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June 7, 2002

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D.C. OFFICE OF ZONING
2002 JUN -7 AM 10: 20

By Hand Delivery

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: BZA Appeal No. 16879

Dear Chairman Griffis and Members of the Board:

We are in receipt of the latest filing by the Nebraska Avenue Neighborhood Association ("NANA") which , while dated June 4 was in fact filed June 6 and continues to raise issues that are not before the Board. Specifically, the Board at its public meeting of June 4, granted Sunrise's Motion to Dismiss, in part, and restricted the hearing on June 18 to two issues:

1. As a preliminary matter, the Board will decide whether the rear yard structure issue raised by NANA will be the subject of the hearing or whether that issue was previously addressed and resolved by the Board; and

2. The Board will hear testimony limited to the allegation that there was a change to the seventh floor that affected the FAR computation for the building.

No other issues will be heard by the Board and no other testimony or exhibits will be allowed into the record.

Attached to this letter is a copy of what NANA filed which we have annotated to clearly indicate the limited scope of the hearing on June 18. Sunrise Assisted Living will be prepared to respond to these two limited issues and we request that NANA be instructed to restrict its testimony and evidence to these same two issues.

Respectfully submitted,

Maureen Dwyer
Maureen E. Dwyer

Allison C. Prince
Allison C. Prince

Paul D. Tummonds, AGP
Paul A. Tummonds

Attachments

BZA
Case No. 16879
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16879
EXHIBIT NO.35

ShawPittman LLP

Certificate of Service

I hereby certify that on June 7, 2002, a copy of the foregoing letter was mailed first class, postage prepaid, to the following:

Anne Paige Chiapella
President, Nebraska Avenue Neighborhood Association
5126 Nebraska Avenue, NW
Washington, DC 20015

Marilyn Holmes, ANC 3G
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Washington, DC 20015

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441 4th Street, NW
Washington, DC 20001

Maureen E. Dwyer

Document #: 1248304 v.1

By Hand Delivery

BEFORE THE BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

IN RE: 5111 Connecticut Ave. N.W. Square 1989, New Lot 162 Previous Lots 49-57 & 161	)	**BZA Appeal No. 16879 (Sunrise)**
Appeal of	)	
The Nebraska Avenue Neighborhood Association and Advisory Neighborhood Commission 3G	)	

Submitted by the Nebraska Avenue Neighborhood Association

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2002 JUN -4 AM 8:50

APPLICANTS' APPEAL OF THE ADMINISTRATIVE DECISION OF THE ZONING ADMINISTRATOR* TO ISSUE BUILDING PERMIT Nos. 435464 (3/8/01) and B442149 (1/23/02)

I.
Introduction

The Nebraska Avenue Neighborhood Association and Advisory Neighborhood Association ("NANA") appeals the decisions of the Zoning Administrator and/or the Acting Administrator of the Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs ("DCRA") in issuing building permits Nos. B435464 (issued on March 8, 2001) and B442149 (Revision to B435464, issued on January 23, 2002). The permits were issued to Louis and Sonny Reyes and Sunrise Assisted Living, LLC ("Sunrise") by for development of property located at 5111 Connecticut Avenue, N.W.

It is important to note that "**Approval of an application *shall include approval of the plans submitted with such application* for the construction of a building or structure**..." 11 DCMR §3125.7, [italics added].

The basis of this appeal of Permits B435464 and B442149 is alleged noncompliance with DCMR Title 11 Zoning Code, as detailed below.

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LIST OF ALLEGED NONCOMPLIANCES WITH TITLE 11 ZONING CODE

A. **The elevator penthouse for the *current approved elevator system*, as provided in Permit B435464 and referenced in Permit B442149, *is noncompliant* with 11 DCMR §§400.7(b).**

B. **FAR is noncompliant with 11 DCMR §402.4. Revised plans add additional Gross Floor Area which brings the FAR over the maximum 3.5 allowed in an R-5-D District.**

C. **Rear yard is noncompliant WITH §404.1 AND §2503.1—STRUCTURES IN REQUIRED OPEN SPACES.**

D. **Use stated in Building Permit No. B442149, "ASSIST. LIVING RESIDENCE," is noncompliant under 11 DCMR §§303 and 330.5(i)**

BRIEF SUMMARY OF ALLEGED NONCOMPLIANCES

The Nebraska Avenue Neighborhood Association alleges that building Permits B435464 and B442149 (Revision of B435464) are noncompliant with Title 11 District of Columbia Municipal Regulations ("11 DCMR") as follows:

A. **The elevator penthouse for the *current approved elevator system*, as provided in Permit B435464 and referenced in Permit B442149, *is noncompliant* with 11 DCMR §§400.7(b).**

Section 400.7(b) requires setback from all exterior building walls by a distance at least equal to its height above the roof upon which it is located.

