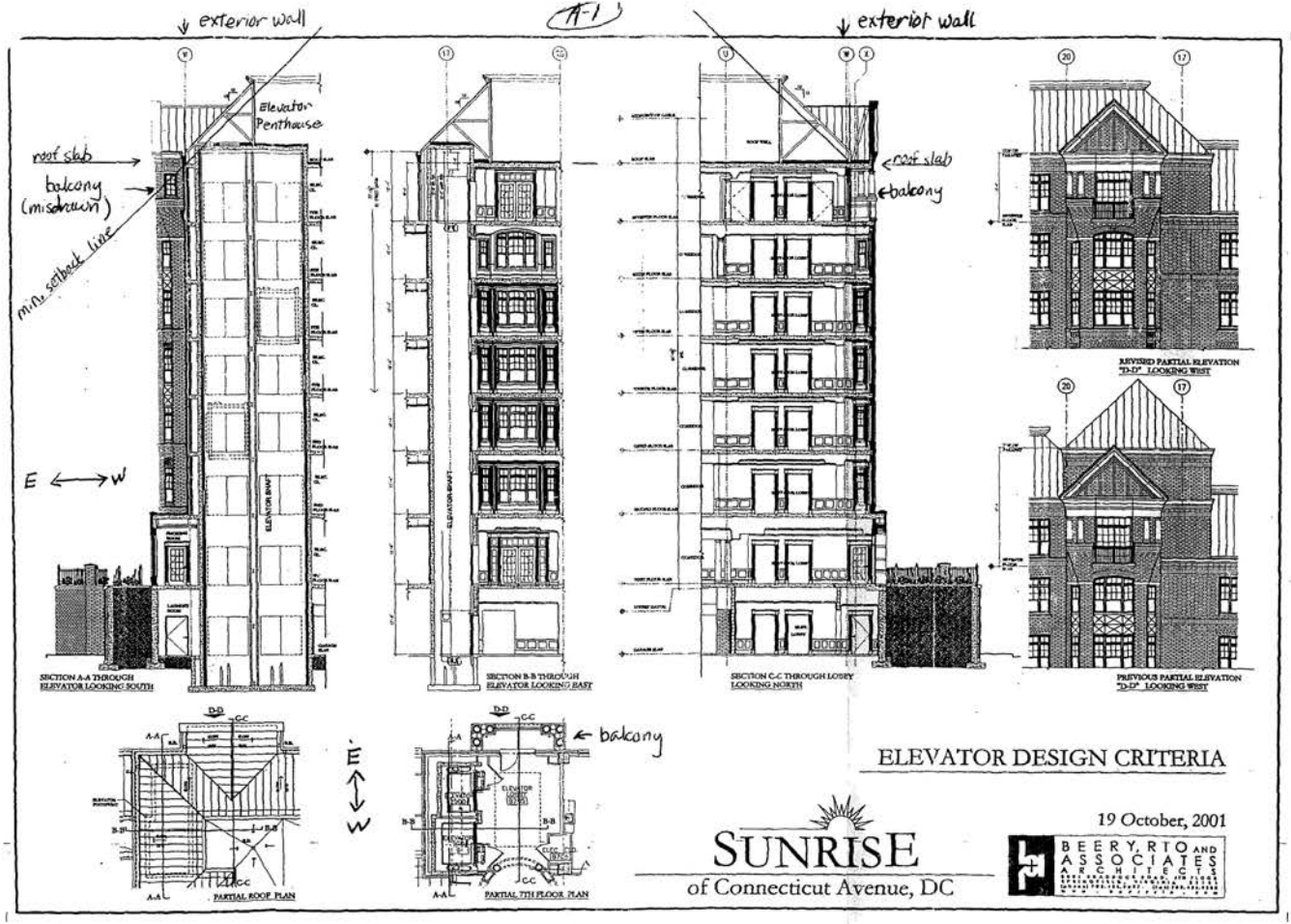
(A-1)

(A-1)



