BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In Re: 5111 Connecticut Ave., NW Square 1989, New Lot 162 Previous Lots 49-57 & 161 Zoning Districts R-2 & R-5-D	)	BZA Appeal No. 16716
Appeal of: Nebraska Avenue Neighborhood Association Advisory Neighborhood Commission 3G	)	

November 15, 2001

Members, Board of Zoning Adjustment
District of Columbia
441 4th Street, NW
Washington, DC 20001

In its November 5, 2001 letter to the Chairman of the Board of Zoning Adjustment, Sunrise Connecticut Avenue Assisted Living LLC (the Intervenor) makes several errors. In this response, the Nebraska Avenue Neighborhood Association (NANA) addresses these errors.

A. FAR CALCULATION: The BZA Decision relied on the erroneous testimony of a witness for the Intervenor, Armando Laurenco, who testified incorrectly that there is a ceiling in the garage located 4 feet below the first floor slab. There is not. The FAR exceeds the 3.5 allowed by code in an R-5-D district.

In its November 5, 2001 letter, the Intervener states that the ceiling which is referenced by Armando Laurenco (BZA Hearing 8/3/01 testimony, page 2xx) and relied upon in the Decision dated October 12, 2001, is shown in the official plans "600 level sheets of the building permit application." This is a set of sheets showing ceiling and reflected ceiling plans for the lower level and first-seventh floors. These plans show ceiling lighting, venting, etc. They do not show the level of ceilings. There is no lower level (garage) ceiling 4 feet below the first floor slab, as claimed by Mr. Laurenco. The plans submitted by the Appellants and entered into the official record document this fact: the Rear Elevation shows that such a ceiling would drop below the garage entrance; Interior Section showing all ceiling levels shows the full garage height.

ZONING COMMISSION
District of Columbia
Case 01-26
Exhibit 8

ZONING COMMISSION
District of Columbia
CASE NO.01-26
EXHIBIT NO.8

Conclusion: The assert that (1) a ceiling is located in the lower level (garage) 4 feet below the level of the first floor slab and (2) such ceiling limits the contribution to FAR to 11.9% of the lower level is incorrect. There is no evidence of such ceiling. The Appellant has shown that the contribution from the lower (garage) level brings the FAR over 3.5 (Attachments).

B. ROOF STRUCTURES AND REFERRAL TO THE OFFICE OF PLANNING: The Intervenor presents no evidence countering that presented by the Appellants.

C. REAR YARD SETBACK: The Intervenor presents no evidence countering that presented by the Appellants.

D. ADDITIONAL NEW INFORMATION: 11 DCRA §3126.6 provides for reconsideration or rehearing based on new evidence which could not reasonably have been presented at the original hearing. Both (1) the August 15, 2001 letter from the OZA to the BZA and (2) the plat for new Lot 162, which was added to the application after the hearing and close of record, are highly significant new information which could not reasonable have been addressed at the original hearing.

The Intervenor does not disagree that the Appellants were not given the opportunity to evaluate and cross examine on the new evidence presented by the OZA (August 15, 2001 letter). The OZA listed three District of Columbia properties without showing their specific relevance to the instant appeal. These examples appear not to be relevant. The Intervenor claims that because NANA did not respond before closing of the record, it should not be given that opportunity to evaluate and cross examine on that information--even though the decision to allow the roof structure nonconformity is based on DCRA "precedence" claimed in the August 15 letter. This approach is not what is provided for in the regulations. 11 DCRA §3126.6 provides for reconsideration or rehearing based on new evidence which could not reasonably have been presented at the original hearing.

The surveyor's plat for new Lot 162, is signed by the OZA and documents its erroneous belief that the entire lot (both R-5-D and R-2) portions were the higher density. The plat appeared in the official file **after** the Aug. 3, 2001, hearing and also after the Aug. 28 closing of record. In preparation for the instant appeal, NANA requested all relevant records and relied on DCRA's provision of those records.

The plat is highly relevant as it documents that the OZA misinterpreted the zoning district(s) and/or thought that it could rezone the property on its own. In either case, the OZA was misinformed about FAR, community residence facility limitations in the R-2 zone, etc. The OZA evaluation of the application at the time of its approval is consistent with this misinterpretation.

CONCLUSION: NANA request that the substantial new evidence which was not available at the original hearing be admitted to the record. Appellants request opportunity to cross examine on substantial new evidence.

NANA respectfully requests that the BZA reevaluate and/or rehear those issues raised in its October 25, 2001, letter, pursuant to 11 DCMR §3126.