Exhibits A-1 and A-2 demonstrate that the Otis elevator system submitted with the original permit application B435464 has been incorporated in Permit B442149. The Otis elevators are the only elevators reviewed and approved by the Elevator Section for the subject development, under both B435464 and B442149. The approved Otis elevator system requires a penthouse that is not compliant with §400.7(b).

Exhibit A-1 shows details of the approved **Otis elevator system, as included in plans provided by DCRA on 4/10/02.**

Exhibit A-2 shows that elevator materials supplied with Permit No. B442149 are not for the subject building and were not reviewed and approved by Elevator Review Section.

Exhibit A-3 is an affidavit certifying that elevator systems are not able to function within the proposed revised elevator enclosure. The Otis elevator system has not been replaced and remains the approved elevator system (two elevators, enclosure, pit and penthouse).

Exhibit A-4 demonstrates that DCRA **has allowed design flexibility by allowing mutually contradictory versions of individual building elements in approved permits** for the 5111 Connecticut Ave. NW ("Sunrise") project. For example, there are two mutually contradictory designs for the South Stairwell and other elements of the development (Exhibit A-4). *Each version, however, is required to be compliant with regulations. The current Otis elevator system is not compliant with regulations.*

CONCLUSION: The currently approved elevator system penthouse is not compliant with zoning code.

B. <u>FAR noncompliant with 11 DCMR §402.4: Revised plans add additional Gross Floor Area which brings the FAR over the maximum 3.5 allowed in an R-5-D District.</u>

Exhibit B shows the DCRA ZONING COMPUTATION SHEET for the Sunrise 5111 Connecticut Avenue, NW development *calculated* Gross Floor Area as 80,870 sq. ft. The *allowed* Gross Floor Area under R-5-D District is 80,876.51 sq. ft., <u>a difference of only 6.27 sq. ft.</u> The *calculated* FAR is 3.4999 and the *allowed* FAR is 3.5. [Exhibit B]. <u>Additional</u> Gross Floor Area should be included in the in the current calculation. This makes the FAR noncompliant with §402.4 by bringing the Gross Floor Area over 80,876.23 sq. ft. and FAR above 3.5 as follows:

B-1. Additional 7th floor Gross Floor Area brings FAR out of compliance: Exhibit B-1 demonstrates that Revision Permit B442149 plans provide additional added Gross Floor Area to the 7th floor. This addition unilaterally brings the FAR out of compliance with the maximum 3.5 allowed in an R-5-D District under 11 DCMR §402.4. The FAR is not compliant..

B-2 Additional 1st floor Gross Floor Area brings FAR out of compliance. Exhibit B-2 presents ***actual* zoning calculations** (using CAD architectural computer software calculations referred to by Mr. Bello at BZA hearing, August 3, 2001 transcript, page 210). This software was used to calculate the first floor perimeter ("length of traverse") and Gross Floor Area ("square USfeet"). A printout of the computer calculations was provided to NANA for the first time on 4/10/02. The ***actual zoning calculations*** show an increase over the ***estimated Gross Floor Area*** shown in Exhibit B. This addition raises the FAR above 3.5 which is the limit of the allowed FAR under R-5-D District. The FAR is not compliant.

B-3. Revision to "rear balcony/stair" demonstrates additional Gross Floor Area bring FAR out of compliance.
Exhibit B-3 demonstrates a revision to the "rear balcony and stairway." Stairwells and balconies that exceed a projection of 6 feet beyond the exterior walls of the building shall be included in the Gross Floor Area. Scaled measurements from current First Floor Plan shows additional 624 square feet Gross Floor Area. Exhibit B (Zoning Computation Sheet) also shows that the zoning official excluded this from the calculation of Gross Floor Area. This additional Gross Floor Area unilaterally brings the FAR out of compliance with the maximum 3.5 allowed in an R-5-D District under 11 DCMR §402.4.

B-4. Additional basement Gross Floor Area behind revised rear balcony and stairway brings FAR: out of compliance.
Exhibit B-4 shows calculation of additional Gross Floor Area in the basement of the building which the zoning official excluded from the FAR calculation (Exhibit B and August 3, 2001 BZA Hearing Transcript page 210). Toye Bello stated that this structure was a "retaining wall, not part of the building." The retaining wall presumably held up a berm of earth, the top surface of which was used as the adjacent grade in the zoning calculations of the FAR. This incorrect interpretation by the zoning official led to the exclusion of at least 1175 sq. ft. actual basement Gross Floor Area from the FAR calculation presented in the ZONING COMPUTATION SHEET (Exhibit B).