ELEVATOR DESIGN CRITERIA

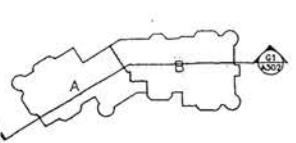
19 October, 2001

SUNRISE
of Connecticut Avenue, DC

BEERY, RITO AND ASSOCIATES ARCHITECTS

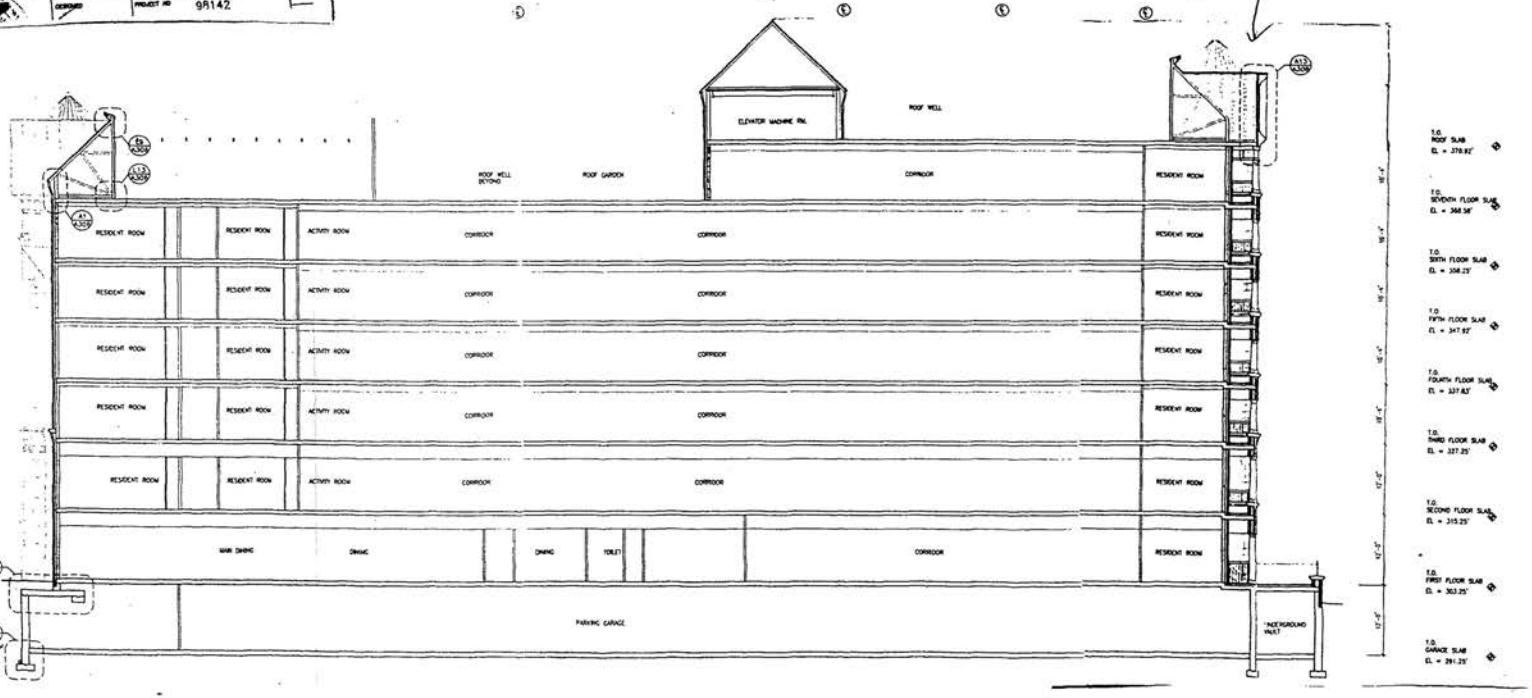
(B-3)

