BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

IN RE: 5111 Connecticut Ave. N.W.	)	
Square 1989, New Lot 162	)	**BZA Appeal No. 16716**
Previous Lots 49-57 & 161	)	
	)	
Appeal of	)	
	)	
The Nebraska Avenue	)	
Neighborhood Association	)	
	)	
Advisory Neighborhood	)	
Commission 3G	)	

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Re: **Motion for Re-review**

The following is in support of motion for re-review of the Decision and Order dated October 12, 2001, in BZA Appeal No. 16716. One item of the Appeal was not addressed in the Decision and Order. Consideration of this Appeal item is requested. The other items document errors in the Decision and Order.

The item not addressed in the Decision and Order is as follows:

"6. <u>INAPPROPRIATE LOCATION OF CONVENIENCE STORES IN THE FACILITY</u>

§354.2 The adjuncts authorized under this section <u>shall</u> be limited to the main floor of the building or below.

§354.6 Convenience stores in apartments (R-5). The center of the principal entrance of the apartment house <u>shall</u> be more than one-fourth mile walking distance from the nearest principal business street frontage of any business district previously established and operating in a Commercial or Industrial district." [Exhibit 28, BZA Appeal No. 16716. Underlining added]

These adjuncts are defined by the zoning regulations (§354.1) as convenience stores providing foods, drugs, sundries and personal services servicing tenants' daily living needs, include a beauty salon and a bistro. They are only allowed if approved by the Board of Zoning Adjustment. Note that this development is located about 300 feet from a commercial district--not in compliance. The beauty salon is located on the fourth floor--not in compliance.

CONCLUSION: The convenience store adjuncts are not in compliance. We request the appeal be sustained based on this noncompliance.

Board of Zoning
Case 01-26
Exhibit 21

ZONING COMMISSION
District of Columbia
CASE NO.01-26
EXHIBIT NO.21

BRIEF SUMMARY OF ITEMS PROPOSED FOR RECONSIDERATION:

A. Nonconforming (excessive) FAR: **The FAR contribution from the basement alone (excluding the 3rd floor balcony or the 8th floor) brings the building FAR well above the 3.5 limit for a R-5-D district.** The parking garage ceiling claimed by the Intervener does not exist. In addition, the rear adjacent grade is at the bottom of the rear concrete staircase. The Intervener is incorrect in excluding basement based on said ceiling and use of the top of the staircase as adjacent grade.

B. Nonconformity with required rear yard setback: The Front and Rear Building Elevations document the front (Connecticut Avenue) and rear (along the alley) of the building. The project does not comply with the required setback across the entire rear yard (§199.1—yard, rear). **The unprecedented definition of the building having two simultaneous building fronts** is used to contradict the application materials which clearly show front and rear.

C. Nonconforming roof penthouse(s): The Zoning Commission sustained the requirement that roof penthouses must follow requirement of setback from all exterior walls by a distance at least equal to its height above the roof on which it is located (§400.7(b)). The roof penthouse, including the **stairwell/machine room penthouse, is not set back from the exterior wall**.

DETAILED EXPLANATIONS:
(References are to BZA August 3, 2001 hearing exhibits and transcript and to District of Columbia Municipal Regulations 11, Zoning Code.)

A. **The FAR contribution from the lower level basement alone (excluding the 3rd floor balcony or the 8th floor which are also under contention) brings the building FAR well above the 3.5 limit for a R-5-D district.** The entire lower level at the rear of the building along the alley is greater that 4 feet above adjacent grade. This comprises over 30% of the perimeter of the basement, not 11% as claimed by the Intervener. This can be seen clearly in the South and Rear Elevations (Ref: Exhibit 28).

The Zoning Administrator/Intervener claims 11% based on (1) a nonexistent ceiling 4 feet below the first floor slab and (2) using the top of the rear stair as the adjacent grade. **Both of these claims must be true to decrease the FAR below 3.5. Neither is substantiated.**

The Appellants have shown that there is no ceiling in the lower level 4 feet below the first floor slab (Exhibit 42, building longitudinal and cross sections; ceiling and reflected ceiling plans). The only claim of that ceiling was by former zoning administrator, Armando Lourenco: "I would note also in passing that there's a ceiling to that basement and the calculations that were

presented here by the appellant are based on the distance to the underside of the slab forgetting that there is a four foot difference between that level and the level of the ceiling." (P. 266) Mr. LAURENCO later states that there is a 12 foot [high] garage entrance " .. immediately adjacent to the loading platform there is a 12-foot door into a garage," (p. 275). Note that the claimed ceiling would pass about 4 feet below the top of the garage entrance. No plans have been provided to the record demonstrating the said ceiling. The officially approved plans in the record show the lack of said ceiling.