CONCLUSION: Each modification raises Gross Floor Area above the 80,876.51 limit under R-5-D District. Each modification raises the FAR above 3.5. <u>The FAR is not compliant with §402.4.</u>

C. <u>NON-COMPLIANT REAR YARD.</u>

Revised plans show a structure in a required rear yard that is noncompliant with 11 DCMR §2503.1—STRUCTURES IN REQUIRED OPEN SPACES and §404.1 requiring the rear yard setback to extend across the entire rear yard. [Exhibit C]

CONCLUSION: The permits are not compliant with rear yard requirements in 11 DCMR §§404.1 and 2503.1 requiring the rear yard to extend across the entire rear of the building and be open to the sky from the ground up.

D. <u>Building Permit No. B442149 states use not compliant with §§303 and330.5(i).</u>

Building Permit No. B435464 was issued for a "CRF TO HOUSE THE HANDICAPPED AS IT IS DEFINED IN THE FAIR HOUSING ACT" (Exhibit D-1). Building Permit No. B442149 (1/23/02) was issued for an "ASSIST. LIVING

RESIDENCE" (Exhibit D-2). During zoning evaluation of the application for permit No. B435464, the zoning official rejected the use: "ASSISTED LIVING FACILITY," which is not a permitted use under 11 DCMR. During BZA Appeal No. 16716. it was shown that "Assisted Living Facility" is not synonymous with "Community Residence Facility."

CONCLUSION: The proposed use on Building Permit B442149 is not a matter-of-right use in an R-2 (11 DCMR §303) zone nor an R-5-D zone 11 DCMR §330.5(i).

NANA also offers the previously submitted letter, dated May 16, 2002, incorporated by reference.

The Nebraska Avenue Neighborhood Association strongly urges the Board to reverse issuance of Building Permits Nos. B435464 and B442194 based on alleged zoning noncompliance as documented in the attached Exhibits.

Respectfully,

Page Chiapella

Page Chiapella
President, Nebraska Avenue Neighborhood Association

Attachments: Exhibits A-D and List of Exhibits
Copy of May 16, 2002 letter
Certification of Service
List of Potential Witnesses

LIST OF EXHIBITS

A-1 Details of the approved Otis elevator system, including shaft and penthouse. Copied from official DCRA files on 4/10/02

A-2 A-2.Permit No. B442149 and elevator materials submitted with the application for this permit. Copied from official DCRA files on 4/10/02

A-3 A-3.Affidavit by DC-licensed architect Re: lack of functionality of revised penthouse.

A-4 A-4. DCRA-approved of self-contradictory versions of building elements in building permits issued to Sunrise. Copied from official DCRA files.

B DCRA ZONING COMPUTATIONS FOR SUNRISE PROJECT

B-1 Gross Floor Area addition from Building Permit B442149 application. Copied from DCRA files.

B-2 Gross Floor Area shown in Zoning Administrator's computer-generated (CAD software) calculations. CAD printout provided by DCRA on 4/10/02.

B-3 Revision to rear balcony/stair demonstrating additional Gross Floor Area inappropriately excluded from FAR calculation. Copy of revision provided by DCRA on 4/10/02.

B-4. Basement Gross Floor Area inappropriately excluded from FAR calculation

C. Plans showing noncompliant structure in required open space. Copied from official DCRA files.

D-1. Building permit application for 5111 Connecticut Ave., NW, copied from DCRA files. Building described as "Assisted Living Facility," a use not defined by 11 DCMR.

D-2. Letter from DCRA to Sunrise stating need to specify use as "**CRF**, HOUSING FOR THE HANDICAPPED AS THE TERM IS DEFINED BY THE FAIR HOUSING ACT" in order to be a Title 11 DCMR-defined use.

D-3. Building Permit B435464 issued 3/8/01. Copied from official DCRA files.. Use specified as CRF, not Assisted Living Facility.

D-2. Building Permit B442149 issued 1/23/02, copied from official DCRA files. Use is changed to Assisted Living Residence, a use not defined in 11 DCMR.

Nebraska Avenue Neighborhood Association
5126 Nebraska Avenue, N. W.
Washington, D.C. 20008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing submission of the Nebraska Avenue Neighborhood Association to the Board of Zoning Adjustment, dated June 6, 2002 and the submission of ANC 3G, dated June 3, 2002 were mailed first class, postage prepaid, on June 6, 2002 to the following:

Maureen E. Dwyer, Esq
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William Bennett, Esq.
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Page Chiapella — Page Chiapella

6/4/02 — Date

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

LIST OF POTENTIAL WITNESSES

BZA Hearing, June 18, 2002

Page Chiapella

Chirs Frombolutti

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John Gill, Sr.

Nick Gill

Marilyn Holmes

Edgar Nunley

Mary Smith