STAIRWELL PENTHOUSE



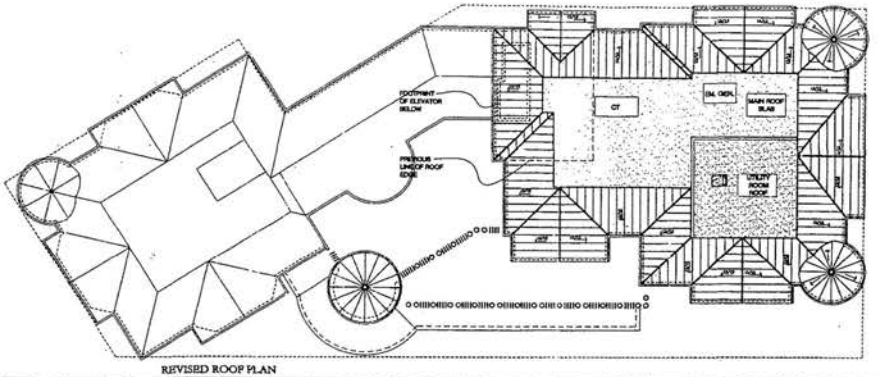
BUILDING SECTIONS AND DETAILS

PROJECT NO 95142

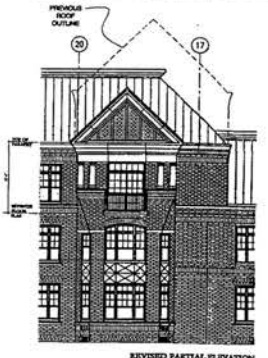


(B-2)