In addition, the rear concrete stair is an emergency exit, required to access public space. MR. LOURENCO, referring to the rear stairs: "You still need to gain access to public area and that's what completes that means of egress. And that's the reason why those steps are there. It's not to lug the furniture up or lug the groceries up." (p. 276) The rear external staircase is an integral part of the building and is only allowed to extend into the required rear yard because it is an open concrete stair (DCMR §§ 199.1, 2502.1, 2502.6). To call it anything else would violate the requirement that the rear yard be open to the sky from the ground up. **The bottom of this stair, not the top, is the adjacent grade.**

CONCLUSION: The basement contribution to FAR brings the building FAR above the 3.5 limit. The FAR is noncompliant.

B. Nonconformity with required rear yard setback: The Front and Rear Building Elevations (Exhibit 28) document the front (Connecticut Avenue) and rear (along the alley) of the building. Only **the unprecedented definition of the development having two simultaneous building fronts**, one on Connecticut Avenue and one on Chevy Chase Parkway (as opposed to one street for height and another for building front), leads to the illogical conclusion that part of the rear of the building (shown on the rear elevation and located opposite the Connecticut Avenue front) is a side.

The interpretation of two fronts leads to obvious confusion: Mitten (p. 176): "How would you know where the rear is if the front is sort of, you know debatable.: "So if you have two fronts, does that mean you have two rears?" And Chair Reid (p.170): "How many sides are we talking about here?" Mr. Bello: " two of the sides [the two streets] constitute the front." Note that this is not consistent with the definition of a "corner lot" but of a "through lot" where the two fronting streets differ in direction by less that 45 degrees (§199.1).

The conclusions of both zoning administrators is consistent with the Appellants' arguments that there is only one front and that the entire rear should be included in the rear setback: Mr. Bello (p. 167): "The rear would be the opposite location of the front." According to zoning expert Lourenco (p. 268): "And if you ask anybody, everybody can tell you what's the front and what's the back. The front is to the front, the back is the other way."

This unusual shaped lot, zoned R2/R-5-D was **created by a subdivision which occurred after the permit application was submitted** and **purchased by Sunrise after the appeal was filed.** Zoning code provides the Board with the power to grant variances from the strict

application of the regulations (§3107.2): As set forth in D.C. Code §5-424(g)(3) (1981), "Where by reason of exceptional narrowness, shallowness or **shape of a specific piece of property at the time of the original adoption of the regulations**...the strict application of any regulation adopted under D.C. Code §§5-413 to 5-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship..

CONCLUSION: The rear yard setback is nonconforming.

C. Nonconforming roof penthouse(s). The Zoning Commission sustained the requirement that roof penthouses must follow requirement of setback from all exterior walls by a distance at least equal to its height above the roof on which it is located (§400.7(b)).

The roof penthouse, including the stairwell/machine room penthouse, is not set back from the exterior wall. In addition, the new elevator penthouse and connecting wall are not set back from the exterior wall by a distance equal to their height from the main roof. The "mansard roof" (connecting wall and cover to the new elevator structure) extends above the main roof and outside the building exterior walls.

New elevator plan supplied to the Appellants by Sunrise Assisted Living, LLC shows a smaller elevator replacing one of the original two. As pointed out by architect Chris Fromboluti, expert witness for the appellants, only a single emergency exit is provided for the 7th floor, instead of the required two (p. 192). The decreased elevator capacity may exacerbate the emergency exit problem. The required Elevator Needs Study (11 DCMR 358.5 reference to Title 22 requirements) has not been conducted.

CONCLUSION: Roof structures are not compliant with §400.7(b) set-back requirements.

For the foregoing reasons, the Nebraska Avenue Neighborhood Association respectfully requests the BZA to correct these errors and issue a revised decision reflecting the actual facts in the record of this case and to revoke the building permit erroneously issued by the Zoning Administrator, Department of Consumer and Regulatory Affairs.

Yours truly,

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Certificate of Service

I hereby certify that a copy of the foregoing letter from the Nebraska Avenue Neighborhood Association to the Board of Zoning Adjustment was mailed first class on December 28, 2001 to:

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