Yours truly,

Anne Page Chiapella

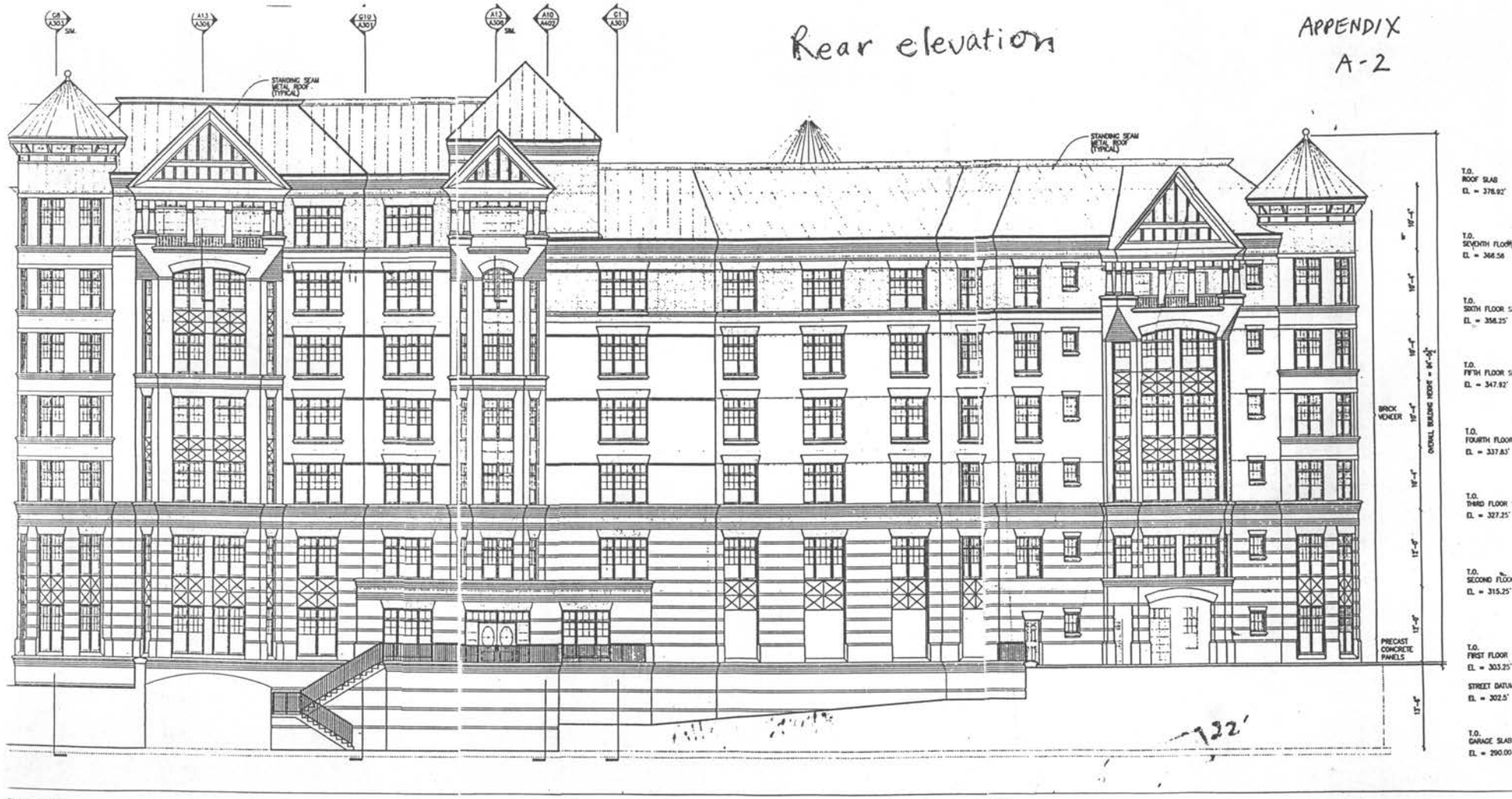
Anne Page Chiapella
President, Nebraska Ave. Neighborhood Assn.

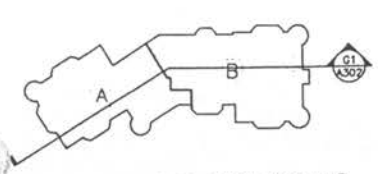
Attachments (copies from the official DCRA file):
Rear elevation
Interior section

Cc: Maureen Dwyer, Esq.
William Bennett, Esq.

Rear elevation

APPENDIX
A-2





F

B

BUILDING SECTIONS AND DETAILS

DESIGNED | PROJECT NO 98142

5 6 7 8 9 10 11 12 13 14 15 16 17

RESIDENT ROOM
ACTIVITY ROOM
CORRIDOR
ROOF WELL BEYOND
ROOF GARDEN
ELEVATOR MACHINE RM.
ROOF WELL
MAIN DINING
DINING
TOILET
PARKING GARAGE
UNDERGROUND VAULT

T.O. ROOF SLAB EL = 378.92'
T.O. SEVENTH FLOOR SLAB EL = 368.58'
T.O. SIXTH FLOOR SLAB EL = 358.25'
T.O. FIFTH FLOOR SLAB EL = 347.92'
T.O. FOURTH FLOOR SLAB EL = 337.83'
T.O. THIRD FLOOR SLAB EL = 327.25'
T.O. SECOND FLOOR SLAB EL = 315.25'
T.O. FIRST FLOOR SLAB EL = 303.25'
T.O. GARAGE SLAB EL = 291.25'

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing letter to the BZA was sent by first class mail to the following on November 16, 2001:

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