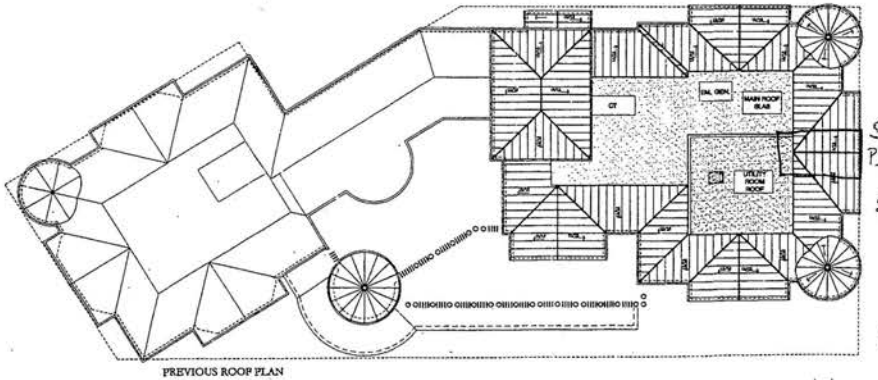
B-2



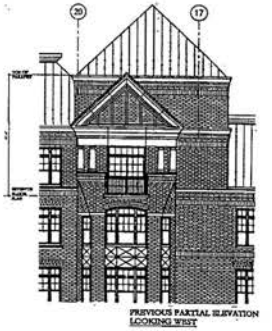
REVISED ROOF PLAN



REVISED PARTIAL ELEVATION LOOKING WEST



PREVIOUS ROOF PLAN



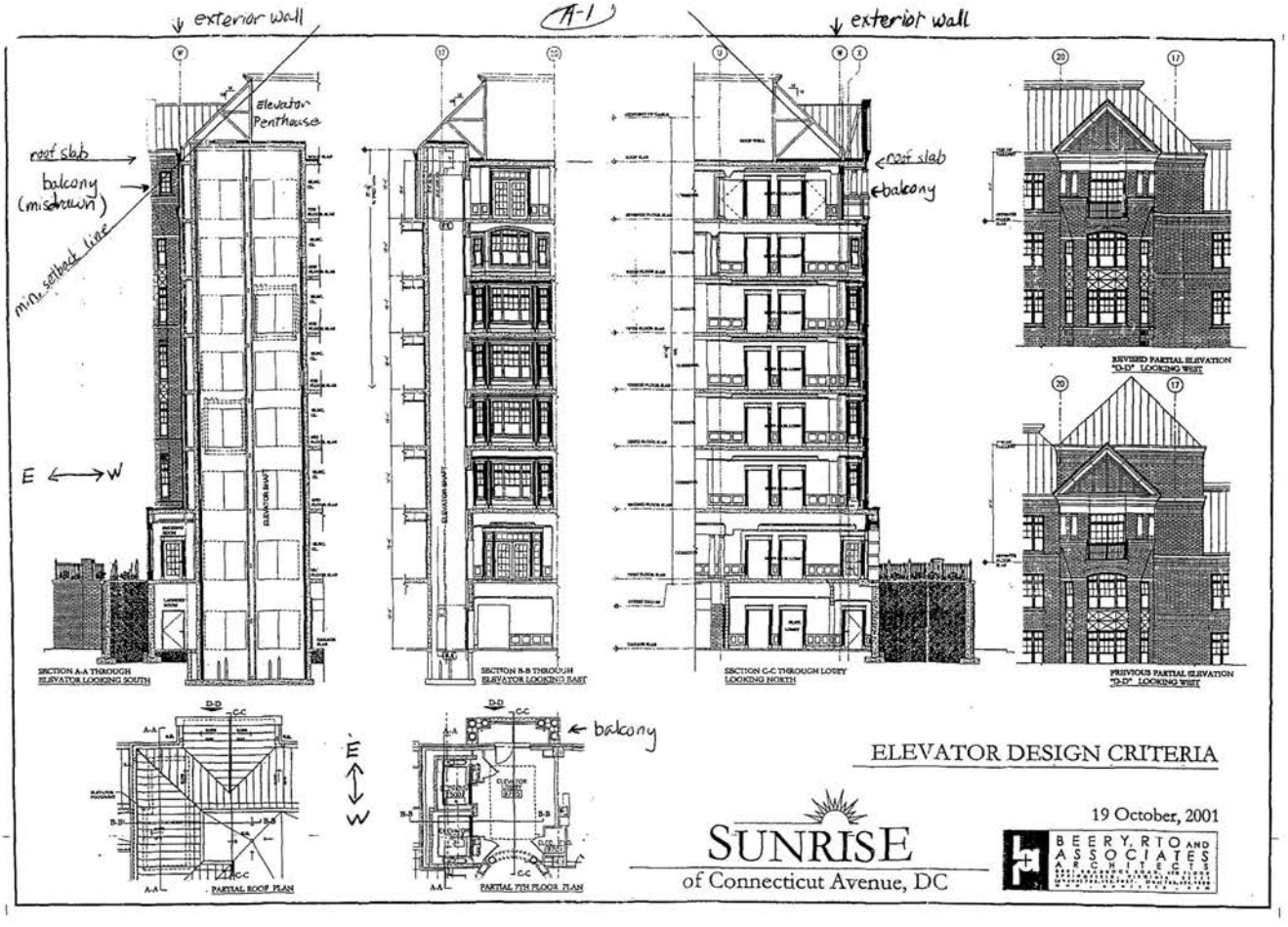
PREVIOUS PARTIAL ELEVATION LOOKING WEST

ROOF PLAN-COMPARISON

SUNRISE
of Connecticut Avenue, DC

24 October, 2001

BEERY, RIO AND ASSOCIATES ARCHITECTS

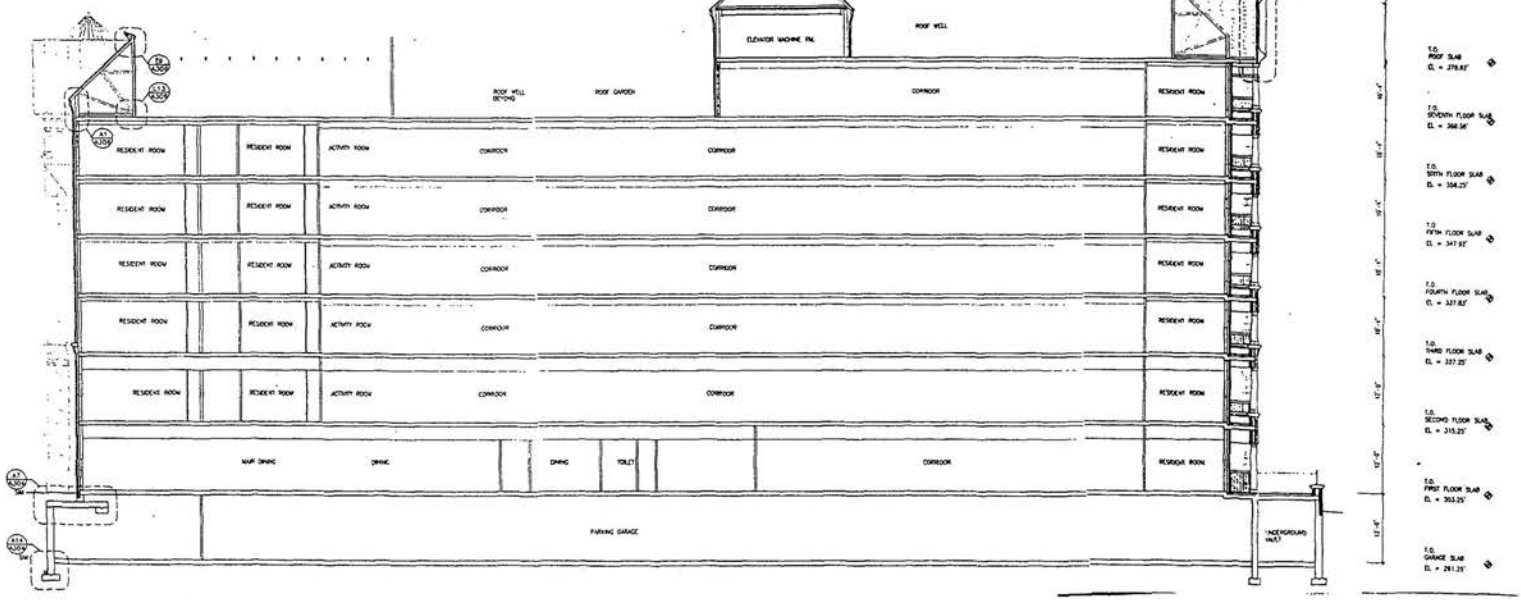

exterior wall
A-1
exterior wall
A-1
Elevator Penthouse
roof slab
balcony (misdrawn)
min. setback line
E ⟷ W
roof slab
balcony
SECTION A-A THROUGH ELEVATOR LOOKING SOUTH
SECTION B-B THROUGH ELEVATOR LOOKING EAST
SECTION C-C THROUGH LOBBY LOOKING NORTH
REVISED PARTIAL ELEVATION "D-D" LOOKING WEST
PREVIOUS PARTIAL ELEVATION "D-D" LOOKING WEST
PARTIAL ROOF PLAN
E ↕ W
balcony
PARTIAL 7TH FLOOR PLAN
ELEVATOR DESIGN CRITERIA
SUNRISE
of Connecticut Avenue, DC
19 October, 2001
BEERY, RTO AND ASSOCIATES ARCHITECTS

(B-3)

STAIRWELL PENTHOUSE

BUILDING SECTIONS AND DETAILS

PROJECT NO 98142



didn't count because they thought they'd fit within this .37 increment, are not uses that are in compliance with this section. In order for a penthouse to be able to take advantage of that increment and not be counted -- not be counted as part of the main FAR calculation instead enjoy this additional quantity of FAR, it has to qualify as a penthouse within the meaning of Section 411. For the three reasons I mentioned previously, this doesn't qualify.

It's two structures, two penthouse structures not one. It is not set back. Neither structure is set back from the edge of the building. They have to be set back at least the distance of their height and they're not set back at all. And then third, the elevator machine room, as we've demonstrated earlier, is too high. So for those reasons, the .37 increment does not apply.

Now, the city, when we met with them and pointed this out, did assert that they didn't bother to measure that because of this .37. That obviously, is erroneous. These areas should be counted. We've calculated them and as you can see -- let me pull out my other materials here -- our calculations show for the eighth floor the utility room of an additional 900

C2

that the applicant had shown us earlier, you know, the applicant has an expert that has helped them to understand about an elevator machine room that is, I think probably located in one corner of the roof and then there's another penthouse on the roof called utility room. How do you view those two structures from the perspective of the definition of penthouse?

MR. BELLOW: The determination for what constitutes a penthouse is the function to which that space is devoted. Clearly the zoning codes indicate that if your enclosure serves no other purpose other than for a elevator or a machine room, mechanical equipment or stairway enclosure, that, in fact, that is a penthouse. So I have no problems with that interpretation.

COMMISSIONER MITTEN: Okay. So if that's true, then what the appellants have said is their view is that there's two penthouses on this structure. Is that your view?

MR. BELLOW: No, ma'am.

COMMISSIONER MITTEN: Okay, then connect those two thoughts for me.

MR. BELLOW: The issue is one of enclosure. And as a practice, where there's a necessity for having more than one enclosure which may

not be contiguous to each other, we have applied the interpretation that a connection between those two structures with a structure which a mansard roof qualifies for would actually reflect one penthouse --

COMMISSIONER MITTEN: So --

MR. BELLOW: -- because of the physical connection.

COMMISSIONER MITTEN: So let me just be clear. The mansard goes around the perimeter of the roof.

MR. BELLOW: That is correct.

COMMISSIONER MITTEN: And even though they are totally different parts of the roof, that because they're connected by this perimeter mansard, that is -- your interpretation is that those constitute one structure.

MR. BELLOW: That is correct. And, in fact, I think that a review of the plans would indicate that a portion of the stairway enclosure is actually hidden under the mansard roof.

COMMISSIONER MITTEN: Okay, the issue about the referral to the Office of Planning, I want to be clear on what you said and then what's required. I believe that what you said when Mr. Bennett was asking you was that the Office of Planning had access

this roof starts sloping back. Even on the architectural embellishment of this corner turret, he went as far as measuring it today, which happens to be just because of alignment of lines on the facade, happens to be also the parapet of this wall here.

So this is where we're measuring out 84-1/2 height of the building. The architectural embellishments around the building include turrets, include these cables, include the mansard looking architectural embellishments, include the continuation of this wall going up and replicating this element at the top of the parapet and then one floor down, the same thing occurs just reducing the scale of the building going to the north. All of this, all of this are architectural embellishments around the building.

Now, as Mr. Bellow stated earlier, of course, you certainly remember the time when because of the way the building was designed you ended up with one penthouse here, one penthouse there and then you had to have this huge wall connecting them with little -- a little covered walk behind just so that when you look at it you can make the determination that this is a single penthouse. So in the process of trying to avoid a proliferation of both structures, you ended up with this huge structure where with a little bit of

C-4

CHAIRPERSON REID: Mr. Bellow, do you understand the question or do you need clarification?

MR. BELLOW: I'm not clear on --

MEMBER LEVY: You know, perhaps I'm not being clear --

MR. BELLOW: -- the question.

MEMBER LEVY: -- and if other Board members, you know, could help me clarify it but it seems to me that a portion of that penthouse or one of the two penthouses, however you label those, is actually flush with the face of the exterior wall of the building and outside of the mansard roof that Mr. Bellow was describing. And that's the portion where it's called elevator machine room.

MR. BELLOW: Which is on top of the seventh floor.

COMMISSIONER MITTEN: Let me maybe rephrase your question as I understand it and then we'll see, you know, where that goes.

MEMBER LEVY: Thank you.

COMMISSIONER MITTEN: As I understand the question is if you're going to characterize the penthouses as a single structure then the setback requirements are not -- they're -- it does not absolve the setback requirements. So then let's focus on the

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16716B of Nebraska Avenue Neighborhood Association, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, in the issuance of a building permit (No. B435464) on March 3, 2001, to Sunny and Louis Reyes *et al.* to permit the construction of a 102-unit handicapped assisted-living-apartment residence in an R-2 and R-5-D District at premises 5111, 5113, 5117, 5119, 5121, 5123, and 5125 Connecticut Avenue, N.W., and 5201, 5203, and 5205 Chevy Chase Parkway, N.W. (Square 1989, Lots 49-57 and 161).

HEARING DATES: **July 17, 2001; August 3, 2001**

DECISION DATES: **September 4, 2001; October 2, 2001**

ORDER DATE: **October 12, 2001**

RECONSIDERATION DECISION DATE: **January 2, 2002**

ORDER ON MOTIONS FOR RECONSIDERATION AND REHEARING

PROCEDURAL HISTORY:

By Order issued October 12, 2001, the Board denied the appeal filed by the Nebraska Avenue Neighborhood Association (NANA) challenging on various grounds the Zoning Administrator's decision to approve the issue of Building Permit No. B435464, to Sunrise Assisted Living LLC ("Sunrise") to construct the seven-story Sunrise Assisted Living facility at 5111 Connecticut Avenue, N.W.[1] In addition to NANA, parties to the proceeding were Advisory Neighborhood Commission ("ANC") 3G and Sunrise Assisted Living.

On October 25, 2001, ANC 3G and NANA each submitted a timely request for reconsideration on the grounds that the Board erred, the record did not support the Board's decision, and the Board's Order contained material inconsistencies and factual errors or omissions. In the alternative, NANA sought rehearing on the grounds there was new evidence to be presented. Both challenged the Board's findings regarding the elevator penthouse/rooftop structures setbacks, correct Floor Area Ratio ("FAR") calculation for the basement, and rear yard setback. ANC 3G challenged the Board's decision regarding side yard setbacks and contended that the

[1] **When the building permit application was filed on July 10, 2000, the subject property was owned by a number of individual property owners and Sunrise Connecticut Avenue Assisted Living LLC. Subsequent to the issuance of the building permit on March 8, 2001, Sunrise completed its purchase of all of the subject property. As the owner of the property that is the subject of this appeal, Sunrise is automatically a party in this appeal pursuant to 11 DCMR 3199.1.**

Board failed to give "specific factual findings made by the ANC" the "great weight" to which they were entitled. ANC 3G submitted an additional statement on December 21, 2001 pursuant to a notice from the Office of Zoning. NANA questioned the referral of the roof structure plans to the Office of Planning and setbacks for the combined stair penthouse and utility room. NANA also challenged the decision on the grounds that the Board based its decision on new evidence that was not a part of the public hearing record or the "official DCRA files," erroneous information and testimony from the Zoning Administrator, erroneous interpretations of the Zoning Regulations, and "DCRA precedence" instead of the Zoning Regulations.

Sunrise opposed the motions for reconsideration and rehearing on all grounds in memoranda filed November 5, 2001. Sunrise submitted an additional statement renewing its opposition to reconsideration and rehearing on December 21, 2001, pursuant to a notice from the Office of Zoning.

The Board held its review of the motions in abeyance pending completion of the Zoning Commission's *sua sponte* review of two issues in the Board's Decision and Order pursuant to 11 DCMR § 3128.1. The Commission completed its review and issued Zoning Commission Order No. 952, dated December 10, 2001. The Commission reversed that portion of the Board's order concerning the setback of the elevator penthouse and sustained that portion of the order finding harmless error in the failure of the Zoning Administrator to refer the roof plans to the Office of Planning.

On January 2, 2002, the Board denied NANA's Motion for Reconsideration and Rehearing and ANC 3G's Motion for Reconsideration at its regularly scheduled public meeting.

DECISION

Pursuant to the Board's Rules of Practice and Procedure, any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed within 10 days from the issuance of a final written order. 11 DCMR § 3126.2. The motions for reconsideration or rehearing were filed in a timely manner on October 25, 2001, the prescribed 10-day period having been extended by three days to account for service by mail. 11 DCMR § 3110.2.

REHEARING

Section 3126.6 of the Board's Rules provides that: "[n]o request for a rehearing shall be considered by the Board unless new evidence is submitted which could not reasonably have been presented at the original hearing." NANA identified supplemental statements, documents or exhibits that the Board requested to clarify points discussed during the hearing, as well as the surveyor's plat for the new subdivision, as new evidence. The Board found that the materials do not justify the granting of a motion for rehearing because the materials were not new evidence, which could not reasonably have been presented at the original hearing on August 3, 2001. Accordingly, the Board denies NANA's motion for rehearing.

RECONSIDERATION

The Zoning Commission assumed jurisdiction of the issue of the elevator penthouse/architectural embellishment of the tower and entered a decision reversing the decision of the Board that this roof structure need not comply with the setback requirements of 11 DCMR § 400.7(b). As a result, the issue of the Zoning Administrator's response to the BZA regarding precedents and architectural tower embellishment is moot.

With respect to the referral issue, the Zoning Commission's determination to sustain this portion of the Board's decision lends credence to the legitimacy of the position taken. No credible argument is presented for the Board to reverse its finding of harmless error. On FAR calculations, the Board credited the testimony of the Zoning Administrator because he used the proper points of measurement in his FAR calculations while the appellants' expert testified that to determine the basement FAR he utilized the contours of the site, an incorrect point of measurement. The Board thoroughly considered rear and side yard setback during the hearing as reflected in its Order.

Regarding the proper location for measurements from the front of a building on corner lots, the Zoning Administrator has discretion because the applicants may choose the front of their property. On the issue of the subdivision of the property, the record before the Board is clear as to what part of the site was considered the R-5-D area, lots 49-57; the Board determined that the Zoning Administrator's calculations were not made in error. For zoning review purposes, it is not necessary for the building plans to show the actual elevator machinery and where it will be housed or demonstrate that the machinery can operate. During the Board's hearing and deliberations, it addressed the stair enclosure on the roof at length. The Board concluded that the plans show the stairwell enclosed behind the mansard, which serves as a single unifying enclosure around the building's perimeter.

The Board received the letter dated June 25, 2001 from ANC 3G in which it joined the NANA appeal. The presentation by the Appellant, including ANC 3G's statement, was considered to be representative of the ANC. Therefore the entire submission and the ANC's testimony received the "great weight", in that the Board addressed, with particularity, each of the points raised by the Appellant in a detailed manner.

The Order in BZA Appeal No. 16716A clearly indicates that the Board thoroughly reviewed and addressed all of the relevant issues raised by NANA and ANC 3G in their respective motions for reconsideration and rehearing. The Board's Order clearly and thoroughly outlines the reasoning for its decision to deny the appeal of NANA and ANC 3G. The Board finds no errors that justify reconsideration or rehearing of its original Order. The motions for reconsideration and rehearing are denied.

It is **ORDERED** that the motion for **REHEARING** is **DENIED.**

VOTE: **3-0-1** **(Carol J. Mitten, Geoffrey H. Griffis, David W. Levy to deny; Anne M. Renshaw not voting, recused.)**

It is also **ORDERED** that the motion for **RECONSIDERATION** is **DENIED.**

VOTE: **3-0-1** **(Geoffrey H. Griffis, David W. Levy, Carol J. Mitten, to deny; Anne M. Renshaw not voting, recused.)**

Accordingly, it is **ORDERED** that the motions for reconsideration and rehearing are **DENIED.**

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

Final Date of Order: FEB 15 2002

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPEAL NO. 16716B

As Director of the Office of Zoning, I hereby certify and attest that on FEB 15 2002 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning