Rec'd 01
8.3.

To the Board of Zoning Adjustment regarding Case No. 16716

I appear today in ~~opposition~~ support to Case No. 16716 of Sunrise Connecticut Avenue Assisted Living.

My name is John W. Gill and I, along with my son, Nicholas Gill, are owners of a major part of the east side of the 5000 block of Connecticut Avenue, NW, one block to the south of the proposed development.

I have three brief points I would like to make to the Board and then read a letter presented in person to Mayor Williams that was signed by 22 business owners, six property owners and 2 managers of additional businesses in our block.

Firstly, I have never received any notices from any agency of the City regarding this development.

Secondly, the Sunrise project is in violation of the Zoning Code for the project proposes commercial businesses such as a beauty salon and dining facility. The zoning code only allows for this if there are no commercially zoned property with a quarter of a mile of the site. In this case, our block- the adjoining block- is commercially zoned.

Thirdly, the Sunrise project violates the Zoning Code by failing to provide sufficient parking as required by the Code.

Attached to this page is a letter with attachments that was presented to Mayor Williams. I will read it into the record, but I want to preface my reading by commenting on the reckless disregard that Sunrise has for the laws of our community. Sunrise is trying to flat out violate covenants that run with the land that prohibit the exact project they have before you. They are trying to skirt their lawful responsibilities by failing to honor this covenant, which I might add they had full advance knowledge of before buying the property.

Now I will read the letter. Thank you for your consideration.

John W. Gill Sr.

BZA
Case No. 16716
Exhibit No. 43

ZONING COMMISSION
District of Columbia
CASE NO.01-26
EXHIBIT NO.1A3

Anthony Williams
Mayor
District of Columbia

Dear Sir:

Thank you for the opportunity to present our comments about the construction of a 90 foot tall building in the 5100 block of Connecticut Avenue, NW.

We, the undersigned business owners and/or commercial property owners in the 5000 block of Connecticut Avenue, NW vehemently oppose this construction on the following grounds:

The low density development in the surrounding neighborhoods makes our commercial area attractive and economically viable. The proposed high density development along the narrow strip of Connecticut Avenue north of Nebraska Avenue offers little economic advantage but significant disadvantage to our business. We understand that this developer typically supplies its facilities using out-of-city vendors. Its residents customarily do not support local business in a significant way. Yet the developoment will require substantial parking for staff, visitors, and vendors supplying the building. In addition, it will contribute significantly to traffic congestion. This will negatively impact our businesses.

We invested in the adjoining block in reliance on a 1925 covenant (copy attached) restricting development in the 5100 block to single family detached, semi-detached or groups of three homes (one attached and two semi-detached). It was precisely this promise of the lack of density that made investment in our block attractive. It is lack of density that enables our customers and patrons the ability to park their cars and shop in our stores. The "Sunrise" development will destroy this ability and will severely hurt our businesses. We do not want our city government to approve building permit applications inconsistent with such covenants. Please do not force us to spend the time and money to sue to enforce the covenant.

We believe less restrictive zoning laws do not supercede more restrictive covenants running with the land. If however, a court strikes down the covenant that we, the business and commercial property owners in the 5000 block of Connecticut Avenue relied on, then we obviously support the effort to downzone from high density to single family rowhouse zoning. To the extent this downzoning prevents the high-density development, we obviously support the downzoning.

We also understand that there are irregularities on the granting of the building permit for the Sunrise
We support the efforts to appeal the issuance of such permits.

Thank you.

Signatories to attached letter to Anthony Williams, Mayor for the District of Columbia from the east side of the 5000 block of Connecticut Avenue, NW

Michael Meyer, Business Owner, Marvelous Market, 5035 Connecticut Avenue, NW 202 686-4040

Larivel Sanchez, Manager, CVS Pharmacy, 5013 Connecticut Avenue, NW
202-966-0327

John Conner, Business Owner, Connecticut Avenue Amoco, 5001 Connecticut Avenue
202-244-6975

Carole Greenwood, Business Owner, Greenwood Restaurant, 5031 Connecticut Avenue
202-364-4444

Charles Schulze, President Connecticut Place Condominium (5039 Connecticut Avenue)
Property Owner, 5039 Connecticut Avenue, NW #3
202-364-1111 Business Owner, Schulze and Pederson Attorneys at Law 5039 Conn.

Patricia Silver, Anthropologist, Researcher 5039 Connecticut Avenue, NW #4
Cell-301-237-0230

Tom Pines, Business Owner, Real Magnet (Internet) 5039 Connecticut Ave #6B
202-244-7845

Nathanial Pearlman, Business Owner, NGP Software Inc. 5039 Connecticut Ave #1
202-686-9330

Phil Jae Lee, Business Owner, Regal Cleaners 5021 Connecticut Avenue, NW
202-537-1846

Dr. Patrick Grogan, Business Owner, Dentist, 5039 Connecticut Avenue, NW #2
Property Owner, 5039 Connecticut Avenue, NW #2
202-363-1314

Nicholas Gill, Property Owner 5015-31 and 5039 (#7) Connecticut Ave.
202-246-4451

John W. Gill, Property Owner 5015-31 Connecticut Avenue, NW
202-363-4114

Wasantha Tennakoon, Business Owner, Murrell's Electronics, 5039 Connecticut Ave. #7
202-338-2915

Frank Silnicky, Manager, Duron Inc. Paint Store, 5023 Connecticut Avenue, NW
202-363-1301

Ed Rockefeller, Property Owner, 5039 Connecticut Avenue, NW #4
202-778-6463

Gwyneth Hand, Business Owner, Kitchen Design 5039 Connecticut Avenue, NW #4
202-244-7704

Robert Schafer, Business Owner, The Kitchen Guild, 5027 Connecticut Avenue, NW
202-362-7111

Nam Dayhoff, Business Owner, Sheffield Liquor Store, 5019 Connecticut Avenue
202-966-5885

Jackie Sunday , Business Owner, Chevy Chase Gallery 5039 Connecticut Avenue #6
202-364-8155

Julie Empson , Business Owner, Children's Resources International, 5039 Conn. #1

Abdel Hammad, Business Owner, Pizza Bolis, 5029 Connecticut Avenue, NW
202-244-5004

Carla Cohen, Business Owner, Politics and Prose Bookstore 5015 Conn. Avenue, NW
Property Owner, 5039 Connecticut Avenue, #5
202-364-1919

Prakit Laohaphan, Business Owner, Thai Room Restaurant, 5037 Connecticut Avenue
202-244-5933

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party hereby secured may have said improvements insured and pay said taxes and assessments, and the expenses thereof shall be a charge hereby secured and bear interest at the rate of six per centum per annum from the time of such payment.

AND it is further agreed that if the said property shall be advertised for sale, as herein provided, and not sold, the trustee or trustees acting shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.

AND the said party of the first part covenants that he will warrant specially the land and premises hereby conveyed, and that he will execute such further assurances of said land as may be requisite or necessary.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

Signed, sealed and delivered Ervin Edward Waulters (Seal)
in the presence of-
Chas. W. Steers

UNITED STATES OF AMERICA.
DISTRICT OF COLUMBIA, to wit:

I, Charles W. Steers a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY that Ervin Edward Waulters (unmarried) party to a certain Deed bearing date on the 28th day of March 1925, and aereto annexed, personally appeared before me in said District, the said Ervin Edward Waulters (unmarried) being personally well known to me as the person who executed the said Deed, and acknowledged the same to be his act and deed.

GIVEN under my hand and seal this 28th day of March A. D. 1925.

Charles W. Steers

(NOTARIAL SEAL) Notary Public, D. C.

- - 0 - -

The Chevy Chase Land Co. of Montgomery Co. Md.) No. 24 Recorded April 8, 1925.
to) DEED at 10:30 A. M.
Kay-Schnider-Kay Co.)

THIS DEED Made this 2nd day of April in the year one thousand nine hundred and twenty-five, by and between The Chevy Chase Land Company of Montgomery County,

12176 23
CALL 1228
FILED 1925
73851

[redacted]

287

Maryland, a corporation duly organized under and by virtue of the laws of the State of Maryland, party of the first part, and Kay-Schnider-Kay Company, a body corporate under the laws of the State of Delaware, party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Ten (10) Dollars to it paid by the said party of the second part, and of the covenants and agreements of the said party of the second part as hereinafter set forth, does hereby grant and convey unto the said party of the second part, its successors and assigns, in fee-simple, the following described land and premises, with the improvements, easements and appurtenances thereunto belonging, situate in the District of Columbia, namely:-

Lots numbered from twenty-four (24) to Twenty-nine (29), both inclusive, in Square numbered Nineteen hundred and eighty-nine (1989), in the Subdivision made by The Chevy Chase Land Company of Montgomery County, Maryland, as per plat of said subdivision recorded in Book No. 72 page 17 of the records of the office of the Surveyor of the District of Columbia.

SUBJECT to building restriction line as shown on plat recorded in Book No. 72 page 17 of said Surveyor's Office Records.

TO HAVE AND TO HOLD the said land and premises, with the improvements, easements and appurtenances, unto and to the use of the said party of the second part, its successors and assigns, in fee-simple.

SUBJECT to the following covenants and restrictions which shall apply to and charge only the property hereby conveyed, and which covenants and restrictions are not intended to, nor shall they be construed as extending to any other property whatsoever:-

1 - That all buildings erected, or to be erected, upon the land hereby conveyed shall be built and used for residence purposes exclusively, except that stables, carriage houses, sheds, or other out-buildings to be used only in connection with such residences, may be erected upon the rear of, and not elsewhere upon, said land.

2. That the land hereby conveyed, or any building, which may be erected thereon, shall not be used or permitted to be used for any trade, business, manufacturing or mercantile purposes.

3. That no house shall be erected on the land hereby conveyed which shall cost less than $5000.

4. That no houses in rows shall be built on said property and only detached houses, semi-detached houses, or groups of three houses, shall be built thereon.

AND the said party hereto of the first part hereby covenants to warrant specially the property hereby conveyed, and to execute such further assurances of said land as may be requisite.

Case 00 437

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"280

IN TESTIMONY WHEREOF, on the day and year first hereinbefore written, the said The Chevy Chase Land Company of Montgomery County, Maryland, has caused these presents to be signed with its corporate name by Edward J. Stellwagen, its President, attested by George E. Fleming, its secretary , and its corporate seal to be hereunto affixed, and does hereby constitute and appoint George E. Fleming, its true and lawful Attorney-in-fact, for it and in its name, place and stead to acknowledge these presents as its act and deed before any person or officer duly authorized to take such acknowledgment, and to deliver the same as such.

The Chevy Chase Land Company of
Montgomery County, Maryland.
(CORPORATE SEAL) By:- Edward J. Stellwagen, President

Attest:-
George E. Fleming, Secretary

$31.00 Int Rev Stamp Affixed)

DISTRICT OF COLUMBIA, to wit:

I, Albert W. Siousa a Notary Public in and for the District of Columbia, aforesaid, do hereby certify that George E. Fleming, who is personally well-known to me to be the person named as Attorney-in-fact in the foregoing and annexed Deed, dated the 2nd day of April 1925, to acknowledge the same, personally appeared before me in the said District of Columbia, and as Attorney-in-fact as aforesaid, and by virtue of the power and authority in him vested by the aforesaid Deed, acknowledged the same to be the act and deed of the said The Chevy Chase Land Company of Montgomery County, Maryland, and delivered the same as such.

GIVEN under my hand and seal this 2nd day of April A. D. 1925.

Albert W. Siousa

(NOTARIAL SEAL) Notary Public, D. C.

Commission expires April 2, 1928

- - C - -

Kay-Schnider-Kay Co., Inc.) No. 25 Recorded April 8, 1925.
to) TRUST at 10:31 A. M.
Saul & Jacobs, Trs)

THIS DEED Made this 3rd day of April A. D. 1925 by and between Kay-Schnider-Kay Company, Incorporated, a corporation duly organized under the laws of the

Mail to D. Saul & Co. 4-23-25 R.R.

Case 00-2134

3

TO: BOBT G

COLUMBIA REAL ESTATE TITLE INSURANCE COMPANY

1422 H Street, Northwest · Washington, D. C. 20005
Phone 628-3788

REPORT OF TITLE

Case No. 202,794

THIS COMPANY has caused to be examined the record title to the real estate described in Schedule "A" to the date below for the protection of _____ in the consummation of a purchase in the amount of $_____ and found to be vested in K. J. M. INVESTMENT CORP., a District of Columbia corporation, whose estate or interest is a fee simple title and found to be free from recorded objections except as noted in Schedule "B."

SCHEDULE "A" (Description)

Reference only

Lots 48, 53, 54, 55 and 57 in the Subdivision made by Chevy Chase Land Company of Montgomery County, Maryland, of lots in Square 1989, as per plat recorded in Liber No. 77 at folio 79, of the Records of the Office of the Surveyor of the District of Columbia.

SCHEDULE "B" (Objections)

1. Unpaid taxes, water rent, and assessments.
2. Such state of facts as would be disclosed by an accurate survey of the premises. ☐ Eliminate
3. Building and zoning regulations in force in the District of Columbia.
4. Deed of Trust from Christiane Tague and Belen Holland, joint tenants, to Samuel Scrivener, Jr. and Junior F. Crowell, trustees, dated September 14, 1961 and recorded September 22, 1961 in Liber 11673 at folio 338; Secures PERPETUAL BUILDING ASSOCIATION, in the sum of $20,000.00.
   AFFECTS LOT 48 OF CAPTION PROPERTY
   NOTE: By Instrument dated February 28, 1969 and recorded in Liber 12970 at folio 586, The National Bank of Washington was appointed substitute trustee hereunder.
5. Deed of Trust from K. J. M. Investment Corp., a District of Columbia corporation, to Samuel Scrivener, Jr. and Junior F. Crowell, trustees, dated December 4, 1962 and recorded December 19, 1962 in Liber 11920 at folio 496; Secures PERPETUAL BUILDING ASSOCIATION, in the sum of $20,000.00.
   AFFECTS LOT 53 OF CAPTION PROPERTY
   NOTE: By Instrument dated February 28, 1967 and recorded in Liber 12970 at folio 595, The National Bank of Washington was appointed substitute trustee hereunder.
6. Deed of Trust from K. J. M. Investment Corp., a District of Columbia corporation, to Samuel Scrivener, Jr. and Junior F. Crowell, trustees, dated December 4, 1962 and recorded December 26, 1962 in Liber 11923 at folio 234; Secures PERPETUAL BUILDING ASSOCIATION, in the sum of $20,000.00.
   AFFECTS LOT 54 OF CAPTION PROPERTY

- CONTINUED ON ATTACHED SHEET -

4

CERTIFIED this 8th day of April, 19 72.

COLUMBIA REAL ESTATE TITLE INSURANCE COMPANY

By, _____
ROBERT O. BLOCH, Vice President

No liability is assumed by Columbia Real Estate Title Insurance Company under this Report of Title unless it is accompanied by an Interim Binder of this Company.

ATTACHED SHEET TO CASE NO. 202,794

SCHEDULE "B" (Objections)

- continued -

7. Deed of Trust from K. J. M. Investment Corp., a District of Columbia corporation, to National Savings and Trust Company, trustee, dated May 31, 1963 and recorded July 1, 1963 in Liber 12024 at folio 77; Secures AMERICAN SECURITY AND TRUST COMPANY, in the sum of $19,000.00 with interest until paid at 6% per annum. $61.00 monthly. Due June 1, 1978. AFFECTS LOT 55 OF CAPTION PROPERTY

8. Deed of Trust from K. J. M. Investment Corp., a District of Columbia corporation, to William E. Shannon and Kenneth J. Luchs, trustees, dated June 12, 1964 and recorded June 25, 1964 in Liber 12232 at folio 196; Secures POTOMAC FEDERAL SAVINGS AND LOAN ASSOCIATION, in the sum of $29,500.00.
AFFECTS LOT 57 OF CAPTION PROPERTY

9. Deed of Trust from K. J. M. Investment Corp., a District of Columbia corporation, to Bernard E. Roache and Ellis L. Lyon, trustees, dated August 13, 1965 and recorded August 17, 1965 in Liber 12464 at folio 5; Secures STERLING CAPITAL CORP. in the sum of $63,000.00. Due in five years, with interest at 6% per annum, payable semi-annually.
AFFECTS ALL OF CAPTION PROPERTY (Lots 48,53,54,55 and 57)

10. Rights of parties in possession under unrecorded leases.

11. The covenants, that all buildings erected or to be erected upon said land shall be built and used for residence purposes exclusively, except that stables, carriage houses, sheds, or other out-buildings to be used only in connection with such residences may be erected upon the rear of and not elsewhere upon said land; that said land or any building which may be erected thereon shall not be used or permitted to be used for any trade, business, manufacturing or mercantile purposes; that no house shall be erected on said land which shall cost less than $5,000.00, and that no house in rows shall be built on said property, and only detached houses, semi-detached houses or groups of three houses shall be built thereon.

12. The right of way over the following described part of said Lot 57 - Beginning at a point in the Southerly line of said lot, 54 feet Southeasterly from the Easterly line of Chevy Chase Parkway; and running thence by and with said Southeasterly line of said Lot 57, 30.62 feet to the rear line thereof; thence Northeasterly along said rear line 4 feet 10 1/2 inches; thence Northwesterly parallel with the Southeasterly line of said Lot 57, 30.62 feet; and thence South 4 feet 10 1/2 inches to the point of beginning.

To the District of Columbia Government
Zoning Office

And to the affected ANCs and the Chevy Chase Citizens Association

Re: Case No. 00-23 (Downzoning of Eastern Side of Connecticut Avenue, NW from Nebraska Avenue to Jocelyn Street)

March 20, 2001

I am a property owner in the 5000 Block of Connecticut Avenue, NW (5039 Connecticut Avenue, NW Unit 4). While I understand what the ANC 3G's position regarding downzoning is and accept the position that over development of the site in question is detrimental to me and to the neighborhood, I believe, that at least with respect to the properties between Chevy Chase Parkway and Nebraska (highlighted in yellow on the attached map) that development inconsistent with the existing covenants that run with the land would be impossible. The covenants, as the attached documentation provide, allow only for detached, semi- detached or groups of three residential houses. No doubt the Chevy Chase Land Company who put these covenants on their land did so in exchange for benefits given to them on other parcels in the city.

I bought my property in reliance on these covenants. I hope the ANCs and the Citizens Association, on behalf of the property owners in our neighborhood, will enforce these covenants regardless of the outcome of the downzoning action. I further hope that what appears to be purposeful waste and lack of maintenance of the properties between Nebraska and Chevy Chase Parkway on the east side of Connecticut is arrested through the enforcement of existing housing code laws. Your help, on behalf of the neighborhood, to ask the DC government to compel these property owners to take care of these properties would be greatly appreciated.

Thank you for your consideration.

Dr. Patrick Grogan
5039 Connecticut Avenue, NW Unit 4
202-363-1314

6

Mr. Steven M. Klebanoff
c/o Mr. William T. Wheeler, Esq.
Lee Plaza
Suite 700
8601 Georgia Avenue
Silver Spring, MD 20910

February 11, 1997

Dear Mr. Klebanoff:

It has come to my attention that you are currently seeking to have the use covenant affecting the properties on the 5100 block of Connecticut Avenue, N.W. released by the property owners in the 5100 block of Connecticut Avenue.

Please be advised that this covenant serves to protect the low density residential character of the immediate neighborhood and is very beneficial to the property owners and lessees in the immediate neighborhood who relied on them when purchasing or leasing their property.

I am one of these owners and while I doubt your strategy of recording releases would have any legal effect, please be assured that I, in conjunction with similarly minded neighbors, would employ all appropriate options available to us to prevent <u>any</u> change to the status quo of our pleasant neighborhood.

Sincerely,

Joseph Gaglio

P.S. It is my understanding these covenants in part state that these properties (Lots 44-58 in Square1989), "shall not be used or permitted to be used for any trade, business, manufacturing or mercantile purposes" and "only detached houses, semi detached houses or groups of three houses shall be built thereon".

cc: David Borkowski
Diana W. McKinney
Helen K. & William R. Dyer
Louis & Sunny Reyes
Walter E. Beach, President, Chevy Chase Citizens Association
Allen E. Beach, ANC Commissioner, Chevy Chase

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FIRST-SUMNER

Real Estate Investment and Development

February 7, 1997

Mr. David Borkowski
5101 Connecticut Avenue, NW
Washington, DC 20008

RE: 5100 Block
Connecticut Avenue

Dear David:

Our firm is the contract purchaser of the Coll property at 5103-5109 Connecticut Avenue We are contacting all of the property owners along the east side of Connecticut Avenue between Chevy Chase Parkway and Nebraska Avenue to draw your attention to a restrictive covenant that applies to each of the properties in this block (Lots 44-58 in Square 1989) We discovered this covenant while preparing our title report We have attached with this letter a copy of the covenant and record plat information for your reference

This covenant, which dates back to 1925, has the effect of seriously restricting the uses and future development of the applicable properties Paragraph 2 states that the property ". shall not be used or permitted to be used for any trade, business, manufacturing or mercantile purposes." and in Paragraph 4 that " only detached houses, semi-detached houses, or groups of three houses, shall be built thereon." It would appear that the operation of a dentist office may be in violation of this covenant Violations of the covenant could lead to legal claims and actions to cease and/or to restore the properties to the required uses.

Accordingly, we believe that prompt removal of this covenant is desirable. In addition, its removal can only enhance the market value of your property over the long term and will be in the best interest of everyone concerned. We have been advised by our title company and counsel that these restrictions can be removed by having all affected property owners together execute and record a release of the restrictive covenant.

If you agree that the covenant should be removed, we request that you execute the attached covenant release document (along with your spouse) and forward it to Mr William Wheeler, Esquire of Wheeler and Korpeck When all owners have sent him the documents, he will then record the covenant release, confirm the recordation with you, and provide you a copy of the fully-executed document. This service is offered at no cost to you Please make sure that the ownership name is listed correctly and advise Mr Wheeler of any necessary corrections We will be executing the document as well

342 Hungerford Drive, Rockville, Maryland 20850
(301) 315-9026 Fax (301) 315-9028

The address of Wheeler and Korpeck is:

Lee Plaza
Suite 700
8601 Georgia Avenue
Silver Spring, Maryland 20910

We encourage you to review the enclosed documents with your attorney or real estate advisor. We do not intend by this letter to be providing legal advice If you have questions for Mr. Wheeler, he can be reached at 301-587-6200. If you would like to contact me, I can be reached at (301) 315-8926. It would be appreciated if you could return the release form to Mr. Wheeler not later than February 28, 1997

Thank you for your cooperation.

Very truly yours,

Steven M Klebanoff
President

Enclosure

cc: Mr. William T Wheeler, Esquire

Q:\WORD\SMK\6132.WPD

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TOTAL

05/31/2001 12:50 2023385005 H A GILL AND SON INC PAGE 01
05/30/2001 15:25 FAX 202 778 6460 SCHIFF HARDIN & WAITE PAGE 02
05/30/2001 13:49 2023385005 H A GILL AND SON INC
FAX No. 202 338-5005

Anthony Williams
Mayor
District of Columbia

Dear Sir:

Thank you for the opportunity to present our comments about the construction of a 90 foot tall building in the 5100 block of Connecticut Avenue, NW.

We, the undersigned business owners and/or commercial property owners in the 5000 block of Connecticut Avenue, NW vehemently oppose this construction on the following grounds:

The low density development in the surrounding neighborhoods makes our commercial area attractive and economically viable. The proposed high density development along the narrow strip of Connecticut Avenue north of Nebraska Avenue offers little economic advantage but significant disadvantage to our business. We [illegible] that this developer typically supplies its facilities using out-of-city vendors, its residents customarily do not support local business in a significant way. Yet the development will require substantial parking for staff, visitors, and vendors supplying the building. In addition, it will contribute significantly to traffic congestion. This will negatively impact our businesses.

We invested in the adjoining block in reliance on a 1925 covenant (copy attached) restricting development in the 5100 block to single family detached, semi-detached or groups of three homes (one attached and two semi-detached). It was precisely this promise of the lack of density that made investment in our block attractive. It is lack of density that enables our customers and patrons the ability to park their cars and shop in our stores. The "Sunrise" development will destroy this ability and will severely hurt our businesses. We do not want our city government to approve building permit applications inconsistent with such covenants. Please do not force us to spend the time and money to sue to enforce the covenant.

We believe less restrictive zoning laws do not supercede more restrictive covenants running with the land. If however, a court strikes down the covenant that we, the business and commercial property owners in the 5000 block of Connecticut Avenue relied on, then we obviously support the effort to downzone from high density to single family rowhouse zoning. To the extent this downzoning prevents the high-density development, we obviously support the downzoning.

We also understand that there are irregularities on the granting of the building permit for the Sunrise. We support the efforts to appeal the issuance of such permits.

Thank you.

X Abdel Hammad Abdel HAMMAD 202-244-5004 5029 CONNECTICUT AVE NW Pizza Bol. (Pizza Delivery) Business Owner

[signature] 202 338-5000, property owner, 5015-31 and 5039 #7 Connecticut Ave NW

[signature] 202 338-5000, property owner, 5015-31 Connecticut Ave

[signature] 2027786463, property owner 5039 Conn. Ave #4

Ed Rockefeller

[signature] THE KITCHEN GUILD BUS. OWNER
5027 CONNECTICUT AVE, NW
202-362-7111

10

Frank Silnicky [signature] Manager, Duron Inc. Paint Store 5021 Connecticut Ave. NW
202-363-1802

WASANTHA TENNAKOON [signature] BUSINESS OWNER MURRELL ELECTRONICS 5039 CONNECTICUT AVE #7 (338-2915

PAT Brayton, Dentist [signature] BUSINESS OWNER, PROPERTY OWNER 5039 CONN AVE #2
363-1514

[signature] BUSINESS OWNER, 5021 CONN AVE 537-1846

Anthony Williams
Mayor
District of Columbia

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We also understand that there are irregularities on the granting of the building permit for the Sunrise
We support the efforts to appeal the issuance of such permits.

Thank you/

x Manuel Clarivel Sanchez — MANAGER CVS, Pharmacy — 202966-0327 5013 Connecticut Ave NW. Manager.

x John M Conner — JOHN CONNER — 202-244-6975 5001 Connecticut Ave NW Business Owner. Connecticut Ave. Amoco

x Carole Greenwood — Carole Greenwood — Business owner, Greenwood Restaurant 5031 Connecticut Ave NW 202-364-4444

x Charles Schulze — President Connecticut Place Condominium (5039) Property Owner 5039 Connecticut Ave #3 Business Owner, Schulze & Pederson, PC Attorneys at Law

11

Anthony Williams
Mayor
District of Columbia

Dear Sir:

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We also understand that there are irregularities on the granting of the building permit for the Sunrise. We support the efforts to appeal the issuance of such permits.

Thank you.

X Chris Broadfield — BUSINESS OWNER MARVELOUS MARKET 5035 CONNECTICUT AVE NW 202686-4040

X CLARIVEL SANCHEZ — 202-966-0327 5013 Connecticut Ave NW. MANAGER CVS, Pharmacy Manager.

X John Conner — 202-244-6975 5001 Connecticut Ave NW BUSINESS OWNER. CONNECTICUT AVE, MD CO

X Carole Greenwood — BUSINESS OWNER, Greenwood Restaurant 5131 Connecticut Ave NW 202-364-41

Charles Schulze — President Connecticut Place Condo (5039) Property Owner 5039 Connecticut A

Patricia S. Weir — Business Owner, Schulze & Pedersen Attorneys at Law Researcher/Anthropologist 5039 CONNECTICUT AVE #4 30123 0230

X Tom Pines — 5039 Connecticut Ave #6B BUSINESS OWNER REAL MAGNET 202-244-7845

(12)

Anthony Williams
Mayor
District of Columbia

Dear Sir:

Thank you for the opportunity to present our comments about the construction of a 90 foot tall building in the 5100 block of Connecticut Avenue, NW.

We, the undersigned business owners and/or commercial property owners in the 5000 block of Connecticut Avenue, NW vehemently oppose this construction on the following grounds!

The low density development in the surrounding neighborhoods makes our commercial area attractive and economically viable. The proposed high density development along the narrow strip of Connecticut Avenue north of Nebraska Avenue offers little economic advantage but significant disadvantage to our business. We that this developer typically supplies its facilities using out-of-city vendors. Its residents customarily do not support local business in a significant way. Yet the development will require substantial parking for staff, visitors, and vendors supplying the building. In addition, it will contribute significantly to traffic congestion. This will negatively impact our businesses.

We invested in the adjoining block in reliance on a 1925 covenant (copy attached) restricting development in the 5100 block to single family detached, semi-detached of groups of three homes (one attached and two semi-detached). It was precisely this promise of the lack of density that made investment in our block attractive. It is lack of density that enables our customers and patrons the ability to park their cars and shop in our stores. The "Sunrise" development will destroy this ability and will severely hurt our businesses. We do not want our city government to approve building permit applications inconsistent with such covenants. Please do not force us to spend the time and money to sue to enforce the covenant.

We believe less restrictive zoning laws do not supercede more restrictive covenants running with the land. If however, a court strikes down the covenant that we, the business and commercial property owners in the 5000 block of Connecticut Avenue relied on, then we obviously support the effort to downzone from high density to single family rowhouse zoning. To the extent this downzoning prevents the high-density development, we obviously support the downzoning.

We also understand that there are irregularities on the granting of the building permit for the Sunrise
We support the efforts to appeal the issuance of such permits.

Thank you,

X _____ BUSINESS OWNER MARVELOUS MARKET 5035 CONNECTICUT AVE NW 202 686 - 4040

X _____ CLARIVEL SANCHEZ 202 686 0327 5013 Connecticut Ave NW.
MANAGER CVS, Pharmacy Manager

X _____ 202-244-6975 5001 Connecticut Ave NW
JOHN CONNER BUSINESS OWNER. CONNECTICUT AVE, MACO

X _____ Business owner, Greenwood Restaurant
Carolyn Greenwood 5131 Connecticut Ave NW 202 244 4

_____ President Connecticut Place Condo (5039)
Charles Schultze Property Owner 5039 Connecticut A

_____ Business Owner, Schultze & Pedersen Attorneys at Law
Patricia S. Price Researcher/Rental Agent of 5039 Connecticut Ave #4 30123 02301

X _____ 5039 Connecticut Ave #6B
TOM PINES Business Owner Real Magnet 202 244-7845

(13)

Anthony Williams
Mayor
District of Columbia

Dear Sir:

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We also understand that there are irregularities on the granting of the building permit for the Sunrise. We support the efforts to appeal the issuance of such permits.

Thank you,

X _____ CLARIVEL SANCHEZ 202-66-0327 5013 Connecticut Ave NW.
MANAGER CVS, Pharmacy Manager.

X _____ 202-244-6975 5001 Connecticut Ave NW
JOHN CONNER Business Owner. Connecticut Ave. Amoco

X _____ Business owner, Greenwood Restaurant
Carolyn Greenwood 5131 Connecticut Ave NW 202-364-4444

_____ President Connecticut Place Condominium (5039)
Charles Schulze Property Owner 5039 Connecticut Ave #
Business Owner, Schulze & Pederson, Attorneys at Law

_____ Researcher/anthropologist 5039
Patricia S. Muir Connecticut Ave #4 301 237-0230 (cell)

(14)

Anthony Williams
Mayor
District of Columbia

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We also understand that there are irregularities on the granting of the building permit for the Sunrise We support the efforts to appeal the issuance of such permits.

Thank you

X Manuel Clarivel Sanchez — 202-66-0327 5013 Connecticut Ave NW. Manager CVS, Pharmacy

X John Conner — 202-244-6975 5001 Connecticut Ave NW Business Owner. Connecticut Ave. Amoco

X Carola Greenwood — Business owner, Greenwood Restaurant 5131 Connecticut Ave NW 202-364-4444

Charles Schulze — President Connecticut Place Condomin (5039) Property Owner 5039 Connecticut Ave # Business Owner, Schulze & Pederson, Attorneys at Law

Patricia S. Lee — Researcher/anthropologist 5039 Connecticut Ave #4 301 237-0230 (cell)

Nathaniel Pearlman — Business Owner Nathaniel Pearlman NBP Software Inc 2026869330 5039 Conn Ave #1

15

05/30/2001 14:05

Anthony Williams
Mayor
District of Columbia

Dear Sir:

Thank you for the opportunity to present our comments about the construction of a 90 foot tall building in the 5100 block of Connecticut Avenue, NW.

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We also understand that there are irregularities on the granting of the building permit for the Sunrise
We support the efforts to appeal the issuance of such permits.

Thank you.

GWYNETH HAND — GWYNETH HAND CUSTOM KITCHENS Business owner — 202 244 7704 — 5039 CONNECTICUT AVE NW SUITE 4 WASHINGTON DC 20008

Jackie Sunday — Chevy Chase Gallery BUSINESS OWNER — 2023648155 — 5039 Connecticut Ave NW #6A

Julie Empson — Children Resources International Business owner 5039 Connecticut Ave NW #1 Property owner — (202) 363-9536

17

Anthony Williams
Mayor
District of Columbia

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We also understand that there are irregularities on the granting of the building permit for the Sunrise
We support the efforts to appeal the issuance of such permits.

Thank you,

X CLARIVEL SANCHEZ — 202-966-0327 5013 Connecticut Ave NW. Manager.
MANAGER CVS, Pharmacy

X JOHN CONNER — 202-244-6975 5001 Connecticut Ave NW Business Owner. Connecticut Ave. Amoco

X Carolyn Greenwood — Business owner, Greenwood Restaurant 5131 Connecticut Ave NW 202-244-4444

Charles Schulze — President Connecticut Place Condomin (5039) Property Owner 5039 Connecticut Ave # Business Owner, Schulze & Pederson, Attorneys at Law

Patricia S. Muir — Researcher/Anthropologist 5039 Connecticut Ave #4 301 237-0230 (cell)

NAM DAYNOFF — Business Owner Sheffield Liquor 5019 Connecticut Ave NW 202 966-5885

(19)

Anthony Williams
Mayor
District of Columbia

Dear Sir:

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We believe less restrictive zoning laws do not supercede more restrictive covenants running with the land. If however, a court strikes down the covenant that we, the business and commercial property owners in the 5000 block of Connecticut Avenue relied on, then we obviously support the effort to downzone from high density to single family townhouse zoning. To the extent this downzoning prevents the high-density development, we obviously support the downzoning.

We also understand that there are irregularities on the grounding of the building permit for the Sunrise. We support the efforts to repeal the issuance of such permits.

Thank you,

X Carla F Cohen — 202 364 1919 — Blitz + Blitz
CARLA COHEN — BUSINESS OWNER — 5015-17 Connecticut Ave Pure In.
PROPERTY OWNER — 5039 CONNECTICUT AVE #5

X [signature] — 202-686-0327 — 5013 Connecticut Ave NW.
MARTHA CHAVEZ — Manager.

X [signature] — 202-244-6975 — 5001 Connecticut Ave NW
JOHN CONNER — BUSINESS OWNER. Connecticut Ave. Arco

X [signature]
Carla Greenwood — Business owner, Greenwood Restaurant 5131 Connecticut Ave NW 202-364-4444

[signature]
Charles Schulze — President Connecticut Place Condomin (5039)
Property Owner 5039 Connecticut Ave #
Business Owner, Schulze & Pederson, Attorneys at Law

[signature]
Patricia S. Tuia — Research/partial rep. of 5039 CONNECTICUT AVE # 4 301 237-0230 (Cell)

X JULIE EMPSON
[signature] — Property owner/Business owner Children's Resources International 5039 CONNECTICUT AVE #1 202-362-0022

IG

Section 101 · Assisted living to ... type ·
Section 102(B)(2) · Assisted g - significant # of residents have cognitive impairment

ENROLLED ORIGINAL

Rec'd 8.3.01

AN ACT

D.C. ACT 13-297

Codification District of Columbia Code 2001 Supp.

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 22, 2000

To establish regulations for Assisted Living Residences in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may be cited as the "Assisted Living Residence Regulatory Act of 2000".

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BZA
Case No. 16716
Exhibit No. 45

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Title I. Purpose and Philosophy of Care.

Sec. 101. Purpose.

The purpose of this act is to set uniform, minimum standards of licensure for community residence facilities currently regulated under Chapter 34 of Title 22 of the District of Columbia Municipal Regulations and other facilities when they provide services that assist residents with the activities of daily living. This act creates a new category of licensure called "assisted living residence".

Sec. 102. Philosophy of care.

(a) The philosophy of assisted living emphasizes personal dignity, autonomy, independence, privacy, and freedom of choice. Further, the services and physical environment of an assisted living residence should enhance a person's ability to age in place in a homelike setting by increasing or decreasing the amount of assistance in accordance with the individual's changing needs.

(b) This act shall be interpreted in accordance with the following philosophy of care:

(1) An assisted living residence is a program which combines housing, health, and supportive services for the support of residents aging in place. The function of an assisted living residence is to provide or coordinate personalized assistance through activities of daily living, recreational activities, 24-hour supervision, and provision or coordination of health services and

instrumental activities of daily living as needed.

(2) The design of services and environment should acknowledge that a significant number of residents may have some form of cognitive impairment. Services and environment should offer a balance between choice and safety in the least restrictive setting.

(3) Both the program and environment should support resident dignity, privacy, independence, individuality, freedom of choice, decision making, spirituality, and involvement of family and friends.

(4) Residents should be supported to age in place by minimizing the need to move through reasonable accommodation and, when necessary, through coordination and use of home health agencies, hospice, rehabilitation agencies, and other licensed healthcare providers.

(5) Quality, affordable assisted living residence care should be accessible to all individuals residing in the District regardless of income.

Title II. Definitions.

Sec. 201. Definitions.

For purposes of this act, the term:

(1) "Activities of Daily Living" or "ADLs" means activities including eating, bathing, toileting, grooming, dressing, undressing, mobility, and in place transfers.

(2) "Aging in place" means minimizing the circumstances which require a person to move to a different setting when his or her condition changes.

(3) "Assistant Living Administrator" or "ALA" means the licensee, or a person designated by the licensee, who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living residences.

(4) "Assisted Living Residence" or "ALR" means an entity, whether public or private, for profit or not for profit, that combines housing, health, and personalized assistance, in accordance to individually developed service plans, for the support of individuals who are unrelated to the owner or operator of the entity. "Assisted Living Residence" or "ALR" does not include a group home for mentally retarded persons as defined in section 2(5) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 or a mental health community residence facility as that term is used in Chapter 38 of Title 22 of the District of Columbia Municipal Regulations.

(5) "Change of ownership" means the transfer of ownership by an individual, partnership, or association to another and includes transfers of the legal or beneficial ownership of 10% or more of the stock of a corporation that owns or operates an ALR.

(6) "Chemical restraint" means the use of a psychopharmacologic drug for a purpose other than to treat a standard psychiatric diagnosis whose criteria are set forth by the American Psychiatric Association.

(7) "Cognitive impairment" means the loss of those mental processes that

orchestrate relatively simple ideas, movements, or actions into goal directed behavior including a lack of judgement, planning, organization, self-control, and the persistence needed to manage normal demands of the individual's environment. "Cognitive impairment" refers to a condition that interferes with decision-making skills or effective communication including Alzheimer's disease, multi-infarct dementia, stroke, Parkinson's disease, and other neurological conditions.

(8) "Functional assessment" means an assessment of a resident's ability to perform activities of daily living, instrumental activities of daily living, and the degree of assistance required, if any.

(9) "Health-Care Licensure Act" means the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983.

(10) "Health-Care Protection Act" means the Nursing Home and Community Residence Facility Residents' Protection Act of 1985.

(11) "Healthcare practitioner" means a person licensed as a physician or nurse practitioner.

(12) "Healthcare provider" means a healthcare practitioner, home health agency, hospice, rehabilitation agency, or health management organization.

(13) "In place transfer" means movements that involve changes in position in place. "In place transfer" includes an activity such as moving from a bed to a wheelchair or regular chair, moving from a wheelchair to a toilet, bathtub, shower, or car, and moving from a wheelchair, regular chair, or toilet seat to a standing position.

(14) "Individualized Service Plan" or "ISP" means a written plan developed by the provider, in conjunction with the resident and his or her surrogate, if appropriate, which identifies, among other things, services that the licensee will provide or arrange for the resident.

(15) "Instrumental Activities of Daily Living" or "IADL" means daily activities such as housekeeping, meal preparation, shopping, money management, and travel outside the ALR.

(16) "Licensee" means any person, association, partnership, or corporation to which a license is issued pursuant to this act.

(17) "Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the resident's body, such as mitts or vests, that the individual cannot remove easily and which restricts freedom of movement or normal access to one's own body.

(18) "Physician's statement" means the form approved by the Mayor pursuant to section 802(b).

(19) "Resident" means an individual admitted to an ALR pursuant to title VI.

(20) "Resident agreement" means the admission agreement between the resident, the resident's surrogate, when appropriate, and the assisted living residence.

(21) "Shared responsibility" means a process by which the resident, or the

resident's surrogate, and the ALR arrive at an acceptable balance between the resident's desire for independence and the facility's legitimate concerns for safety, where there is a disagreement. The purpose of "shared responsibility" is to provide complete information to the resident and the surrogate so that the parties can arrive at an informed agreement of which services are to be provided and in what manner.

(22) "Shared responsibility agreement" means a formal written agreement that outlines the responsibilities and actions of all parties. The agreement is a process for resolving discrepancies between the individual resident's right to independence and the provider's concerns for the safety and well being of the individual and others.

(23) "Surrogate" means a person designated by a resident to act on the resident's behalf pursuant to law.

(24) "Trained Medication Employee" or "TME" means an individual employed to work in an ALR who has successfully completed the training program developed by the Mayor pursuant to section 906 and who is certified to administer medication to residents.

Title III. Licensure and Inspection.

Sec. 301. Authority to operate an assisted living residence in the District of Columbia.

It shall be unlawful to operate an assisted living residence in the District of Columbia without being licensed and in compliance with the provisions of this act.

Sec. 302. Initial ALR licensure.

(a) Applications for licensure shall be made in writing on a form or forms prescribed by the Mayor at least 60 days prior to the date needed.

(b) An applicant for ALR licensure shall pay a licensure fee as determined by the Mayor.

(c) An ALR license issued by the Mayor shall state the effective date and expiration date of the license and maximum number of residents allowed to reside in the ALR.

(d) An application for an ALR license shall include the following information:

(1) Identification of the owner and documentation supporting the fact that the ALR is owned or otherwise under the control of the applicant;

(2) Identification of the ALA and information concerning the ALA's qualifications;

(3) Criminal background check information pursuant to the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998;

(4) Documentation and explanation of any prior denial, suspension, or revocation of license to provide care to third parties;

(5) Location of the ALR;

(6) Statement of program;

(7) Proof of solvency;

(8) Proof of insurance coverage;

(9) Statement of services to be offered;

(10) Maximum number of residents planned;

(11) Verification that the real property where the ALR is located is owned, leased, or otherwise under the control of the applicant; and

(12) Structure of applicant's organization and names of board members and officers.

(e)(1) The Mayor shall conduct an initial pre-licensure inspection of the premises of the ALR and of its records.

(2) An applicant for licensure shall provide the following information at the time of the pre-licensure inspection:

(A) Certificate of occupancy;

(B) Disaster plan;

(C) Staffing plan;

(D) Resident funds management system;

(E) Medication management system;

(F) Individual Service Plan policy and procedures;

(G) Admission, transfer, and discharge policies;

(H) Resident agreements, both financial and nonfinancial;

(I) Location of the ALR;

(J) Maximum number of residents to be served;

(K) Program statement;

(L) Proof of solvency; and

(M) Other reasonably relevant information required by the Mayor.

(f) Based on information obtained during the pre-licensure inspection required by subsection (e) of this section, the Mayor shall either approve the application unconditionally for 12 months or deny the application.

(g) The Mayor shall re-inspect an ALR within 6 months of the effective date of the initial lieensure.

Sec. 303. Special ALR licensure for community residence facilities.

(a) The Mayor may approve the application of a community residence facility licensed pursuant to Chapter 34 of Title 22 of the District of Columbia Municipal Regulations on the effective date of this act, notwithstanding the requirements of section 302(e) through (g), for a period of 12 months, if the applicant presents the following:

(1) A detailed plan to come into compliance with this act;

(2) Proof of steps taken to implement the plan; and

(3) Proof of compliance with the terms of Chapter 34 of Title 22 of the District of Columbia Municipal Regulations.

(b) The Mayor may renew a license issued pursuant to subsection (a) of this section for 2 additional consecutive 12-month periods.

(c) This section shall expire 3 years after the effective date of this act.

Sec. 304. Renewal of ALR license.

(a) An ALR license shall be renewed every 12 months.

(b) Applications for renewal of a license shall be made in writing on a form or forms prescribed by the Mayor at least 60 days prior to the expiration of the license. The Mayor shall renew a license after receiving an application containing the information required by section 302(d) and completion of an inspection of the premises, if the Mayor finds that the application meets the requirements of this act.

(c) The Mayor shall issue the renewal license prior to the expiration date of the existing license if the applicant submits an application for renewal within 90 to 60 days prior to the expiration of the license and the Mayor finds that the application meets the requirements of this act.

(d) An applicant for renewal shall pay a renewal fee as determined by the Mayor. The fee shall cover the costs involved in processing the renewal applications and conducting inspections of the premises.

(e) Based on information provided to the Mayor and by the on-site inspection, the Mayor shall:

(1) Renew the license for 12 months;

(2) Issue a provisional license for up to 12 months if the ALR is not in full compliance with the regulations but, in the opinion of the Mayor, the noncompliance does not constitute an immediate safety or health hazard and the licensee has submitted to the Mayor an acceptable plan of correction with specific time frames; or

(3) Suspend or revoke the license as specified in section 401.

Sec. 305. Changes in licensee.

(a) The following changes occurring within an ALR shall require revision of the license:

(1) Change in the maximum number of residents for which the facility is licensed;

(2) Name change of the ALR;

(3) Change in ownership of the ALR;

(4) Change in location of the ALR; or

(5) Voluntary closure of the ALR.

(b) A request for changes which requires the reissuance of a license shall be made in writing to the Mayor at least 60 days in advance of the effectiveness of the changes. An application fee, as established by the Mayor, shall accompany a request for changes.

(c)(1) The licensee shall notify residents and their surrogates of any proposed changes set forth in its request for changes, in writing, 60 days before the effective date of the proposed

changes.

(2) A licensee shall include the following information in its request for changes:

(A) The method for informing residents and their surrogates of its intent to make the requested changes; and

(B) The actions the licensee shall take to assist residents in securing comparable housing, if necessary.

(d)(1) Whenever there is a change of ownership, sale, assignment, or other transfer of an ALR from the person or organization named on the license to another person or organization, the transferee shall apply for a new license.

(2) A transferee shall apply for a new license at least 60 days before the final transfer.

(3) The licensee named under the current license shall remain responsible for the operation of the ALR until a new license is issued to the transferee.

(4) The Mayor shall issue a new license to the transferee if the transferee meets the requirements for licensure under this act. Upon issuance of the new license to the transferee, the transferor shall return its license to the Mayor by certified mail.

Sec. 306. Inspections.

(a) In addition to the inspections required by section 302(e), the Mayor may inspect an ALR at the Mayor's discretion to ensure compliance with this act.

(b) The Mayor shall at all times ensure that any ALR licensed pursuant to this act is able to continually provide appropriate care to its residents. The Mayor shall notify an ALR if, at any time, the Mayor determines that the ALR is unable to provide appropriate care to any of its residents.

(c) Inspection of an ALR, or prospective ALR, for purposes of initial licensure or compliance after license renewal shall be conducted by the Mayor following the procedures set forth in section 6 of the Health-Care Licensure Act and the requirements of this act.

(d) If, upon inspection, the Mayor determines that an ALR, or prospective ALR, is in violation of one or more of the requirements of this act, the Mayor shall give written notice of such violation to the ALR, or prospective ALR, within 15 working days of the inspection and may suggest a remedy for each violation.

(e) The violating ALR, or prospective ALR, shall submit a written response to the Mayor within 15 working days of receipt of the Mayor's notice. The violating ALR, or prospective ALR, may deny the alleged violation, accept the Mayor's suggested remedy, or propose its own remedy.

(f) If the Mayor accepts the ALR's, or prospective ALR's, written response, the Mayor may either issue a license to the ALR, or prospective ALR, if appropriate, or conduct a follow-up inspection to confirm compliance.

(g) If the Mayor and the ALR, or prospective ALR, cannot agree on an acceptable

corrective action, or if the ALR, or prospective ALR, fails to respond in writing within 15 working days of receipt of the Mayor's notice, the Mayor shall determine what action to take, including a penalty in accordance with this act and give the ALR, or prospective ALR, notice of his or her determination.

(h) The Mayor may inspect an ALR for the purpose of investigating a complaint.

Sec. 307. Restrictions.

(a) An ALR licensed pursuant to this act shall not use in its title the words "hospital," "sanitorium," "nursing," "convalescent," "rehabilitive," "subacute," or "hospice."

(b) Only a licensed ALR may describe, market, and offer itself as such. No other entity, whether licensed or not by the District government, shall describe, market, or offer itself as an Assisted Living Residence without first obtaining an ALR license. Violation of this requirement shall constitute operation of an ALR without a license and shall be subject to penalties in accordance with this act.

Sec. 308. Appeals.

Appeals under this title may be taken pursuant to title XII.

Title IV. Sanctions and Penalties.

Sec. 401. Sanctions.

(a) The sanctions set forth in section 10 of the Health-Care Licensure Act shall apply to an ALR.

(b) On determining that a licensee has violated this act, the Mayor, in addition to the sanctions required by subsection (a) of this section, may:

(1) Restrict the number of residents the licensee may admit;

(2) Require the licensee to reduce the number of residents in its care;

(3) Require the licensee and any of its staff to receive remedial instruction or training in a specific area;

(4) Require the licensee to use the services of a management firm approved by the Mayor;

(5) Notify or require the licensee to notify a resident who is affected by the violation and his or her surrogate;

(6) Increase the frequency of monitoring visits during a specified period of time;

(7) Enter into an agreement with the licensee establishing certain conditions for continued operation, including time limits for compliance; and

(8) Petition a court of competent jurisdiction to appoint a receiver as provided in title 2 of the Health-Care Protection Act.

(c) If the Mayor determines that the licensee has violated a condition or requirement of

an imposed sanction, the Mayor may suspend or revoke the license.

(d) Appeals under this section may be taken pursuant to title XII.

Sec. 402. Civil Penalties.

(a) The Mayor may impose one or more of the civil penalties authorized under section 10 of the Health-Care Licensure Act against persons who:

(1) Maintain or operate an unlicensed ALR; or

(2) Otherwise violate provisions of this act.

(b) Notwithstanding any other provision of law, penalties authorized under section 10 of the Health-Care Licensure Act shall not be imposed by the Mayor unless a violation, cited during an inspection:

(1) Is within the control of the ALR; and

(2) Poses an immediate or serious and continuing danger to the health, safety, welfare, or rights of residents.

(c) If during a follow-up inspection the Mayor determines that violations within the control of the facility which were cited in an immediately prior inspection have not been corrected or have recurred, the Mayor may impose penalties authorized under section 10 of the Health-Care Licensure Act.

(d) Appeals under this section may be taken pursuant to title XII.

Sec. 403. Criminal penalties.

The criminal penalties set forth in section 10 of the Health-Care Licensure Act shall apply to an ALR.

Sec. 404. Emergency suspension of license.

(a) The Mayor may immediately suspend, as an emergency action, a license on finding that the licensee's premises are unsafe for human habitation or pose an immediate threat to the health and safety of its residents.

(b) The Mayor shall deliver a written notice to the licensee informing it of the emergency suspension, giving the reasons for the suspension, providing the provisions of law with which the licensee has failed to comply that form the basis for the emergency suspension, and notifying the ALR of its right to request a hearing and to be represented by counsel.

(c) The filing of a hearing request shall not stay the emergency suspension. If the licensee is dissatisfied with the emergency suspension, it may appeal the suspension as provided in section 6 of the Health-Care Licensure Act.

(d) When a license is suspended pursuant to this section, the licensee shall immediately return the license to the Mayor, notify the residents and surrogates of the suspension, and make every effort to assist them in making other assisted living arrangements.

Title V. Residents' Rights and Quality of Life.

Sec. 501. Standard of care.

(a) An ALR must care for its residents in a manner and in an environment that promotes maintenance and enhancement of the residents' quality of life and independence.

(b) In order to promote resident independence and aging in place in a residential setting, at a minimum, an ALR shall offer or coordinate for payment 24 hour supervision, assistance with scheduled and unscheduled activities of daily living, and instrumental activities of daily living as needed, as well as provision or coordination of recreational and social activities and health services in a way that promotes optimum dignity and independence for the residents.

Sec. 502. Self-determination, choice, independence, participation, and privacy.

(a) A resident shall have the right to be treated at all times as follows:

(1) Courteously;

(2) Respectfully;

(3) With full recognition of personal dignity and individuality; and

(4) With assurance of privacy and the opportunity to act autonomously and share in the responsibility for decisions.

(b) A resident of an ALR shall have the right to live in an environment that:

(1) Maintains and enhances the resident's dignity, independence, and respect in full recognition of his or her individuality and physical and mental capabilities;

(2) Is creatively designed to counter loneliness, depression, dependence, boredom, and designed to manage difficult behavior;

(3) Provides opportunities for socialization, social interaction, leisure activities, and spiritual and religious activities consistent with the preferences and background of the resident; and

(4) Facilitates participation by arranging for transportation and assisting with communication and social skills and other services.

Sec. 503. Dignity.

A resident shall have the right to the following:

(1) A safe, clean, comfortable, stimulating, and homelike environment allowing the resident to use personal belongings to the greatest extent possible;

(2) Control time, space, and lifestyle;

(3) Free access to visitors of his or her choice;

(4) To receive and send correspondence without any restrictions;

(5) To maintain personal possessions to the extent the health, safety, and well being of others is not disturbed;

(6) To remain in his or her living unit unless a change corresponds to the

uncoerced preference of the resident or conforms to the obligations set forth in the resident's contract respecting discharge and is related to the resident's preference or to transfer conditions stipulated in his or her contract with the ALR;

(7) To approve his or her roommate whenever possible, if the resident is living in a semi-private unit;

(8) To attend or not attend religious services of his or her choice;

(9) To choose activities and schedules consistent with his or her interests, and physical, mental, and psychosocial well-being;

(10) To interact with members of the community inside and outside the facility and make choices about aspects of his or her life in the facility that are significant to the resident;

(11) To be free from mental, verbal, emotional, sexual and physical abuse, neglect, involuntary seclusion, and exploitation; and

(12) To participate in the development, implementation, and review of plans designed to provide services to residents, including the Individualized Service Plan.

Sec. 504. Accommodation of needs.

A resident shall have the right to the following:

(1) To receive adequate and appropriate services and treatment with reasonable accommodation of individual needs and preferences consistent with their health and physical and mental capabilities and the health or safety of other residents;

(2) To have access to appropriate health and social services, including social work, home health, nursing, rehabilitative, hospice, medical, dental, dietary, counseling, and psychiatric services in order to attain or maintain the highest practicable physical, mental and psychosocial well-being;

(3) To remain in the current setting, forgoing a recommended transfer to obtain additional services as contracted for by the resident or secure additional services in a manner acceptable to the ALR;

(4) To engage in a shared responsibility agreement with the ALR which is acceptable to the resident and the ALR and does not violate any applicable law;

(5) To refuse to participate in any service once the potential consequences of such participation have been explained and a shared responsibility agreement has been reached, if necessary, between the resident, the surrogate, and the ALR;

(6) To be free of physical restraints at all times; and

(7) To be free of chemical restraints.

Sec. 505. Representation and resolution of grievances and complaints.

(a) A resident shall have the right to the following:

(1) To designate a person as his or her surrogate or to have their guardian, or

advance directives or surrogate health decision maker, act for them if for any reason the resident cannot act for him or herself;

(2) To uncoerced consent;

(3) To present grievances and complaints without fear of threat of retaliation and have them acknowledged and acted upon promptly with due respect to the provisions of this act;

(4) To have access to an internal grievance and complaint procedure for any denial of services or rights provided for under this act and to an external review process by an independent person or entity;

(5) To address grievances and complaints to representatives of the Office of the Long-Term Care Ombudsman of the District of Columbia pursuant to the District of Columbia Long-Term Care Ombudsman Program Act of 1988 or other representative;

(6) To appoint a specially designated person or attorney to represent the resident in any grievance or complaint, procedure, or appeal process who shall have access to all necessary and relevant books and records of the ALR; and

(7) To organize and participate in and hold meetings of resident groups in the ALR and invite staff or visitors to the meetings and have a designated staff person to assist and respond to written requests resulting from the meetings.

(b) The ALR shall maintain complete written records of the filing and disposition of all grievances, complaints, and appeals.

(c) Appeals under this section may be taken pursuant to title XII.

Sec. 506. Privacy and confidentiality.

(a) A resident shall have the right to the following:

(1) To access their ALA and healthcare records on demand;

(2) To have their records kept confidential and released only in accordance with their informed uncoerced consent in accordance with District and federal law;

(3) To have their records maintained during their residency;

(4) To have their records maintained for up to 3 years after discharge or death; and

(5) To have any case discussion, consultation, examination, or treatment of the resident be kept confidential.

(b) If, for any reason, a resident cannot act for him or herself, their consent shall be given on their behalf by their designated surrogate which consent shall also be uncoerced and informed.

Sec. 507. Full disclosure.

A resident shall have the right to full disclosure of contract terms and billing practices that are fair and reasonable.

Sec. 508 Notice of resident's rights.

An ALR shall place a copy of a document delineating the resident's rights, as set forth in this act, in a conspicuous location, plainly visible and easily read by residents, staff, and visitors and provide a copy to each resident and resident's surrogate upon admission and at the time of any change to the resident's status, level of care, or services available to the resident.

Sec. 509. Abuse, neglect, and exploitation.

(a) An ALR shall develop and implement policies and procedures prohibiting abuse, neglect, and exploitation of residents.

(b)(1) An ALR, employee of an ALR, or other person who believes that a resident has been subjected to abuse, neglect, or exploitation shall report the alleged abuse, neglect, or exploitation immediately to the assisted living administrator who shall take appropriate action to protect the resident. The ALR shall report any allegation of abuse, neglect, or exploitation brought to its attention to the Mayor and the Adult Protective Services Program, administered by the Family Services Administration of the Department of Human Development.

(2) An ALR or employee of an ALR may be subject to a penalty imposed by the Mayor for failure to report an alleged incident of abuse, neglect, or exploitation pursuant to the Adult Protective Service Act of 1984.

(3) An ALR shall thoroughly investigate any allegation of abuse, neglect, or exploitation and shall take appropriate action to prevent further incidents. The ALR shall report the results of its investigation and actions taken, if any, to the Mayor.

(c) An ALR shall post signs that set forth the reporting requirement of this section conspicuously in the employee and public areas of the ALR.

Title VI. Admissions; Residential Agreements; Quality of Care; Discharge; Transfer.

Sec. 601. Admissions.

(a) An ALR shall accept as residents only individuals for whom the ALR can provide appropriate services unless the ALR arranges for third party services or the resident does so with the agreement of the ALR.

(b) Prior to admission of a resident, the ALA or designee shall determine that the resident is appropriate for admission to the ALR and that the resident's needs can be met in addition to the needs of the other residents.

(c) An ALR may only admit individuals who are at least 18 years of age.

(d) No individual may be admitted who at the time of initial admission, and as established by the initial assessment:

(1) Is dangerous to him or herself or others or exhibits behavior that significantly and negatively impacts the lives of others, where the ALR would be unable to eliminate such danger or behavior through the use of appropriate treatment modalities; or

(2) Is at high risk for health or safety complications which cannot be adequately managed by the ALR and requires more than 35 hours per week of skilled nursing and home health aide services combined, provided on less than a daily basis, according to section 2113.1 of HCFA Pub. 75 and 42 CFR, sections 409.32, 409.33, and 409.44.

(e) An ALR shall not admit individuals who require the following:

(1) More than intermittent skilled nursing care;

(2) Treatment of stage 3 or 4 skin ulcers;

(3) Ventilator services; or

(4) Treatment for an active, infectious, and reportable disease or a disease or condition that requires more than contact isolation.

(f) The ALR shall maintain records of all denials of admission.

(g) Nothing in this section shall automatically exclude persons with primary or secondary mental health issues from admission.

Sec. 602. Resident agreements.

(a) A written contract must be provided to the resident prior to admission and signed by the resident or surrogate, if necessary, and a representative of the ALR. The nonfinancial portions of the contract shall include the following:

(1) The ALR's organizational affiliations (including parent or subsidiary organizations, religious or charitable affiliation, and management company);

(2) The specific nature of any special care that it holds itself out to provide, such as specialty in Alzheimer's disease or Parkinson's disease;

(3) An identification of services to be included and excluded, part of which is the ISP;

(4) A list of resident rights including grievance procedures;

(5) Unit assignment and procedures if changes occur;

(6) Admission and discharge policies which include clear and specific criteria for admission, transfer, and discharge;

(7) A description of responsibility for provision or coordination of healthcare, if any;

(8) An arrangement for notification in case of the resident's death; and

(9) A disposition of the resident's property upon discharge, transfer, or death of the resident.

Sec. 603. Financial agreements.

(a) The written resident agreement required by section 602 shall include financial provisions which indicate the following:

(1) The obligations of the ALR, the resident, or the resident's surrogate as to performance of the following:

(A) The handling of the finances of the resident;

(B) The purchasing or renting of essential or desired equipment and supplies;

(C) The coordinating and contracting for services not covered by the resident agreement; and

(D) The purchasing of medications and durable medical equipment;

(2) Separate and accurate records of all funds and personal property deposited with or managed by the ALR for the benefit of a resident which include a receipt stating the date, amount, and purpose of any transaction and the current balance;

(3) Rate structure and payment provisions covering all rates to be charged to the resident, including the following:

(A) Service packages;

(B) Fee for service rates; and

(C) Any other nonservice related charges;

(4) Payment arrangements and fees, if known, for third-party services not covered by the resident agreement, but arranged for by either the resident, the resident's surrogate, or the ALR;

(5) Identification of the persons responsible for payment of all fees and charges and a clear indication of whether the person's responsibility is or is not limited to the extent of the resident's funds;

(6) A provision which provides at least 45 days notice of any rate increase except if necessitated by a change in the resident's medical condition;

(7) The procedures the ALR will follow in the event the resident or surrogate can no longer pay for services provided for in the resident agreement or for additional services or care needed by the resident; and

(8) The terms governing the refund of any pre-paid fees or charges in the event of a resident's discharge from the ALR or termination of the resident agreement.

(b) The ALR shall establish billing, payment, and credit practices that are fair and reasonable.

Sec. 604. Individualized Service Plans.

(a)(1) An ISP shall be developed for each resident prior to admission.

(2) An ISP shall be developed following the completion of the "post move-in" assessment.

(3) The ISP shall be written by a healthcare practitioner using information from the assessment.

(4) The ISP shall be developed with the resident, or surrogate, as a full partner.

(5) The ISP shall be signed by the resident, or surrogate, and a representative of the ALR.

(6) The ISP shall include a shared responsibility agreement when necessary.

(7) The ISP shall be based on such factors as:

(A) The medical, rehabilitation, and psychosocial assessment of the resident;

(B) The functional assessment of the resident; and

(C) The reasonable accommodation of resident and, if necessary, surrogate preferences.

(b) The ISP shall include the services to be provided, when and how often the services will be provided, and how and by whom all services will be provided and accessed.

(c) During the ISP development process, the ALR shall confer with the prospective resident and, if necessary, the surrogate to arrive at a mutual agreement as to the responsibilities of each party in accessing care and achieving related outcomes.

(d) The ISP shall be reviewed 30 days after admission and at least every 6 months thereafter. The ISP shall be updated more frequently if there is a significant change in the resident's condition. The resident and, if necessary, the surrogate shall be invited to participate in each reassessment. The review shall be conducted by an interdisciplinary team that includes the resident's healthcare practitioner, the resident, the resident's surrogate, if necessary, and the ALR.

(e) An ALR shall facilitate aging in place to the best of its ability with the understanding that there may be a point reached where adequate and appropriate services can not be marshalled to support the resident safely, making transfer to another setting necessary.

Sec. 605. Shared responsibility agreements.

(a) Whenever disagreements arise as to lifestyle, personal behavior, safety, and service plans the ALR staff, resident or surrogate, and other relevant service providers shall attempt to develop a shared responsibility agreement.

(b) A shared responsibility agreements represents a tool for ALRs to recognize an individual resident's right to autonomy by respecting his or her right to make individual decisions regarding lifestyle, personal behavior, and ISPs. In some cases, a resident's decision may involve increased risk of personal harm and therefore potentially increase the risk of liability by the ALR absent an agreement between the resident and ALR concerning such decisions or actions. In such instances the ALR shall:

(1) Explain to the resident, or surrogate, why the decision or action may pose risks and suggest alternatives to the resident; and

(2) Discuss with the resident, or surrogate, how the ALR might mitigate potential risks.

(c) If, after consultation with the ALR as required by subsection (b) of this section, a resident decides to pursue a course of action, such as refusal of services, that may involve increased risk of personal harm and conflict with the ALR's usual responsibilities, the ALR shall:

(1) Describe to the resident the action or range of actions subject to negotiation; and

(2) Negotiate a shared responsibility agreement, with the resident as a full partner, acceptable to the resident and the ALR that meets all reasonable requirements implicated. The shared responsibility agreement shall be signed by the resident or surrogate and the ALR.

Sec. 606. Resident records.

A record shall be maintained for every resident and include the following:

(1) The resident agreement required by this title, including the "Resident's Rights" statement and any additional agreements;

(2) The functional assessment of ADLs;

(3) A physician's statement, including medical orders and rehabilitation plans;

(4) The ISP and any revisions thereto;

(5) All shared responsibility agreements; and

(6) Any note and comments added to the record by the ALR.

Sec. 607. Services to be provided.

(a) An ALR shall provide or ensure the provision of the following:

(1) Twenty-four hour supervision and oversight to ensure the well-being and safety of its residents;

(2) Three nutritious and attractive meals and additional snacks, modified to individual dietary needs as necessary, on a daily basis;

(3) A variety of fresh and seasonal foods, adapted to the food habits, preferences, and physical abilities of the residents;

(4) At minimum, some assistance with ADLs and IADLs to meet the scheduled and unscheduled service needs of the residents; and

(5) Laundry and housekeeping service not provided by the resident or surrogate.

(b) An ALR shall facilitate access for a resident to appropriate health and social services, including social work, home health agencies, nursing, rehabilitative, hospice, medical, dental, dietary, counseling, and psychiatric services.

(c) An ALR shall provide or coordinate scheduled transportation to community-based services.

Sec. 608. Discharge and transfer.

(a) When a resident wishes to be discharged from an ALR, the resident or surrogate shall give 30 days written notice to the ALR.

(b) When a sudden, unexpected, and life-threatening medical emergency arises necessitating the immediate transfer of the resident to an acute care facility, the ALR shall

immediately notify the surrogate and the resident's healthcare provider of the transfer. The ALR shall provide the surrogate and healthcare provider with information concerning cause of the transfer and the name and location of the acute care facility.

(c) After a resident is transferred pursuant to subsection (b) of this section, his or her return to the ALR shall be determined by the renegotiation of the ISP with the resident or surrogate, the resident's healthcare provider, and the ALR. If, in renegotiating the ISP, the interested parties determine that the resident can no longer safely reside at the ALR, discharge planning shall take place in consultation with the resident or surrogate, the resident's healthcare provider, and the ALR. Under these circumstances the ALR shall waive the 30 day notice requirement.

(d) Before a resident may be discharged on an involuntary basis, the ALR shall provide 30 days written notice to the resident and surrogate of the planned discharge, and make arrangements for the discharge in consultation with the resident, the surrogate, and the healthcare provider. Any involuntary discharge shall conform to the notice and process established in title III of the Health-Care Protection Act.

(e) Although an ALR shall make every effort to avoid discharge, grounds for involuntary discharge may include the following:

(1) Failure to pay all fees and costs as specified in the contract; and

(2) Inability of the ALR to meet the care needs of the resident as provided in the ISP.

(f) An involuntary discharge shall be canceled upon the occurrence of one the following:

(1) The payment of all monies owed at any time prior to discharge; or

(2) The negotiation of a new ISP.

Title VII. Staffing and Training.

Sec. 701. Staffing standards.

(a) An ALR shall be supervised by an ALA who shall be responsible for all personnel and services within the ALR.

(b) The ALA shall ensure that each resident has access to appropriate medical, rehabilitation, and psychosocial services as established in the ISP and that there is appropriate oversight, monitoring, and coordination of all components of the ISP, including necessary transportation and the delivery of needed supplies.

(c)(1) An ALA shall be at least 21 years of age.

(2) An ALA shall possess at least a high school diploma or general equivalency diploma ("G.E.D.") or have served as an operator or administrator of a licensed community residence facility ("CRF") in the District of Columbia for at least one of the past 3 years in which the CRF has met minimum legal standards. An ALA employed on or after the effective date of this act shall have at least a high school diploma or G.E.D. and have served as a direct care

provider or administrator for at least one of the past three years.

(3) An ALA shall possess satisfactory knowledge of the following:

(A) The philosophy of assisted living;

(B) The health and psychosocial needs of residents;

(C) The resident assessment process;

(D) The development and use of ISPs;

(E) Medication administration, including cuing, coaching, and monitoring residents who self-administer medications, with or without assistance;

(F) The provision of assistance with activities of daily living and personal hygiene;

(G) Residents' rights;

(H) Fire and life safety codes;

(I) Infection control, including standard precautions to prevent infection;

(J) Food safety and sanitation;

(K) First aid and cardiopulmonary resuscitation (CPR);

(L) Emergency disaster plans;

(M) Human resource management, including staff employment, orientation and training, employee rights and protection against discrimination, harassment, and wrongful discharge; and

(N) Financial management.

(d) An ALA shall:

(1) Employ staff and develop a staffing plan in accordance with this act and based upon the following criteria to assure the safety and proper care of residents in the ALR:

(A) The health, mental condition, and psychosocial needs of the residents;

(B) The fulfillment of the 24-hours-a-day scheduled and unscheduled needs of the residents;

(C) The size and layout of the ALR;

(D) The capabilities and training of the employees; and

(E) Compliance with all of the minimum standards in this act;

(2) Assure that sufficient staff who know how to implement the ALR's evacuation plan and emergency management plan are on the premises at all times to implement emergency procedures;

(3) Assure that each person employed by the ALR maintains personal cleanliness and hygiene;

(4) Develop written job descriptions for staff who are responsible for providing personal services to residents and provide a copy of the job description to the employee;

(5) Assign duties to each staff member consistent with his or her level of education, preparation, and experience;

(6) Assure that there is at least one staff member within the ALR at all times who

is certified in first-aid and CPR;

(7) Assure that all members of the staff are mentally and physically capable of performing their assigned duties;

(8) Assure that each employee has a background check pursuant to federal and District law executed at the time of initial employment;

(9) Assure that members of the staff appear to be free from apparent signs and symptoms of communicable disease, as documented by a written statement from a healthcare practitioner;

(10) Remove from duty any staff member who is found to have, or is suspected of having, a communicable disease or is mentally or physically incapable of performing her or his duties until the ALA determines that such impairment no longer exists;

(11) Maintain personnel records for each employee that include documentation of criminal background checks, statements of health status, and documentation of the employee's communicable disease status;

(12) Assure that, during periods of temporary absence of the ALA when residents are on the premises, a staff member who is at least 18 years of age and meets the staffing standards of the ALA required by this section shall assume responsibilities of the ALA; and

(13) Complete the training required by section 702 and 12 additional hours of training, annually, conducted by a nationally recognized organization that possesses experience in training staff in dementia care, such as the Alzheimer's Disease and Related Disorders Association, on managing residents who are living with cognitive impairments.

(e) Newly hired staff shall have 30 days to document their communicable disease status. For the purposes of this subsection, "newly hired staff" means any individual who is hired by an ALR regardless of the individual's previous work experience. An employee who is transferring from one ALR to another ALR that is under the same management or ownership, without break in service, shall not be considered newly hired staff.

(f) Employees shall be required on an annual basis to document freedom from tuberculosis in a communicable form.

(g) The staff shall:

(1) Be at least 21 years of age;

(2) Possess current and appropriate licensure and certifications as required by law;

(3) Possess sufficient skills, education, training, and experience to meet the needs of the residents;

(4) Subject to their assigned duties and responsibilities, possess a satisfactory knowledge of the resident assessment process, use of ISPs, resident health and psychosocial needs, and resident rights;

(5) Complete initial and ongoing training pertaining to the philosophy of care in

ALRs and meeting the personal care needs of residents; and

(6) Not work unsupervised without satisfactory completion of the training required by section 702.

(h) Staff who have not completed the training required by section 702 must work at all times under the supervision of a staff member who has satisfactorily completed this training.

(i) For the purposes of subsection (g)(5) of this section "ongoing training" means a regularly scheduled program of staff training designed by the ALR to assure that all staff who have direct resident contact possess the skills necessary to provide high quality services in a manner appropriate to the philosophy of assisted living and includes staff training in how to monitor changes in a resident's condition, including physical and cognitive assessments.

Sec. 702. Staff training.

(a) All staff shall be properly trained and be able to demonstrate proficiency in the skills required to effectively meet the requirements of this act. Prior to the date of hire, an employee must meet or possess one of the following criteria:

(1) Be certified as a nurse's aide;

(2) Be certified as a home care aide as defined in the Medicare criteria in OBRA 1987;

(3) Be properly trained by virtue of holding current licenses in a healthcare related field;

(4) Be properly trained under a plan approved by the Mayor which covers the following topics, for a minimum of 40 hours:

(A) Delivering care for the bed-bound resident, including bathing, feeding, shampooing, dressing, positioning, and toileting;

(B) Use of the first aid kit and knowledge of its location;

(C) Confidential treatment of personal information;

(D) Procedures for detecting and reporting suspected abuse, neglect, or exploitation of residents;

(E) Managing difficult aggressive behavior;

(F) Advanced body mechanics;

(G) Communicating with adults, including those with communication deficits such as aphasia, hearing loss, loss of eyesight, and cognitive impairments;

(H) Recognizing the signs and symptoms of dementia;

(I) Caring for the cognitively impaired with such behaviors as wandering, repetitive questions, and confusion;

(J) Techniques for assisting residents in overcoming transfer trauma;

(K) Awareness of resident's "change in condition", including depression and ability to report changes to the appropriate staff according to the protocol of the ALR;

(L) Basic competence in housekeeping, laundry, food handling, and meal

preparation; and

(M) Any specialized training for special needs not covered through the basic training.

(b) Within 7 days of employment, an ALR shall train a new member of its staff as to the following:

(1) Their specific duties and assignments;

(2) The purpose and philosophy of the ALR;

(3) The services provided;

(4) The daily routines;

(5) The rights of residents;

(6) The emergency procedures and disaster drills and techniques of complying, including evacuating residents when applicable;

(7) Elementary body mechanics, including proper lifting and in place transfer;

(8) Choking precautions and airway obstruction, including the Heimlich Maneuver; and

(9) Infection control.

(c) After the first year of employment, and at least annually thereafter, a staff member shall complete a minimum total of 12 hours of in-service training in the following:

(1) Emergency procedures and disaster drills;

(2) Rights of residents;

(3) Four hours covering cognitive impairments in an in-service training approved by a nationally recognized and creditable expert such as the Alzheimer's Disease and Related Disorder Association; and

(d) On an annual basis, the ALA shall complete 12 additional hours of training on cognitive impairments approved by a nationally recognized organization with expertise in dementia such as the Alzheimer's Disease and Related Disorders Association.

Title VIII. Resident Assessment.

Sec. 801. General.

A resident assessment required by this title shall form the basis for the development of the resident's service plan, and shall be completed for all routine admissions to the ALR.

Sec. 802. Medical, rehabilitation, and psychosocial assessment.

(a) A medical, rehabilitation, and psychosocial assessment of the resident shall be completed within 30 days prior to admission.

(b) The ALR shall maintain resident information obtained from a standardized physician's statement approved by the Mayor. The information shall include a description of the applicant's current physical condition and medical status relevant to defining care needs,

and the applicant's psychological and cognitive status, if so indicated during the medical assessment.

(c) The assessment shall be based on an examination by the prospective resident's primary, licensed healthcare practitioner within 30 days prior to admission. The information obtained from the examination shall include at least the following:

(1) The individual's medical history with a recent evaluation;

(2) Any significant medical conditions affecting function, including the individual's ability for self-care, cognition, behavior, and psychosocial activities;

(3) Presence of allergies;

(4) Confirmation that the applicant is free from communicable TB and from other active, infectious, and reportable communicable diseases;

(5) Current medication profile and projected and other needed medications, treatments and service; review of nonprescription drugs and review of possible adverse interactions;

(6) Current dietary needs and restrictions;

(7) Medically necessary limitations or precautions; and

(8) Monitoring or tests that may need to be performed or followed up after admission.

Sec. 803. Functional assessment.

Within 30 days prior to admission, the facility shall collect, on a standardized form approved by the Mayor, the following information regarding each applicant:

(1) Level of functioning in activities of daily living including bathing, dressing, grooming, eating, toileting, and mobility;

(2) Level of support and intervention, including any special equipment and supplies, required to compensate for the individual's deficits in activities of daily living;

(3) Current physical or psychological symptoms of the individual requiring monitoring, support, or other intervention by the ALR;

(4) Capacity of the individual for making personal and healthcare related decisions;

(5) Presence of disruptive behavior or behavior which presents a risk to the physical or emotional health and safety of self or others;

(6) Social factors, including:

(A) Significant problems with family circumstances and personal relationships;

(B) Spiritual status and needs; and

(C) Ability to participate in structured and group activities and the resident's current involvement in such activities.

Sec. 804. Short-term residential care.

For individuals who will stay in the ALR no longer than 30 days, only the following information is required for admission to the ALR:

(1) An analysis of the individual's current physical condition, medical status, and functional assessment as set out in this title; and

(2) A resident agreement in accordance with this act.

Sec. 805. Emergency placement.

A resident admitted as an emergency placement, not to exceed 14 days, must comply with admission, physical examination, and assessment requirements of this act.

Title IX. Medication Management.

Sec. 901. Responsibilities of the ALR personnel in medication management.

An ALA shall ensure that an initial assessment identifies whether a resident:

(1) Is capable of self-administering his or her own medications;

(2) Is capable of self-administering his or her own medication, but requires a reminder to take medications or requires physical assistance with opening and removing medications from the container, or both; or

(3) Requires that medications be administered by a TME or a licensed nurse.

Sec. 902. Pre-admission medication management assessment.

Within 30 days prior to admission, the ALR shall consult with the prospective resident's healthcare practitioner regarding:

(1) The prospective resident's current medication profile, including a review of nonprescription drugs;

(2) Possible adverse interactions;

(3) Common expected or unexpected side effects; and

(4) The potential that such medications have to act as chemical restraints.

Sec. 903. On-site review.

The ALR shall arrange for an on-site review by a registered nurse every 45 days to:

(1) Supervise the administration of medications by Trained Medication Employees;

(2) Assess the resident's response to medication; and

(3) Assess the resident's ability to continue to self-administer his or her medications.

Sec. 904. Medication storage.

(a) The ALA shall provide a secured space for medication storage with access to a sink and cold storage in the same area. Space for necessary medical supplies and equipment shall be provided.

(b) The storage area shall be kept locked when not in use.

(c) The storage area shall be used only for storage of medications and medical supplies.

(d) The key to the storage area shall be kept on the person of the employee on duty who is responsible for administering the medications.

(e)(1) All medications shall be kept in their original packaging and shall be properly labeled and identified.

(2) The label of each resident's prescription medication container shall be permanently affixed and contain the resident's full name, healthcare practitioner's name, prescription number, name and strength of drug, lot number, quantity, date of issue, expiration date, manufacturer's name, if generic, directions for use, and cautionary or accessory information. Required information appearing on individually packaged drugs or within an alternate medication delivery system need not be repeated on the label.

(3) All over-the-counter (OTC) medications repackaged by the pharmacy shall be labeled with an expiration date, name and strength of the drug, lot number, date of issue, manufacturer's name if generic, and cautionary or accessory labels, in accordance with U.S.P. regulations. Original manufacturer's containers shall be labeled with at least the resident's name. The name label shall not obstruct any of the aforementioned information.

(4) In the "unit of use" distribution system, each dose of medication shall be individually packaged in a hermetically sealed, tamper-proof container, and shall carry full manufacturer's disclosure information on each discrete dose. Disclosure information shall include product name, strength, lot number, expiration date, and the manufacturer's distributor's name.

(5) Single use and disposable items shall not be reused.

(6) No stock supply of prescription medications shall be maintained, unless prior approval is obtained from the Mayor.

(7) Discontinued or expired medications shall be destroyed within 30 days in the ALR, or, if unopened and properly labeled, returned to the pharmacy. All medication destroyed in the ALR shall be witnessed and documented by two persons, one of whom shall be the ALA or the ALA designee.

(8) Residents who self-administer may keep and use prescription and nonprescription medications in their units as long as they keep them secured from other residents.

Sec. 905. Medication administration.

(a) Licensed nurses, physicians, physician assistants, and TMEs may administer medications to residents or assist residents with taking their medications.

(b)(1) Each resident shall be identified prior to drug administration.

(2) Drugs prescribed for one resident shall not be administered to another resident.

(3) The TME shall report drug errors to the healthcare practitioner or licensed nurse and shall document the incident in the resident's record.

Sec. 906. Medication management training program.

(a) The Mayor shall develop medication management training courses which shall be approved by the Board of Nursing. The medication administration training program shall include instruction in the following areas:

(1) Cuing, coaching, and monitoring residents who self-administer medications with or without assistance;

(2) Pharmacology;

(3) Terminology related to medication;

(4) Procedures and precautions in administering medication;

(5) Types of medication;

(6) Actions, interactions, and effects of medication;

(7) Administration of medication in emergency or life-threatening circumstances;

(8) Recordkeeping, storage, handling, and disposal requirements for medications;

(9) Rights of residents;

(10) Monitoring of vital signs;

(11) Federal and District of Columbia laws governing medication; and

(12) Reference sources related to medication.

(b) The Mayor shall maintain a list of approved medication administration courses for the training of persons to be certified by the District of Columbia as TMEs.

(c) In order to maintain certification, every 2 years a TME shall successfully complete a clinical update or refresher course approved by the Mayor.

(d) The ALA shall document completion of the medication training course in TME's personnel file.

Sec. 907. Medication control.

(a) Each resident shall be identified prior to drug administration.

(b) Drugs prescribed for one resident shall not be administered to another resident.

(c) Staff shall report drug errors and adverse drug reactions immediately to the ALA or ALA designee who shall report, as appropriate, to the doctor, prescriber, pharmacist, resident, and resident's surrogate and shall document the incident in the resident's record.

(d) A unit drug compliance package (blister or bubble or unit dose package) shall be developed and implemented where feasible.

(e) Medications shall be refrigerated separately from lab specimens and food.

Title X. Facility Regulations.

Sec. 1001. General conditions.

(a) An ALR shall meet applicable zoning, building, housing, sewer, water, fire prevention codes, rules, and regulations of the District of Columbia.

(b) An ALR shall maintain all structures, installed equipment, grounds, and individual living units in good repair and operable.

(c) An ALR may be classified as a residential occupancy and may be located in a single or multi-family dwelling.

Sec. 1002. Fire safety.

An ALR shall comply with the Life Safety Code of the National Fire Protection Association, NFPA 101, 1997 edition as follows:

(1) An ALR shall be in compliance with Chapter 22, New Residential Board and Care Occupancies, Life Safety Code of the National Fire Protection Association; and

(2) An existing community residence facility that is converting to an ALR shall be in compliance with Chapter 23, Existing Residential Board and Care Occupancies, of the Life Safety Code of the National Fire Protection Association.

Sec. 1003. General building exterior.

(a) An ALR shall ensure that the exterior of its facility, including walkways, yards, porches, chimney, gutters, downspouts, paintable surfaces, and accessory buildings are maintained structurally sound, sanitary, and in good repair.

(b) An ALR that provides services to wheelchair-bound residents, shall make reasonable accommodations to render the ALR accessible to residents who are wheel-chair bound through the installation of a chair lift, curbcuts, an exterior ramp, or like accommodations.

Sec. 1004. General building interior.

(a) An ALR shall ensure that the interior of its facility including walls, ceilings, doors, windows, equipment, and fixtures are maintained structurally sound, sanitary, and in good repair.

(b) An ALR shall ensure that floors and stairways provide a clean, slip-resistant, and safe surface, free of tripping hazards.

(c) An ALR shall install and maintain assist handrails or grab bars, whenever practicable, on each side of interior stairways and on one side of corridors and in bathrooms.

(d) An ALR shall provide common areas for social and recreational use totaling at least 35 square feet per resident for living, dining, therapy, and recreational activities.

Sec. 1005. Accessibility.

An ALR that provides services for wheelchair-bound residents, shall insure that:

(1) Doorways and hallways provide a clear opening of at least 32 inches; and

(2) Thresholds exceeding 1/2 inch are modified to provide a 1:12 maximum slope.

Sec. 1006. Bathrooms.

(a) An ALR shall ensure that there is one full bathroom, for every 6 residents, including live-in family or staff. Additional full or half baths shall be available to non-live-in staff. No resident shall be required to traverse more than one flight of stairs to access a bathroom and appropriate accommodations shall be made for residents who are unable to climb stairs.

(b) When applicable, bathrooms shall contain adequate space and strategically located grab bars to allow wheelchair-bound residents to utilize toilets, tubs, showers, and wash basins without traversing a stair way.

(c) An ALR shall insure that the temperature of the hot water at all taps to which residents have access is controlled by the use of thermostatically controlled mixing valves or by other means, including control at the source, so that the water temperature does not exceed 110 degrees Fahrenheit.

Sec. 1007. Health, light, and ventilation.

(a) An ALR shall ensure that each facility is lighted and ventilated in accordance with Title 12 of the District of Columbia Municipal Regulations (District of Columbia Construction Codes Supplement of 1992). Artificial night lights for corridors and exterior security lighting shall be installed.

(b) Each room shall have either a functioning ceiling light fixture or another source of artificial light.

(c) An ALR shall ensure that heating and air conditioning equipment is maintained to ensure that:

(1) During waking hours, an interior temperature throughout the facility of at least 72 degrees Fahrenheit when outside temperatures are 65 degrees Fahrenheit or below, is maintained throughout the facility;

(2) During sleeping hours, an interior temperature of at least 68 degrees Fahrenheit, when outside temperatures are 65 degrees Fahrenheit or below, is maintained throughout the facility;

(3) For individual units, heating and air conditioning shall be maintained at a temperature which is comfortable for the individual resident, whenever practicable; and

(4) When inside temperature exceeds 85 degrees Fahrenheit, mechanically cooled air shall be used in areas of the building used by residents with no inside area used by the residents allowed to exceed 90 degrees Fahrenheit.

Sec. 1008. Bedrooms.

(a) An ALR located in an existing building shall ensure that bedrooms provide at least 70 square feet of habitable space for single occupancy resident units and 100 square feet of habitable space in double occupancy resident units. Each bedroom shall have adequate dresser and closet or wardrobe space for residents' seasonal clothing and personal belongings. A secure storage space in a resident's unit shall be made available if requested by the resident.

(b) Any ALR located in a building newly constructed or renovated after the effective date of this act shall ensure that bedrooms provide at least 80 sq. ft. of habitable space for single occupancy and 120 sq. ft. of habitable space for double occupancy.

(c) An ALR shall ensure that each resident has an adult size bed with clean comfortable mattress and extra linens. Additional furnishings, such as night stand, desk, chair, mirror, waste basket, etc., shall be made available, subject to residents wishes and tastes. Beds in double occupancy bedrooms must be at least 3 feet apart. Residents may choose to provide their own furnishings after being made aware of the furnishings that the facility is required to provide. All furnishings must meet the Fire Safety Code and be maintained in good repair.

Sec. 1009. Kitchen.

An ALR shall provide a kitchen that has the following:

(1) Storage, refrigerator, or freezer space for perishable and nonperishable foods;

(2) Food preparation areas with cleanable surfaces;

(3) Equipment to prepare and serve food at safe and palatable temperatures; and

(4) Sufficient equipment and staffing to be in compliance with section 1116 of Title 14 of the District of Columbia Municipal Regulations, as those regulations are applicable to boarding houses.

Sec. 1010. Laundry.

An ALR shall provide an on-site laundry facility for use of staff for residents personal laundry. All laundry shall be processed and handled in a manner to prevent the spread of infection by:

(1) Separate processing and storage of incontinent items; and

(2) Sanitizing by hot water and appropriate chemical agents.

Sec. 1011. Special requirements for ALRs with 17 beds or more.

(a) An ALR that provides sleeping accommodations for more than 16 residents shall comply with sections 1001 through 1010 as well as this section.

(b) The ALR may be free-standing or a distinct part of an institutional occupancy.

(c) The ALR shall be responsible for providing or coordinating personalized care to individuals who reside in their own living units (which may include dually occupied units) which may or may not include a kitchenette or living rooms and which contain bedrooms.

(d) Living units may or may not include bathrooms; except that, no more than

4 residents shall share a common bathroom. Shared bathrooms shall be in close proximity and on the same floor as living units or bedrooms.

(e) Living units or bedrooms may be locked at the discretion of the residents, except when the resident's assessment documents indicate otherwise.

(f) An ALR shall have a central dining room, living room or parlor, and common activity center (which may also serve as living rooms or dining rooms).

(g) An ALR providing 17 beds or more shall be in compliance with section 512 of Title 12 of the District of Columbia Municipal Regulations, making the facility accessible to physically handicapped and aged residents.

(h) An ALR shall ensure that all food is prepared and served in accordance with Chapters 20 through 24 of Title 23 of the District of Columbia Municipal Regulations and shall organize plumbing facilities to insure that food is processed and served so as to be safe for human consumption.

Sec. 1012. Certificate of Need.

A Certificate of Need shall not be required for Assisted Living Residences licensed under this act.

Title XI. Insurance.

Sec. 1101. Insurance for Assisted Living Residences.

(a) Each ALR shall carry insurance for at least the following:

(1) Hazards (fire and extended coverage) in the amount of $500.00 per resident to protect belongings with a minimum of $2,000 of coverage per facility;

(2) Premises, personal injury, and products liability at least in the following amounts:

(A) For one to 2 beds, $100,000 per occurrence;

(B) For 3 to 9 beds, $300,000 per occurrence; and

(C) For 10 or more beds, $500,000 per occurrence; and

(3) Incidental malpractice coverage specific to the duties required of an ALA manager or any staff member in the amount of at least $100,000.

(b) If an ALR is not owned by the operator or manager, the operator or manager shall obtain proof of the owner's premises liability coverage, such as a certificate of standard landlord coverage, or shall place the owner on the operator's or manager's policy as an additional named insured.

Title XII. Appeals.

Sec. 1201. Appeals from actions of the Mayor.

A person or licensee aggrieved by an action of the Mayor under this act may appeal the Mayor's action by filing a request for hearing as provided in section 6 of the Health-Care Licensure Act.

Title XIII. Rulemaking.

Sec. 1301. Rulemaking by the Mayor.

The Mayor shall promulgate proposed rules where necessary to supplement the provisions of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved.

Title XIV. Conforming Amendments.

Sec. 1401. Section 549 of the District of Columbia Public Assistance Act of 1982 is amended as follows:

(a) Subsection (c) is amended by adding the phrase "or an Assisted Living Residence that has 16 or fewer residents" after the phrase "50 or fewer residents".

(b) Subsection (d) is amended by adding the phrase "or an Assisted Living Residence that has 17 or more residents" after the phrase "50 or fewer residents".

(c) Subsection (e-1)(1) and (2) is amended by adding the phrase "or an Assisted Living Residence" after the phrase "community residence facility" wherever it appears.

(d) Subsection (f) is amended by adding a new sentence at the end to read as follows: "For the purposes of this section the term "Assisted Living Residence" shall have the same meaning as given the term in section 201(4) of the Assisted Living Residence Act of 2000, Bill 13-107, passed by the Council on second reading February 1, 2000.".

(e) Subsection (g) is amended by adding the phrase "and Assisted Living Residences" after the phrase "community residence facilities".

Sec. 1402. Section 2(10) of the Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997, is amended by adding the phrase "or an Assisted Living Residence as defined by section 201(4) of the Assisted Living Residence Act of 2000, Bill 13-107, passed by the Council on second reading February 1, 2000" after the phrase "community residence facility".

Sec. 1403. Section 2(1) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 is amended by adding the phrase "or the Assisted Living Residence Regulatory Act of 2000, passed by the Council on second reading February 1, 2000,"

before the phrase "and any entity".

Sec. 1404. The Nursing Home and Community Residence Facility Residents' Protection Act of 1985 is amended as follows:

(a) Section 101 is amended as follows:

(1) A new paragraph (2A) is added to read as follows:

"(2A) "Assisted Living Residence" shall have the same meaning as given the term in section 201(4) of the Assisted Living Residence Act of 2000, Bill 13-107, passed by the Council on second reading February 1, 2000.".

(2) Paragraph (6) is amended by adding the phrase ", Assisted Living Residence," after the phrase "nursing home".

(b) Section 205(b)(1) and (2) is amended by adding the phrase ", Assisted Living Residence," after the phrase "nursing home" wherever it appears and by adding the phrase "or personal care services," after the word "health-care" wherever it appears.

Title XV. Applicability.

Sec. 1501. Implementation of titles I through XIII shall be subject to the availability of appropriations.

Title XVI. Fiscal Impact.

Sec. 1601. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Title XVII. Effective Date.

Sec. 1701. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in

section 602(c)(I) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

Linda W. Cropp
Chairman
Council of the District of Columbia

Anthony A. Williams
Mayor
District of Columbia
APPROVED: March 22, 2000

COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD THIRTEEN

RECORD OF OFFICIAL COUNCIL VOTE

Docket No. B13-107

[ ] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE ADOPTED FIRST READING, 01-04-00

[X] VOICE VOTE APPROVED
RECORDED VOTE ON REQUEST

ABSENT ALL PRESENT

[ ] ROLL CALL VOTE - Result _____ (___-___-___)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Orange				
Allen					Evans					Patterson				
Ambrose					Graham					Schwartz				
Brazil					Jarvis									
Catania					Mendelson									

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council — March 9, 2000 Date

[ ] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE ADOPTED FINAL READING, 03-07-00

[X] VOICE VOTE APPROVED
RECORDED VOTE ON REQUEST

ABSENT ALL PRESENT

[ ] ROLL CALL VOTE - Result _____ (___-___-___)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Orange				
Allen					Evans					Patterson				
Ambrose					Graham					Schwartz				
Brazil					Jarvis									
Catania					Mendelson									

X-indicates no AB-Absent NV-Present not voting

CERTIFICATION RECORD

Secretary to the Council — March 9, 2000 Date

[ ] ITEM ON CONSENT CALENDAR

[ ] ACTION & DATE _____

[ ] VOICE VOTE _____
RECORDED VOTE ON REQUEST

ABSENT _____

[ ] ROLL CALL VOTE - Result _____ (___-___-___)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Orange				
Allen					Evans					Patterson				
Ambrose					Graham					Schwartz				
Brazil					Jarvis									
Catania					Mendelson									

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

_____ _____

Testimony of ANC 3G and Nebraska Ave. Neighborhood Association
Summary of References

Rec'd. 8.3.01

1. Noncompliant 8th Floor Penthouse

Code provisions

11 DCMR § 400.7: "If housing for mechanical equipment, a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:

(a) it shall meet the requirements of § 411;
(b) it shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and
(c) It shall not exceed eighteen feet six inches (18 ft. 6 in.) in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot six inch (18 ft. 6 in.) height of the building."

11 DCMR § 411.3: "All penthouses and mechanical equipment shall be placed in one (1) enclosure . . . ."

11 DCMR § 411.10: "Before taking final action on a roof structure plan, the Zoning Administrator shall have submitted the plan to the Director of the Office of Planning for review and report. . . ."

Exhibits

NANA Volume I, page A-14 – Main roof plan

NANA Volume II, page 9 – Longitudinal building section

NANA Volume I, page A-3 – South elevation

2. FAR Noncompliance – 8th Floor

Code Provisions

11 DCMR § 411.2: "When located below, at the same roof level with, or above the top story of any building or structure, penthouses (as outlined in § 411.1) shall be subject to the provisions of §§ 400.7 . . . ."

11 DCMR § 411.7: "Solely for the uses designated in this section, an increase of allowable floor area ratio of not more than thirty-seven hundredths (0.37) shall be permitted."

BZA
Case No. 16716
Exhibit No. 45

Exhibits

NANA Volume I, page A-14 – Main roof plan

ANC Attachment B – FAR calculations

3. FAR Noncompliance – 3d Floor

Code Provisions

11 DCMR § 199.1: "**Building** – a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel."

Exhibits

NANA Volume I, page A-2 – Front elevation

NANA Volume II, page 7 – 3d floor plan

NANA Volume I, page A-9 – 3d floor plan

ANC Attachment B – FAR calculations

4. FAR Noncompliance – Basement

Code Provisions

11 DCMR § 199.1: "**Basement** – that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade."

11 DCMR § 199.1: "**Cellar** – that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade."

Exhibits

NANA Volume I, page A-5 – Grading plan

ANC Attachment B – FAR calculations

5. FAR Noncompliance – Summary

Code Provisions

11 DCMR § 199.1: "**Floor area ratio** – a figure that expresses the total gross floor area as a multiple of the area of the lot. This figure is determined by dividing the gross floor area of all buildings on a lot by the area of that lot."

11 DCMR § 199.1: "**Gross floor area** – the sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls and from the center line of walls separating two (2) buildings. The term "gross floor area" shall include basements, elevator shafts, and stairwells at each story; floor space used for mechanical equipment (with structural headroom of six feet six inches (6 ft. 6 in.) or more); penthouses; attic space (whether or not a floor has actually been laid, providing headroom of six feet six inches (6 ft. 6 in.) or more); interior balconies; and mezzanines. The term "gross floor area" shall not include cellars, and outside balconies that do not exceed a projection of six feet (6 ft.) beyond the exterior walls of the building."

11 DCMR § 402.4: "Except as [otherwise] provided . . . the maximum permitted floor area ratio in a Residence district shall be as set forth in the following table:

ZONING DISTRICT:	R-5-D
FLOOR AREA RATIO (F.A.R.):	3.5"

Exhibits

ANC Attachment B – FAR calculations

6. Loading Dock Irregularities

Code Provisions

11 DCMR § 2200.2: "No application for a building permit . . . shall be approved unless there is included with the plans for the building or structure a loading plan showing the location, dimensions, and grades of all loading berths, loading platforms and service/delivery loading spaces. . . ."

11 DCMR § 2201.1 "On or after May 12, 1958, all buildings or structures shall be provided with loading berths, loading platforms and service/delivery loading spaces as specified in the following table:

Uses and Districts:	Apartment House with 50 or more dwelling units in all Districts	Any other use in all Districts With 30,000 to 100,000 ft.^{2} of gross floor area
Minimum No. and Size of Loading Berths Req'd:	1 @ 55 feet deep	1 @ 30 feet deep
Minimum No. and Size of Loading Platforms Req'd:	1 @ 200 ft.^{2}	1 @ 100 ft.^{2}
Minimum No. and Size of Service/Delivery Loading Spaces Req'd:	1 @ 20 feet deep	1 @ 20 feet deep"

11 DCMR § 2203.2: "All loading platforms shall be located contiguous and with unobstructed access to the loading berth and shall have unobstructed access to an entrance to the building or structure."

Exhibits

NANA Volume I, page A-5 – Grading plan

NANA Volume I, page A-6 – Basement floor plan

NANA Volume II, page 6 – 1st floor plan

NANA Volume II, page 12 – Electrical plan

7. Excessive Building Height

Code Provisions

11 DCMR § 199.1: "**Building, height of** – the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet. . . . In those districts in which the heights of building is permitted to be ninety feet (90 ft.) or greater, the height of buildings shall be measured to the highest point of the roof excluding parapets not exceeding three feet (3 ft.) in height."

11 DCMR § 400.1: "Except as [otherwise] specified . . . the height of buildings or structures in a Residence district shall not exceed that given in the following table

DISTRICT:	R-5-D
HEIGHT (Feet):	90"

Exhibits

NANA Volume II, page 9 – Longitudinal building section

8. Building Setback Nonconformance

Code Provisions

11 DCMR § 199.1: "**Lot, corner** – a lot fronting on two or more streets at their junction, with the streets forming with each other an angle of forty-five degrees (45°)."

11 DCMR § 199.1: "**Yard, rear** – a yard between the rear line of a building or other structure and the rear lot line . . . . The rear yard shall be for the full width of the lot . . . ."

11 DCMR § 199.1: "**Yard, side** – a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure."

11 DCMR § 404.1: "A rear yard shall be provided for each structure located in a Residence district, the minimum depth of which shall be as set forth in the following table:

ZONING DISTRICT:	R-5-B, R-5-C, R-5-D
MINIMUM DEPTH OF REAR YARD:	4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet."

11 DCMR § 405.5: "A side yard shall not be required along a side street abutting a corner lot in a Residence district."

11 DCMR § 405.6: "Except as [otherwise] provided . . . a side yard shall not be required in an R-3, R-4, R-5-B, R-5-C, R-5-D or R-5-E district. However, if the yard is provided, it shall be at least three inches (3 in.) wide per foot of height of building, but not less than eight feet (8 ft.) wide."

Exhibits

NANA Volume I, page B-1 – Applicant's description of site

NANA Volume I, page A-1 – Site plan

NANA Volume I, page A-5 – Grading plan

9. Noncompliant Use

Code Provisions

11 DCMR § 199.1: "**Community-based residential facility** – a residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living. . . .

(b) **Community residence facility** – a facility that meets the definition for and is licensed as a community residence facility under the Health Care Facilities and Community Residence Facilities Regulations, 22 DCMR § 3099.1."

11 DCMR § 358: "YOUTH CARE HOMES AND COMMUNITY RESIDENCE FACILITIES (R-5)"

11 DCMR § 358.5: "The proposed facility shall meet all applicable code and licensing requirements."

11 DCMR § 359.1: "Health care facilities for sixteen (16) to three hundred (300) persons . . . shall be permitted in an R-5 district if approved by the Board of Zoning Adjustment, in accordance with the conditions specified in § 3108 of chapter 31 of this title, subject to the provisions of this section."

BOCA § 308.0: "**Institutional Use Groups**."

BOCA § 308.2 – "Use Group I-1: This use group shall include buildings and structures which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Where accommodating persons of the above description, the following types of facilities shall be classified as I-1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or less occupants shall be classified as a residential use group."

BOCA § 308.3 – "Use Group I-2: This use group shall include buildings and structures used for medical, surgical, psychiatric, nursing, or custodial care on a 24-hour basis of six or more persons who are not capable of self-preservation. Where accommodating persons of the above description, the following types of facilities shall be classified as I-2 facilities: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals and detoxification facilities. A facility such as the above with five or less occupants shall be classified as a residential use group."

22 DCMR § 3250.7 – "The number of elevators in the facility shall be determined by an elevator need study submitted by the owner of a skilled care facility to be approved by the Mayor, and shall be provided in accordance with the federal Hill-Burton standards applicable to projects, as set forth in the Department of Health and Human Services Publication No. (HRA) 76-4000."

22 DCMR § 3415.1: "A community residence facility shall not use physical restraint or confinement except in an emergency to protect a resident from harming himself or herself or others."

22 DCMR § 3432.3: "In each community residence facility with more than thirty (30) residents, when residents have the use of common living or eating sapce on floors other than floor on which their bedrooms are located, additional tiolets and lavatories shall be provided on those floors in the proportion of (1) toilet and lavatory for each thirty (30) residents."

11 DCMR § 2101.1 – "For Community Residence Facilities serving more than 25 residents, the BZA shall determine the number of required parking spaces (§2101.1)."

Exhibits

NANA Volume II, page 22 – Time line of proposed use of the building

NANA Volume II, page 14 – Building code summary

NANA Volume I, page D-5 – Operational definition of community residence facility

NANA Volume II, page 15 – Title 22 code sections

NANA Volume II, page 7 – 3d floor plan

10. Vesting Unavailability

Code Provisions

11 DCMR § 3202.2: "To determine compliance with the provisions of this title, each application for a building permit shall be accompanied by any of the following that is deemed necessary:

(a) Scaled drawings showing the following: . . .

(2) The plan, elevation, and location by dimensions of all existing and proposed structures, and the proposed use of those structures;"

11 DCMR § 3202.5: "If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application, and the completion of work pursuant to the permit, shall be governed as follows: . . .

(b) If the application is filed after the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or in accordance with the most restrictive zone district classification being considered for the site."

Exhibits

NANA Volume I, page D-1 – Initial building permit application

NANA Volume I, page E-1 – Plan correction list

NANA Volume I, page E-2 – DCRA letter

NANA Volume I, page E-6 – Revised building permit application

NANA Volume II, page 22 – Time line of proposed use of the building

11. Miscellaneous Matters

Code Provisions

BOCA § 1010.2 – "Every floor area shall be provided with the minimum number of approved independent *exits* as required by Table 1010.2 based on the occupant load, except as modified in Section 1010.3. . . .

Table 1010.2: MINIMUM NUMBER OF EXITS FOR OCCUPANT LOAD

Occupant load:	500 or less
Minimum number of exits:	2"

Exhibits

NANA Volume II, page 8 – 7th floor plan

WITNESS CARD CASE NO. 16716

Proponent _____ OPPONENT X

Name MAUREEN DWYER

Address 3531 WINFIELD LANE, NW

City WASH Zip 20007

DAYTIME PHONE No. 663-8834

WITNESS CARD CASE NO. _____

Proponent _____ OPPONENT X

Name SEAN AMBROSE

Address 3600 VALLEJEN AR

City OAKTON VA Zip 22124

DAYTIME PHONE No. 703-744-1828

WITNESS CARD CASE NO. _____

Proponent _____ OPPONENT X

Name STEVEN H. RUIZ

Address 3800 POWELL LANE, PH #1

City FALLS CHURCH, VA. Zip 22041

DAYTIME PHONE No. 703-249-7660

WITNESS CARD CASE NO. 16716

Proponent _____ OPPONENT X

Name ARMANDO LOURENCO

Address 3712 JOCELYN ST., NW

City WASHINGTON DC Zip 20015

DAYTIME PHONE No. 202-363-3502

WITNESS CARD CASE NO. 16716

Proponent V OPPONENT _____

Name Martha Thompson

Address 5120 Nebraska Ave NW

City Washington, D.C. Zip 20008

DAYTIME PHONE No. 202-363-4697

WITNESS CARD CASE NO. 16716

Proponent X OPPONENT _____

Name Peace Chiapetta

Address 5126 Nebraska Ave NW

City Washington D.C. Zip 20008

DAYTIME PHONE No. 301-443-4715

BZA
Case No. 16716
Exhibit No. 46

WITNESS CARD CASE NO. 16716

Proponent ✓ OPPONENT _____

Name John L Tyce PhD

Address 5126 Nebraska Ave

City Wash Zip 20008

DAYTIME PHONE No. 410-321-6068

WITNESS CARD CASE NO. 16716

Proponent ✓ OPPONENT _____

Name MARILYN HOLMES

Address 3706 MILITARY RD. NW

City WASHINGTON, DC Zip 20015

DAYTIME PHONE No. (202)363-5689

WITNESS CARD CASE NO. 16716

Proponent X OPPONENT _____

Name JOHN W SILL

Address 5000 Block of Connecticut

City Washington DC Zip _____

DAYTIME PHONE No. 202 318 5000

WITNESS CARD CASE NO. 16716

Proponent ✓ OPPONENT _____

Name CARL FRUMBOLTZ

Address 5312 35TH ST NW

City WASHINGTON, DC Zip 20015

DAYTIME PHONE No. 202.339.8798

FAX

To: Board of Zoning Adjustment
FAX: 202-727-6072

Date: August 10, 2001

From: Page Chiapella
Nebraska Avenue Neighborhood Association
Tel: 301-443-4715

Re: **Appeal No. 16716**
Materials requested by the BZA on 8/3/01

The following are our documentation showing that (1) DCRA did not provide the Office of Planning with a roof structure plan for their evaluation and (2) the building permit application and fee were accepted by DCRA with essential items missing, including the plat plan.

Attached:

Email to Ellen McCarthy, Office of Planning, requesting formation re: roof structure plan

Email from Jennifer Steingasser, Office of Planning, re: roof structure plan

Plan Correction List from DCRA to applicant dated 7/18/00 requesting a Plat Plan for Job No. 590AA.

BZA
Case No. 16716
Exhibit No. 48

Chiapella, Page (NIAAA)

From: Jennifer Steingasser [Jennifer.Steingasser@dc.gov]
Sent: Friday, July 13, 2001 2:05 PM
To: Chiapella, Page (NIAAA)
Cc: McCarthy, Ellen (OP)
Subject: Roof Structure Review 5111 Conn. AV NW

Ms. Chiapella,

In response to your inquiry, our files indicate that the Office of Planning has not received a request to review the roof structures for the project at 5111 Connecticut Avenue, N.W., building permit number 590AA.

Jennifer Steingasser, AICP
Development Review Specialist
DC Office of Planning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BLRA-10 (Rev. 8/85) /89)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
TECHNICAL REVIEW BRANCH

PLAN CORRECTION LIST

Job No.
590 AA

Engineer	Section	Date
OTENG- AGIPONG	STRUCTURAL	7/18/00

CHANGES REQUIRED ON PLANS PRIOR TO APPROVAL:

No.

1. PROVIDE A PLAT PLAN SHOWING LOCATION OF THE BUILDING.
2. 1ST FL. THE EXTERIOR STAIR TO BE PROTECTED FROM ACCUMULATION OF ICE AND SNOW. (SEC 1014.12 OF BOCA)
3. THIS IS TYPE 1B CONSTRUCTION, THEREFORE, WOOD CANNOT BE USED FOR THE SUPPLEMENTAL STAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

August 15, 2001

MEMORANDUM

TO: The Board of Zoning Adjustments
Office of Zoning

THROUGH: Michael D. Johnson
Zoning Administrator

FROM: Toye Bello, Chief
Zoning Review Branch
Office of the Zoning Administrator

SUBJECT: 5111 Connecticut Avenue, NW - BZA Appeal No. 16716

This memorandum is in response to your request for clarification on an outstanding issue related to the public hearing of the appeal case number referenced above. The issue centers on why a wall, which seemingly encloses an elevator penthouse, is not subject to the setback requirements of Section 400.7(b) of the Zoning Regulations.

In consistency with precedence, the enclosing façade of the elevator penthouse was deemed an Architectural Embellishment designed for the predominant purpose of architectural uniformity of the roof plan. It was therefore, not subject to the setback requirements of Section 400.7(b).

It is instructive that more than thirty three percent (33%) of the continuing facade wall above the main roof line is literally dead or hollow space designed to house the mechanical hoist necessary to the operation of the elevator and its attendant machine room. The first enclosure of relevance, the Utility Room is clearly set back 171/2 feet from the exterior wall of the building.

This design bears similar outcome to an Architectural Embellishment proposed as an extension of a facade wall or a curtain wall above the main roof line behind which is

941 North Capitol Street, N.E., Suite 2700 Washington, DC 20002 Phone: (202) 442-4560 Fax: (202) 442-4871

BZA
Case No. 16716
Exhibit No. 49

hidden mechanical equipment. The Zoning Regulation is silent on the threshold of functionality allowed an Architectural Embellishment. Clearly, where it is not designed to unduly gain occupiable space, then such embellishment can be co-opted for purposes of functional duality. The precedence of this doctrine was established by previous Zoning Administrator rulings in the form of approval of a near similar design at the following three addresses: 2590 L Street, NW, 1725 I Street, NW, and 1818 H Street, NW.

The decision to factor this enclosure in the excess Floor Area Ratio allowed penthouses is logical given the roof proposal over said enclosure which is designed to effect uniformity with the mansard and turret roofs atop the remainder of the building and the function to which the enclosure is devoted.

The mandate of 11 DCMR, Section 411 is to allow the exercise of a reasonable degree of architectural control upon roof structures. Hence, a reasonable degree of flexibility is inherent in the administrative interpretation of the Zoning Administrator provided, that the intent and purpose of the Zoning Regulation is not materially impaired.

If I can be of further assistance, do not hesitate to contact me or the Zoning Administrator at 442-4576.

TB/er

Cc: Gregg Love, Admin/BLRA
Michael D. Johnson, ZA

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D.C. GOVERNMENT
CTR/DCRA CASHIERS OFFICE
941 N. CAPITOL STREET NE
WASHINGTON, DC 20002
202-727-1000

Store # 0001 Receipt # 057940
Reg. # 1 07/10/00 at 08:54
Cash Drawer 28 Sale Clerk 28

EK0300121I OTHER BUS. LIC. PERMITS
U 1 0 $ 2,000.00 $ 2,000.00

Sub-Total $ 2,000.00
Tax $ 0.00

Total Sale $ 2,000.00

Check Amount $ 6,000.00

Change Due $ 0.00

0848

★★★ GOVERNMENT OF THE DISTRICT OF COLUMBIA
BLRA-17
(Rev. 10/89)

DEPARTMENT OF CONSUMER AND REGULATORY AF
BUILDING AND LAND REGULATION ADMINISTRATI
PERMIT PROCESSING DIVISION
PERMIT & CERTIFICATE ISSUANCE BRANCH

Fill

RECEIPT FOR FILING FEE

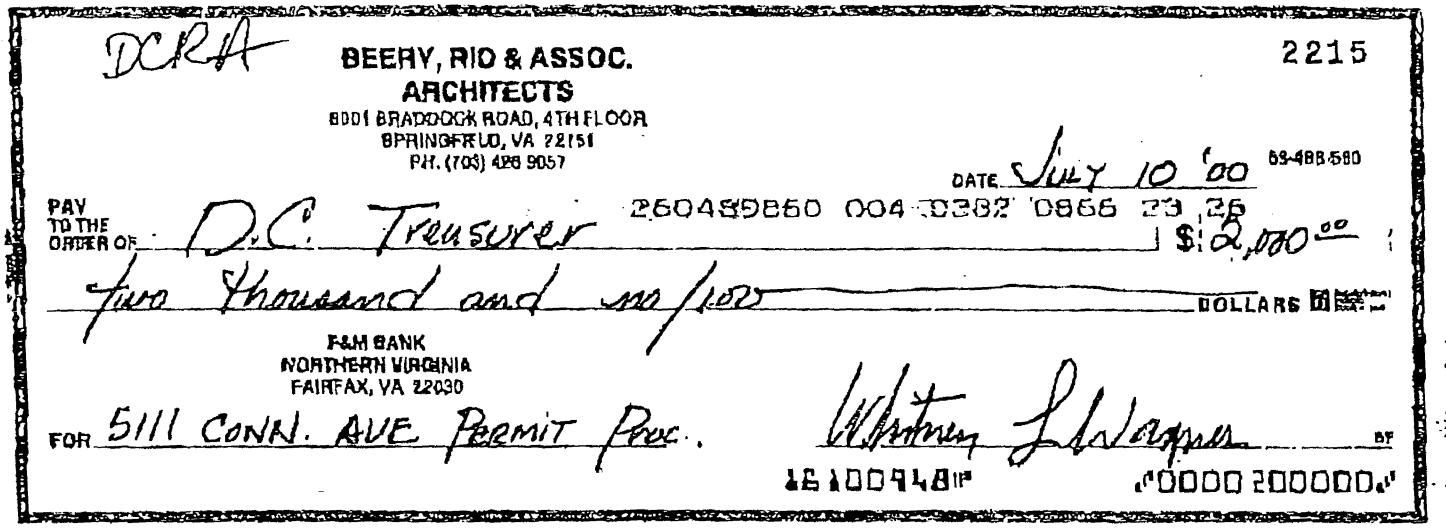
ADDRESS OF PROPOSED WORK:	SQUARE	LOT 161 49, 51 53-56
Mario Escalante	1989	
RECEIVED FROM:		DATE
5111 Conn Ave NW		7-10

Balance of Permit Fee To Be Paid At Time of Issua

Chief, Permit & Certificate Issuance Branch

Clerk

Credit



DCRA

BEERY, RIO & ASSOC.
ARCHITECTS
8001 BRADDOCK ROAD, 4TH FLOOR
SPRINGFIELD, VA 22151
PH. (703) 426 9057

2215

DATE July 10 '00 — 53-488/580

PAY TO THE ORDER OF D.C. Treasurer — $ 2,000.00

Two Thousand and no/100 — DOLLARS

F&M BANK
NORTHERN VIRGINIA
FAIRFAX, VA 22030

FOR 5111 CONN. AVE Permit Proc.

Whitney L. Wagner

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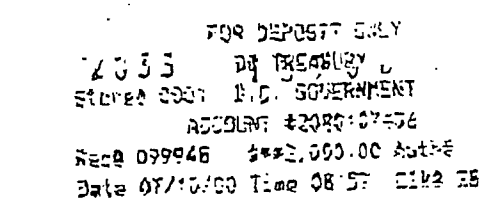
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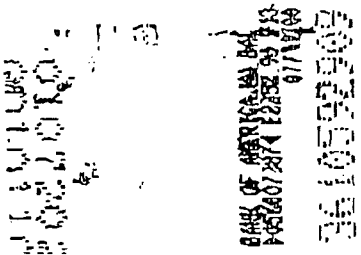
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MD-E-995-585-751-FII
DOB 11-29-58
EXP 11-29-06





GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

August 15, 2001

MEMORANDUM

TO: The Board of Zoning Adjustments
Office of Zoning

THROUGH: Michael D. Johnson
Zoning Administrator

FROM: Toye Bello, Chief
Zoning Review Branch
Office of the Zoning Administrator

SUBJECT: 5111 Connecticut Avenue, NW - BZA Appeal No. 16''16

This memorandum is in response to your request for clarification on an outstanding issue related to the public hearing of the appeal case number referenced above. The issue centers on why a wall, which seemingly encloses an elevator penthouse is not subject to the setback requirements of Section 400.7(b) of the Zoning Regulations.

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This design bears similar outcome to an Architectural Embellishment proposed as an extension of a facade wall or a curtain wall above the main roof line behind which is

941 North Capitol Street, N.E., Suite 2700 Washington, DC 20002 Phone: (202) 442-4760 Fax: (202) 442-4871

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hidden mechanical equipment. The Zoning Regulation is silent on the threshold of functionality allowed an Architectural Embellishment. Clearly, where it is not designed to unduly gain occupiable space, then such embellishment can be co-opted for purposes of functional duality. The precedence of this doctrine was established by previous Zoning Administrator rulings in the form of approval of a near similar design at the following three addresses: 2590 L Street, NW, 1725 I Street, NW, and 818 H Street, NW.

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The mandate of 11 DCMR, Section 411 is to allow the exercise of a reasonable degree of architectural control upon roof structures. Hence, a reasonable degree of flexibility is inherent in the administrative interpretation of the Zoning Administrator, provided, that the intent and purpose of the Zoning Regulation is not materially impaired.

If I can be of further assistance, do not hesitate to contact me or the Zoning Administrator at 442-4576.

TB/er

Cc: Gregg Love, Admin/BLRA
Michael D. Johnson, ZA

F A C S I M I L E

OFFICE OF THE ZONING ADMINISTRATOR

D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Building and Land Regulation Administration
941 North Capitol Street, N.E.
Suite 2000
Washington, D.C. 20002
(202) 442-4560 (office)
(202) 442-4871 (fax)

COVER SHEET

TO: Ms Booth ORGANIZATION: BZA

PHONE: FAX: 727-6072

RE: - cc:

FROM: Toye Bello ORGANIZATION: OZA

[] URGENT [] AS REQUESTED [] PLEASE COMMENT [] FYI [] PLEASE REPLY

COMMENTS: ORIGINAL WILL BE HAND DELIVERED TO YOU 8/16/01

No. of Pages: 3 (includes cover sheet)

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08/15/01 14:55 FAX 2024424871

FINDINGS OF FACT

BZA Appeal No. 16716
August 28, 2001

Submitted by the
NEBRASKA AVENUE NEIGHBORHOOD ASSOCIATION
Appellant

INTRODUCTION

I. The Zoning Administrator's representative (ZA) claims that Building Permit No. B435464 was issued appropriately based on the implication that DCRA "precedence" in accepting certain characteristics of building permit applications overrides Title 11, Zoning Regulations of the District of Columbia Municipal Regulations (11 DCMR). The ZA claims practices of DCRA as the standards to evaluate applications. **He claims this for issues on which 11 DCRA is not silent, but is mandatory**, such as setback requirements and referrals to other agencies. (BZA hearing testimony, August 3, 2001; ZA submission to BZA, August 15, 2001). To sustain this instant permit based on DCRA "precedence" would deprive the Zoning Commission of the power to provide enforceable regulations, the BZA of power to enforce the regulations and the regulations themselves of any consistent interpretability. The BZA should find in favor of the Appellants if the application does not meet the stated requirements of 11 DCMR.

II. The ZA has inappropriately relied on "precertification letters" presented by the Applicant and information in application No. 590AA itself, rather than evaluate several code requirements directly. Specific code requirements at issue include use, parking, FAR and rear yard setback requirements. Two of the "precertification letters," prepared well in advance of submission of the application, requested and received (signature or initialed) agreement from a ZA not an employee at the time of the application and one by a Zoning Administrator who did not attend the hearing and could not be cross-examined.

It is significant that the "precertification letters" do not provide specific and accurate details of the use, property, footprint and setbacks that were agreed to. Moreover, details relating to use and design of the structure changed between signing of the letters and submission of the application and plans. These "precertification letters" are not appropriate substitutes for ZA evaluation of application 590AA under 11 DCMR.

III. The ZA redefines terms in order to defend the decision to issue Building Permit No. 435464. 11 DCMR is not silent of definitions of terms not specifically provided (11 DCMR §199.2 (g)). Words not defined in this section shall have the meanings given in Webster's Unabridged

BZA
Case No. 16716
Exhibit No. 50

Dictionary. It follows that a standard brick wall may not be defined as a façade in order to avoid setback requirements of roof structures; a roof may not be defined as an embellishment on order to avoid height limitations, setback requirements, or FAR requirements. Many roofs are over open space normally defined as "attic." (11 DCMR §199.1)

IV. "Testimony" refers to BZA meeting or hearing testimony, unless otherwise specified. "11 DCMR" refers to in the District of Columbia Municipal Regulations, Title 11 Zoning Regulations. Item references in the Introduction and Main Findings of Fact refer to numbered items presented in the Detailed Findings of Fact. References in the Detailed Findings of Fact refer to materials submitted to BZA Case No. 16716 on the date, section and page(s) specified, unless otherwise noted..

MAIN FINDINGS OF FACT

A. July 17, 2001, Sunrise Assisted Living, LLC (Sunrise), as Intervener, claims to have recently purchased all properties in the subject development site. They did so knowing (1) there is a covenant limiting development on the subject site, (2) ANC 3G and the DC City Council had voted against a previous alley-closing application for the alley stub bordering this site (S.O. 86-46), (3) the area was to be down-zoned from R-5-D to R-5-B, and there was an appeal of the building permit No. B435464. The first two events occurred before Sunrise purchased any property or submitted an alley-closing application. They proceeded at their own risk. (Items 1-10, 24-29)

B. Louis and Sunny Reyes et al submitted a building permit application (No. 590 AA) on July 10, 2000. The application form and other required materials contained many errors and omissions, some of which were later identified by DCRA. Errors and omissions included lack of specified residential use of the building, misstatement of current use of the site, lack of information on penthouse setbacks, and lack of site plan. The Applicants submitted a revised application on February 5, 2001. The Building and Land Regulation Administration (BLRA) issued a building permit, No. 435464, on March 8, 2001. The Nebraska Avenue Neighborhood Association (NANA) appealed the issuance of this permit on March 16, 2001, based on numerous non- compliances with 11 DCMR.. (Items 12-15, 17-24)

C. The roof structures do not comply with 11 DCMR §§400.7, 411.3 and 411.10.

Section 400.7 requires setback from the exterior wall by a distance at least equal to the height above the main roof. There is no setback for the roof structures. (Items 34-35; see also Items 36-39).

Section 400.7 requires that the roof structures shall not exceed 18 ft. 6 in. In height. The elevator penthouse exceeds this height by several feet. (Item 41)

Section 411.3 requires that there is a single structure. There are two structures. The roof around the entire Main Roof does not make the two structures a single structure; the roof itself is not setback by a distance equal to its height. (Item 42)

Section 411.10 requires the Zoning Administrator to submit the roof structure plans to the Director of the Office of Planning. This was not done. (Item 43; see also Items 44-45)

D. The height of the building shall not exceed 90 feet in the R-5-D District. (11 DCMR §400.1) However, the height of this building to the top of the roof over the 7th floor is at least 92.93 feet. The height of the building measured from the front curb to the highest point of the roof or parapet wall (which is the top of the roof over the elevator penthouse) is nearly 98 feet. (Items 46-50; see also Items 51-52)

E. The FAR in a R-5-D district is 3.5. (11 DCMR §401) The Applicant's estimated FAR, which was used by the ZA, incorrectly excludes square footage in the basement, 3rd floor, 7th floor, attics and the main roof structures. The actual FAR is substantially over the allowed 3.5. (Items 53-62)

F. The rear yare setback is noncompliant with 11 DCMR §§199.1 and 404.1. The rear yard setback does not extend across the entire rear yard–there is no setback at all across part of the rear of the building. In addition, where there is a rear yard setback, it does not meet the required 4 inches per 12 inches. (Items 63-68)

G. The parking requirement for a CRF serving 16 or more residents is to be determined by the BZA. (11 DCMR §2101.1) The parking requirement for this application, however, was not determined by the BZA but by a "precertification letter" signed by a former DCRA employee who did not evaluate the actual application or the actual use at the time of application. The parking was determined to be 1 space per 6 units, based on **subsidized housing reserved for the elderly and/or handicapped**. That is not the use of this facility. The parking requirement for this facility has not been appropriately evaluated. (Items 69-71)

H. Application 590 AA plans do not include a separate delivery plan showing routing and grading, as required by 11 DCMR §§ 2200.3 and 3201. The Grading plan shows grade is not appropriate for deliveries for the in the service/delivery space located next to the trash enclosure. In addition the loading dock does not have unobstructed access to the building as required by 11 DCMR §2203.2. The loading and delivery requirements of 11 DCRA are not met. (Items 72-75)

I. The Applicant claims a matter-of-right use based on the facility meeting requirements as a Community Residence Facility (CRF) serving the handicapped, as defined by the Fair Housing Act (11 DCMR §330.5(i). Applications for CRFs shall meet all applicable code and licensing requirements (11 DCRA §358.6). This facility is noncompliant with many of the requirements for a CRF, including requirements for common toilets and not confining residents (the facility

contains a locked ward on the third floor). The facility is located in an R-2 District, which requires a special exception for a CRFs of more that 8 residents (this facility has 130 residents). The application does not meet a mater-of-right use in R-5-D/R-2 Districts. (Items 76-82)

J. Application No. 590 AA is not vested under R-5-D District, as it was substantially incomplete at the time of the a Zoning Commission remapping setdown hearing on October 16, 2000. The application did not comply with vesting requirements in 11 DCMR §§3204 and 3202.2 which require the application be complete, including all necessary information needed to evaluate the application. The July 10, 2000 application contained significant errors and omissions, including specific use, plat, delivery plan, basis for computing parking and loading plans, current use of the property and work to be done. The specific use, for example, was not declared until a revised application was submitted on 2/5/01. The application is not vested under R-5-D. (Items 12, 16-20, 25-26 and 83-88)

DETAILED FINDINGS OF FACT

BACKGROUND AND TIME LINE

1. A covenant limiting development to single family homes was provided for the property bordering on Connecticut Ave. NW in Square 1989 was created in 1923. This includes all lots facing on Connecticut Avenue, NW (testimony 8/3/01; Appellant's submission, 8/3/01)

2. In 1986, Louis and Sunny Reyes applied to close the public alley stub which borders on the subject development. (Appellant's submission dated 7/7/01-- Application No. S.O. 86-46; Public records, Surveyor's Office, DCRA).

3. 1988 ANC 3G unanimously voted against closing the public alley and discussed downzoning the area. The District of Columbia unanimously voted against closing the alley. (Testimony 7/10/01; Appellant's submission, 7/7/01; ANC 3G public records; DC Register, 1988).

4. In December, 1998, Sunrise Assisted Living, LLC (Sunrise) met with Deputy Zoning Administrator Gladys Hicks regarding an assisted living residence proposal on the subject property. Specific details of the proposed development are not documented. Sunrise provided a letter, dated Dec. 15, 1998, to Gladys Hicks requesting that Ms. Hicks agree that the development would qualify as a Community Residence Facility serving the handicapped, as that term is described in the Fair Housing Act. Ms. Hicks signed the letter indicating her agreement. (Testimony 8/3/01; Appellant's submission, 7/3/01, Appendix G, p.1; equals Intervener's submission 7/10/01, Appendix A)

5. In 1999, the Zoning Commission added a matter-of-right use to R-4 Districts, .11 DCMR 303.5 (i) : ((i) Community based residential facility; Provided, that notwithstanding any provision in this title to the contrary, the Zoning Administrator has determined that such community based facility, which otherwise complies with the zoning requirements of this title that are of general and uniform applicability to all matter of right uses in an R-4 District, is intended to be operated as housing for the handicapped as that term is defined under Section 3602 (h) of the Fair Housing Act, as amended, 42 U.S.C. Section 3601 et seq. (1955). Section 802 of the FHA defines handicap as follows:

> (h) "Handicap" means, with respect to a person;
> (1) A physical mental impairment which substantially limits one or more of such person's major life activities.
> (2) A record of having such an impairment, or being regarded as hiving such an impairment..

6. March, 1999, Sunrise met with Ms Hicks and discussed the delivery and loading dock requirements of a building of 30,000 to 100,000 sq. ft. and the parking requirements of a residential building providing **subsidized housing reserved** for the handicapped and elderly [emphasis added]. March 9, 1999, Ms. Hicks signed a letter agreeing that these were the requirements for such a building. (Appellant's submission, 7/3/01, Appendix G, p.3; equals Intervener's submission 7/10/01, Appendix B)

7. In 1999, Sunrise purchased two properties on Chevy Chase Parkway, 5203 Chevy Chase Parkway (zoned R-5-D) and 5205 Chevy Chase Parkway (zoned R-2), which are included in the subject development proposal. (DC tax records)

8. August 2, 1999, Sunrise applied to close a public alley in order to build a 110,000 sq. ft. building with FAR of 3.72 at the subject property. (Sunrise Statement submitted 7/10701; Appellant's submission, 7/7/01--Sunrise alley-closing application)

9. At ANC 3G public meeting on February 14, 2001, Sunrise discussed it's alley-closing application and planned development for a building of 110,000 sq. ft. building with FAR of 3.72 at the subject property. The project was described as an independent **and** assisted living facility for the elderly. (Intervener's submission, 7/10/01; ANC 3G public records)

Under 11 DCRA, such use could qualify as an apartment building and/or a Community-Based Residence Facility / Community Residence Facility (11 DCMR 199.1). At this meeting, the denial of the previous alley-closing application was discussed.

10. May, 2000, ANC3G, after many meetings with the Applicant, voted to oppose closing the alley (ANC 3G minutes; public records; Intervener's submission, 7/7/01)

11. May 2, 2000, Sunrise met with Zoning Administrator, Michael Johnson, and discussed height, setback and courts of the proposed development. A site map shows the development on Lots 49 to 56 in Square 1989. Minimal frontage of the development on Chevy Chase Parkway is shown because Lot 161 (R-2) is omitted from the development plan. The court mentioned in the letter to Michael Johnson is shown on the map as Lot 57. (Appellant's submission, 7/3/01, Appendix D, page 1 [identical to] Intervener's submission, 7/10/01, Appendix E, page 1; Appellant's submission 7/10/01, page 2). Sunrise requested Mr. Johnson initial a letter indicating his agreement to the described requirements, including the side court listed as 22 ft 6 in. wide. Mr. Johnson initialed his agreement on July 8, 2001. This "precertification letter" and map did not accurately represent the project as submitted in the July 10, 2000 building permit application No. 590 AA. (Appellant's submission 7/3/01, Appendix A, pp 1-13, Appendix B)

12. July 10, 2000, Mario Escalante, as Agent for Owner, submitted a building permit application for a "New Building" at the subject site on behalf of "Louis and Sunny Reyes et AL".

The zoning was listed as **R-5-E**.

The Lot was described as "(Site per Sub)" but no site plan was provided.

The use of the building (Question-16) was listed as "residential;" the current use of the site (Q-13) was listed as "Vacant" after "residential" was crossed out by the Applicant. [Application form states: ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION]

Under Q-11 Type of Proposed Work (**check all applicable boxes**) [emphasis added] only New Building was checked.

Retaining Walls was not listed even though the plans showed retaining walls, regrading land to be held up by retaining walls, including raising grades which require retaining walls to protect neighbors' property and the alley.

No demolition was listed although Q-22 razing a building was marked Yes; Q-23 area to be disturbed more than 50 sq. ft was marked Yes; and submitted plans included a Demolition Plan.

No Soil Erosion Control Methods (Q-24) were listed, AS REQUIRED by Q-23.

No. of Footings or Columns was not listed (Q-26) although plans clearly showed footings and columns.

Total Lot Area was incorrectly listed as 23,106 sq. ft. which includes only the nine R-5-D lots although the plans clearly showed the project extending onto the R-2 lot (5205 Chevy Chase Parkway, Lot No. 161) which added an additional 4,059 square feet. This lot was included on all the relevant submitted plan drawings.

Present Gross Floor Area of Bldg.. (Q-44) was blank, consistent with Vacant land." Listing of percentage paved area and greenery (Q-43) was blank.

Number and type of projections (Q-48) was blank although plans showed projecting balconies and storm-water facility projecting into a required side yard; stairs and elevated patio projecting into rear yard.

Volume of new building listed as 1,048,615 which approximates the volume of areas included in FAR calculation areas plus cellar only, and appears to exclude volume under roof, roof structures, storm water management facility, etc.

Intake zoning approval (page 4) was left blank.

(Appellant's submission, 7/3/01, Exhibit D, page 1--Building permit application 590AA dated 7/10/00; Appellant's submission, 8/10/01 Plan Correction List, dated July 18, 2000).

13. July 18, 2000, DCRA submitted a Plan Correction List which requested, among several items, a site plan for the subject development (Appellant's submission, 8/10/01; DCRA public records)..

14. On or after July 29, 2000, the Applicant provided a site plan, "Date: July 23, 2000 (REVISED JULY 29, 2000)," for the subject development. (Site Plan: Applicants' submission, 7/3/01, Appendix A, Page 1–Site Plan)

15. September 13, 2000, the architect for the development, Mr. Stephen Ruiz, submitted an Environmental Impact Screening Form inaccurately stating the height of the building as 23 ft. 2 inches and the cost as $1.38 million dollars. Agency reviews were conducted based on the inaccurate information. (Appellant's submission, 7/3/01, Appendix F; testimony, 8/3/01).

16. October 16, 2000: Zoning Commission setdown hearing for remapping of east side of Connecticut Ave., NW, between Nebraska Ave NW and Jocelyn Street NW.

17. Nov. 13, 2000, Mrs. Xian Mac submitted a Plan Correction List asking the specific "residential" use of the building and the setback of the penthouse from the exterior walls. (Appellant's submission, 7/3/01, Appendix E, page 1).

18. January 19, 2001, Denzil Noble writes letter to Paul Tummonds, attorney for the Sunrise, instructing the Applicants how to describe the use of the building in order to obtain it's use as a "matter-of-right." (Appellant's submission, 73/01, Appendix E, page 2).

19. In the January 19, 2001, letter, Sunrise was also informed that the city had investigated the properties and found that they were not vacant. The Applicant was told to correct the building permit application. (Testimony, 8/3/01; Appellant's submission, 73/01, Appendix E, page 2)

20. February 5, 2001, Applicants submitted a revised application listing proposed the use: "CRF (housing for the handicapped as the term is defined by the Fair Housing Act);" current use as "Residential, partially vacant Facilities." Current use of the site was corrected to say residential, partly vacant. (Appellant's submission, 7/3/01, Appendix E, page 6).

21. DCRA approvals of the revised application occurred rapidly and evaluations missed critical items, such as requirement for two emergency exits from each floor and each fire compartment. Fire Compartment B on the 1st floor and the 7th floor each have only one emergency exit. (The stairwell on the first floor, Fire Compartment B, does not give immediate exit from the building at ground level. The first floor stairs–1 ½ flights-- in the Compartment B stairwell do not match the basement or 2nd - roof level stairs.) (Appellant's submission 710/01, pages 6 and 8; Applicant's submission, 7/3/01, Appendix A, pages 6-13; testimony, 8/3/01).

22. Chronology of plan sign-offs reported on REV 590 AA::

Clearance to file plans	
Zoning	2/7/01
Approvals:	
Mechanical Eng. Review	2/2/01*
Plumbing Eng. Review	2/2/01*
Electrical Eng. Review	2/7/01
Health Plan Review	2/7/01
Elevator Plan Rev. Sec.	2/7/01
Zoning	2/14/01
Fire Prevention Plan Review	2/16/01
Erosion Control	3/6/01
Storm Water Mgmt	3/6/01
DPW Permit and Records Div	3/8/01
Water/Sewer Design Branch	3/8/01
Environmental Policy Review	3/8/01
Structural Eng	3/8/01
Q.C.	3/8/01

*Signed by same person

23. March 8, 2001, permit No. 435464 was issued for the subject site (Appellant's submission 7/3/01, Appendix E, page 9)

24. March 16, 2001, Nebraska Avenue Neighborhood Association filed to the BZA an appeal of the Zoning Administrator's decision to issue Building Permit No.435464.

25. March 29, 2001, Zoning Commission hearing on remapping of east side of Connecticut Ave, NW as described in Oct. 16, 2000 setdown hearing.

26. June 5, 2001, Zoning Commission votes to remap east side of Connecticut Ave., Nebraska Ave. to Jocelyn Street, NW.

27. June 16, 2001, Demolition Permit approved for 5111 Connecticut Ave., NW, **owners Louis and Sunny Reyes**. (DCRA public records; not supplied by DCRA at time of Appellant's pre- or post-hearing filings)

28. July 10, 2001. Sunrise claims to have purchased all properties involved in the development. The D.C. tax records on July 15, 2001 showed Sunrise as owning only 2 properties. Sunrise claims that is because the tax records are not up to date. (Testimony, July 10, 2001).

29. Public records show that Sunrise did not purchase all the property before June 16, 2001. (Item 27; public records showing applications for other demolition and plumbing permits by Reyes, attached) At the time of any such purchase, Sunrise was aware of the Covenant, alley-closing denial in 1988, remapping proposal P32-00, appeal of Building Permit No.435464, and that numerous errors in the application had been pointed out to DCRA. They proceeded at their own risk.

DESCRIPTION OF THE SITE

30. The subject properties are located at current addresses 5111, 5113, 5115, 5117, 5119, 5121, 5123 Connecticut Avenue, NW, and 5201, 5203, and 5205 Chevy Chase Parkway; as of July 2000, the lots were Nos. 49-57 and 161 in Square 1989. The zoning of the parcels on July 10, 2000, was R-5-D for all but 5205 Chevy Chase Parkway, which is R-2.

31. The Applicant's materials describe the property borders are as follows: north--Chevy Chase Parkway; west Connecticut Avenue, NW; south--lot No. 48; east--lot no. 161 alley stub and alley. (Appellant's submission on July 3, 2001, Appendix B, page 1)

32. The natural topography of the area is sloping with the elevation falling as you travel from west to east and north to south. The current finished grade at the rear of the current houses in the R-5-D zone is more than 4 feet to the ceiling for all properties. The rear of the proposed building extends more than 10 feet downgrade compared to the current residences (Appellant's

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submission, 7/3/01, Appendix A, page 5–Grading Plan). The rear of current dwellings bordering on the alley stub have nearly a full basement at the rear of each residence (Grading Plan; Appellant's submission 7/10/01 page 4–photo of alley stub).

ROOF STRUCTURES

Required setbacks:

33. Roof structures do not meet 11 DCMR §§4 (The roof structures shall be setback from the main roof by a distance equal to their height.). Setback is not equal or greater than height.

Elevator penthouse:

34. There is no setback from the exterior wall for the elevator penthouse. The entire rear wall* of the penthouse is on the same plane as the rear wall of the building.

*Note that the 7th **floor balcony** which is adjacent to the elevator lobby, is considered by the ZA as **OUTSIDE the exterior wall** for purposes of evaluating gross floor area and FAR. Therefore, the **entire elevator penthouse rear wall** is on the same plane as the building rear wall, as defined by the ZA. (Appellant's submission, 7/3/01, page 4, Rear Elevation and page 13, 7th floor; Appellant's submission, 7/10/01, page 9, Longitudinal building section and page 8, Seventh Floor Plan 107A)

Utility room/stairwell penthouse setback:

35.Appellant's submission 7/10/01, page 12, "Wall Section," shows that the utility room is not set back from the main wall.

The utility room and stairwell penthouse are contiguous structures. The stairwell, which is not setback from the exterior wall, accesses the utility room on the south side of the building. The wall section shows that the height of the building at this section is a full 8 stories plus 12 foot high roof. (Appellant's submission 710/01, pages 9 and 11–Building and Wall cross-sections)

In addition, the cross sections show that the **roofs of structures and connections between structures are not setback equal to their height**. The roofs start **above** the level of the main roof and **extend outside the exterior walls** before taking a 45-degree angle sloping upwards and inwards. (Appellant's submission 7/3/01, Appendix A, pages 1-3, Building elevations; Appellant's submission 710/01, pages 9-11: Building cross-section and Wall cross-sections)

The exterior wall on the front of the building is considered to be straight across the exterior face of the building, as is shown in the 7th floor plan (Appellant's submission, 7/10/01, page-8) where this area is labeled "BALCONY." Note that the roof with attic underneath projecting out from

the main roof is over "balcony" which is excluded from the gross floor area or FAR. The ZA considers this a projection over a balcony, not the exterior wall. **The rectangular portion of the utility room is not setback to by it's height.**

36. Mr. Bello claims that a roof structure (elevator penthouse) does not need to follow 11 DCMR 411.7(b) setback requirements if, in the Zoning Administrator's opinion, it provides architectural uniformity of the roof plan. Architectural uniformity, Mr. Bello claims, is provided by the elevator penthouse because the rear wall of the building continues directly up above the main roof level to enclose the elevator penthouse. Therefore the walls match (8/3/hearing transcript). This interpretation effectively states that a setback for roof structures is not required if the walls of such roof structures match the exterior walls of the building. This clearly violates 11 DCMR §411.

37. Bello Memorandum to the BZA, dated August 15, 2001: states that "The first enclosure of relevance, the Utility Room is clearly set back 17 ½ feet from the exterior wall of the building." This is incorrect. The documentation above shows the claim is clearly erroneous.

38. The Bello Memorandum claims that "the Zoning Regulations is silent on the threshold of functionality allowed an Architectural Embellishment." (Bello Memorandum to the BZA, dated August 15, 2001). For the purpose of determining height, etc, the Zoning Regulation is **not silent on the definition of what is excluded as embellishment**: 11 DCMR §400.3: A spire, tower, dome, pinnacle, or minaret serving as an architectural embellishment, or an antenna may be erected to a height in excess of that which this section otherwise authorized in the district in which it is located. "Roofs," and "mansard roofs" are not included as architectural embellishments in this exclusion. (Memorandum from Toye Bello to BZA dated August 15, 2001).

39. The Bello Memorandum claims that the ordinary wall of the elevator penthouse, which is on the same plane and of the same material as the rear exterior wall, is "enclosing façade." Therefore, the he claims, the elevator penthouse does not require a setback. This is clearly erroneous. (Memorandum from Toye Bello to BZA dated August 15, 2001).

40. Conclusion: The roof structures do not meet the required 11 DCMR §411 setback requirements.

<u>Height of roof structures:</u>

41. Height of the elevator penthouse, including its roof, is clearly greater than 18 feet, 6 inches, as shown on the rear elevation and interior cross-section. (Appellant's submission, 7/10/01, page 5)

Multiple roof structures:

42. There are two roof structures on the main roof-- an elevator penthouse and a machine room connected to the roof stairwell. The connecting roof, which actually sets out from the main wall, does not meet standards for making all roof structures a single structure. (1) the roof does not go directly between the two structures; (2) the roof is not setback from the exterior walls by a distance equal to its height. (Appellant's submissions 7/3/01, Appendix A, pages 14–Main roof plan; page 3 and 4--Building elevations)

Required review of roof structures:

43. The roof plan was not submitted to the Office of Planning for review as required by 11 DCMR §411. (Appellant's submission 8/10/01– E-mails to Ellen McCarthy from Page Chiapella and from Jennifer Steingasser to Page Chiapella re: Roof Plan Review).

44. The ZA and former Acting Zoning Administrator claim that DCRA does not necessarily send roof structures to the Office of Planning if the ZA considers the roof plan to be architecturally appropriate (August 3, 2001 hearing testimony). The ZA thought these roof structures were appropriate. Therefore, the ZA claims, this plan did not need to be sent for review by the OP. This clearly violates 11 DCMR §411.

45. The BZA Commissioners, requested Mr. Bello to provide evidence that the ZA has authority to grant variances on the roof structures. (8/3/01, testimony) In his August 15, 2001 memorandum, Mr. Bello did not provide such evidence. (DCRA 8/10/01 submission)

HEIGHT OF THE BUILDING

46. Roofs and parapets are included in measuring the height of a building (11 DCMR §199.1: Building, height of - the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet.) "Roofs," and "mansard roofs" are not included as architectural embellishments in measuring the height of a building: 11 DCMR §400.3: A spire, tower, dome, pinnacle, or minaret serving as an architectural embellishment, or an antenna may be erected to a height in excess of that which this section otherwise authorized in the district in which it is located.

47. The height limit of buildings in R5D districts is 90-feet.. (11 DCMR §400.1)

48. 11 DCMR §400.3: A spire, tower, dome, pinnacle, or minaret serving as an architectural embellishment. Mr. Bello claims that the standard roof over the elevator penthouse is an "architectural embellishment" and does not count in height measurements. However, roofs are not excluded in measurements of the height. (11 DCRA §199.1)

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49. The elevation opposite the middle of the front of the building is 302.79, as shown on the grading plan (Appellant's submission 7/3/01, Appendix A, page 5). The elevation to the top of the main roof slab from which the roof above the 7th floor starts is 379.72. The sloped part of the roof starts at least 3 feet above the main roof. The sloped part of the roof extends 12 feet. The structural element at the peak of the roof structure extends at least one foot height. (Appellant's exhibit July 10, 2001, page 11: WALL SECTION). The elevation to the height of the roof over the 7th floor (excluding the elevator penthouse) is at least as follows: 379.72 +3+12+1 or 395.72. The height of the building to the **height of the roof over the 7th floor** (excluding the elevator penthouse) is 395.72 minus 392.79, or **92.93 feet**.

50. The **height of the elevator penthouse roof** (the highest point of the roof or parapet wall) is at least 5 feet above that of the roof over the 7th floor, or at least **97.93 feet**. This is more than 7 feet above that allowed by 11 DCMR §400.1. (Appellant's submission 7/10/01, page 9--interior cross-section of the building -- Application 590-AA does not provide height measurements above the main roof slab. The figures provided above are measured by ruler and rounded downward, to provide a conservative estimate.)

51. Mr Bello claims that "the Zoning Regulations is silent on the threshold of functionality allowed an Architectural Embellishment." (Bello Memorandum to the BZA, dated August 15, 2001). For the purpose of determining height, etc, the Zoning Regulation is **not silent on the definition of what is excluded as embellishment**:

52. Conclusions:

> The height of the roof over the 7th floor, excluding the elevator penthouse and utility room and roof stairwell, is 92.93 feet. This is almost 3 feet over the 90 ft. limit allowed by 11 DCMR §400.1.
>
> The height of the elevator penthouse roof (the highest point of the roof or parapet wall) is at least 5 feet above that of the roof over the 7th floor, or at least 97.93 feet (Appellant's exhibit II-9). This is more than 7 feet above that allowed by 11 DCMR §400.1.

FAR

53. Initial zoning was incorrectly listed as R5E (FAR 6.0). The R2 zone is not listed. The FAR presented in the application appeared to be substantially under that allowed in an R5E district. The ZA did not fill out computation sheet showing independent evaluation of the FAR. The ZA relied on the Applicant's estimate of FAR, reported as 3.49. (Appellant's submission, 7/10/01, page 14--Building Code summary Sheet)

54. The Applicant's estimated FAR incorrectly excludes square footage from the basement, 3rd floor, 7th floor, attics and main roof structures.

Inclusion of attics and basements in the FAR:

55. The Zoning Regulations, 11 DCMR §199.1 and 402 evaluate "attics,"* "basements" and "cellars" for their bulk, not their intended use. "Attic" space with height greater than 6 ft. 6 in. basements with ceilings greater than 4 ft. above adjacent grade are included in "gross floor area." Gross floor area does not include cellars of any height or use. Inclusion in FAR is determined by inclusion in gross floor area. The intended use of the basement/cellar does not change at the specified 4 ft. above grade requirement for inclusion in gross floor area and FAR. To be included in FAR, an attic need not have a floor, only a height greater than 6' 6". Clearly, bulk, not use, determines inclusion in gross floor area and FAR.
*"The part of a building immediately below the roof and wholly or partly within the roof framing." [Webster's Third International Dictionary, Unabridged, 1966]

Basement:

56. In the rear yard is a concrete stairwell and raised platform attached to the building and to be used as the route from the loading dock to the rear entrance of the building and an elevated patio. This is constructed as part of the building (Appellant's submission 7/10/01, page 10–Building section) This structure varies from zero to about 12 feet depth from the rear exterior wall of the main building. (Appellant's submissions, 7/3/01: Appendix A, pp. 4, 5 and 6--Rear Elevation; Grading Plan, **Basement Floor Plan**). The structure itself is not the "adjacent grade." It does not provide exclusion of basement from FAR calculation.

57. All of the adjacent grade in the alley stub bordering the building is more than 4 feet below the ceiling of the basement. (Appellant's submission 7/3/01, Appendix A, page 5 --- Grading Plan; Appellant's submission July 10, 2001, page 4-- photo showing full building floor of current building at the top of the alley stub.)

Third floor balcony:

58. The Applicant lists the 3rd floor **and** balcony/porch (which sits over the 2nd floor below it) in the list of floor area to be counted in the building gross floor area. The balcony depth is greater than 6 feet from the exterior wall. Balconies extending more that 6 feet from an exterior wall are included in the gross floor area (11 DCMR 199.1). The Applicant correctly lists the 3rd floor balcony in the gross floor area chart but incorrectly omits this in the actual calculation. (Appellant's submission 7/3/01, Appendix A, page 13; Appellant's submission 3/10/01, page 8).

Roof structures:

59. Attics, stairwells, elevator penthouses and equipment rooms are included in the FAR (11 DCMR §199.9: definitions of FAR and Gross floor area). Roof structures which are setback

from the walls of the building, are of height under 18 ft. 6 in., are approved by the Office of Planning (11 DCMR §411) shall be granted supplemental FAR up to 0.37, if they serve the purpose of housing mechanical equipment, stairwells or elevator penthouses. These roof structures do not meet the requirements for the supplement. In addition, there is attic space in the turrets and penthouse roof which does not meet the exclusion use. (Appellant's submission 7/10/01, page 9–longitudinal cross section and page 11, Wall section)

Attics

60. Attics are included in the gross floor area when headroom is greater that 6 ft. 6 inches (11 DCMR 199.1: gross floor area). The ZA incorrectly omits all attic (7th and 8th floors) from the FAR.

Upper level porches:

61. The front and rear elevations shows porches (see definition of porch) under roofs (not balconies, see definition of balcony) at the 6th and 7th levels. The floor plans do not show these porches. The ZA's FAR calculation incorrectly omits these porches from the FAR.

62. Conclusion: The ZA incorrectly calculated the FAR. The FAR exceeds the allowed 3.5 for an R-5-D District.

REAR YARD SETBACK

63. The rear yard shall extend across the entire lot and the rear yard setback requirement is 4 inches per 12 inches of building height across the entire rear yard. (11 DCMR §§199.1 and 404.1)

64. The raised patio is shown as part of the structure on all floor plan drawings. It is not the adjacent grade. (Appellant's submission, 7/10/01, page 10–Building Section; Appellant's submission, 7/3/01, Appendix A, page 4, Rear Elevation)

65. Height of building from rear is12 feet greater than that from the front (97.93 feet, Item 50), or 109.93 feet total.

66. The height of the building from the rear wall (elevation, 292, grading plan: A's submission, 7/3/01, Appendix A, page 5, Grading Plan) to the highest point on the roof (top of elevator penthouse roof, adjacent to exterior rear wall of building, measures 402 ft (measured by ruler): (Appellant's submission, 7/10/01, page 9–Longitudinal building section; Appellant's submission, 7/3/01, Appendix A, page 4–Rear elevation) Height = 402 minus 292 or 110 feet tall.

67. The rear of the building extends parallel to the main alley and the alley stub (with a 30 degree angle along the rear exterior wall of the building). (ANC 3G testimony, August 3, 2001; Appellant's submission, 7/3/01, Appendix A– Plat, Grading Plan, all floors of the building)

Rear yard required:
36 feet (4 inches per foot of height)
Rear yard provided:
Rear yard provided across parking garage entrance: 34 feet;
Rear yard provided along raised concrete patio: 26 feet;
Rear yard provided along alley stub: 0 feet .

68. The rear yard requirement is not met.

PARKING

69. 11 DCMR §2101.1, requires parking for a CRF serving 16 or more persons is to be determined by the BZA.

70. The ZA relied on a precertification letter claims parking based on subsidized housing reserved for the elderly and/or handicapped (Appellant's submission, 7/3/10, Appendix G page 3)

71. Application 590 AA does not comply with 11 DCMR requirements for parking.

DELIVERY

72. Application 590 AA plans do not include a separate delivery plan showing routing; grading, as required by 11 DCMR §§ 2200.3 and 3201.

73. Grading plan shows grade is not appropriate for deliveries for the in the service/delivery space located next to the trash enclosure. (Appellant's submission, 73/01, Appendix 1, page 6--- Grading Plan)

74. Loading dock does not have unobstructed access to the building as required by 11 DCMR §2203.2. (Testimony, 8/3/01; Appellant's submission, 7/3/01, Appendix A pp.5-7: Grading Plan, Garage Plan, 1st Floor Plan)

75. Conclusion: The loading and delivery requirements of 11 DCRA are not met.

USE

76. The use claimed on the July 10, 2000 building application No. 590-AA was "Residential." This is not a matter-of-right use. The use claimed on the revised 590-AA application, dated Feb.

5, 2001, was "CRF (housing for the handicapped as the term is defined by the Fair Housing Act)." This may be a matter-of-right use if the R-5-D District if the building complies with all requirements of 11 DCMR for the stated use 11 DCMR §358.5: The proposed facility shall meet all applicable code and licensing requirements. It is not a matter-of-right use in the R-2 District–given the size of the residential program (130 residents).

77. The R-2 lot is included as an integral part of this development. Various plans show loading dock, trash, handicap ramp/loading ramp, continuation of retaining walls, garden for use of the residents to be located on this lot. Under 11 DCMR §2514.2, this use must be approved by the Board of Zoning Adjustment. In addition, no Reasonable Accommodation Request was submitted for this portion of the property. (BZA testimony, Aug. 3, 2001; Appellant's submission, 7/30/01, page 1; Appellant's submission, 7/10/01, page 12)

78. The proposed facility does not meet the following structural requirements for a CRF: 22 DCMR §3412.3 providing common toilets for residents--1 per 30 residents for floors with common space used by residents who do not have rooms on that floor; 11 DCMR §2101.1 evaluating parking requirements for a CRF serving 16 or more residents; or health care facility: 22 DCMR §3205.7 providing elevator need study; 22 DCMR §3252.1 meeting building code regulations including requirement for two exits from each floor (7th floor has only one emergency exit) and fire compartment (Compartment B on the 1st floor has no effective exit to the outside).

79. The BZA has admitted to the record regulations which are referenced directly or indirectly by 11 DCMR on numerous occasions. (Examples include BZA Appeal No. 16533 references to 12 DCMR; BZA Appeal No. 16716, submission dated 8/3/01–D. C. Council Action). Corporation Council provided the opinion that BZA inclusion of such references is appropriate (hearing testimony 8/3/01). Such evaluation is necessary to fulfill 11 DCMR §358.5: The proposed facility **shall** meet all applicable code and licensing requirements. [Emphasis added] Logic and common sense dictate that the building plans must include sufficient common toilets, emergency exits, elevators, etc. to meet regulations and licensing requirements for the use stated in the application (a CRF). To allow to be built a building which cannot be used for its stated use would put the city in jeopardy of litigation.

80. The "pre-certification" letter signed by Gladys Hicks on Dec. 15, 1998, is not accompanied by information documenting her understanding of the proposed use at that time. In addition, the described uses changed over time including (in order): "assisted living facility"-12/17/98; "publicly assisted housing, reserved for the elderly and/or handicapped, all districts" 3/8/99; independent and "assisted living facility" 2/00 ANC 3G; "Assisted Living Residences"-7/10/00 590AA application; "New apartment building" 7/10/00 BLRA tracking form; "CRF serving the handicapped as described by the Fair Housing Act"–2/5/01 revised 590-AA application. The Applicant and ZA relied on the "pre-certification" letter to determine use (testimony 8/3/01). The "pre-certification" letter holds neither a vested use or a date for determining that use.

81. The Applicant provides locked facility on the third floor for Alzheimers patients. In a CRF, patients may not be confined [in rooms or wards]. 22 DCMR §3415.1. (Appellant's submission, July 10, 2001, page–Sunrise description of "secure" Alzheimers ward; Appellant's submission, July 10, 2001, page 7, 3rd floor show a barrier across elevator lobby, in contrast to July 3, 2001, Appendix A, pages 10 - 13-- 4th -7th floors; 7/10/01 submission, page 8 -- 7th floor).

82. Conclusion: The proposed building does not meet (for the R-5-D lots or the R-2 lot) the requirements of the matter-of-right use which was claimed in the Feb. 5, 2001 application No. 590 AA. The claimed matter-of-right use as a CRF to serve the handicapped is not sustained by the design of the building, the requested parking, and the location crossing into an R-2 District.

VESTING under R-5-D District

83. 11 DCMR §3204 states that the application shall be complete for purposes of evaluation in order to hold vesting rights.

84. 11 DCMR§3202.2: To determine compliance with the provisions of this title, each application for a building permit shall be accompanied by any of the following that is deemed necessary **[emphasis added]**:

(a) Scaled drawings showing the following:

(1) The exact shape, topography, and dimensions of the lot to be build upon;

(2) The plan, elevation, and location by dimensions of all existing and proposed structures, and the **proposed use** of those structures;

(3) The parking and loading plans and the **basis for computation of those plans**; and

(4) Other information necessary to determine compliance with these regulations; and

(b) An **official building plat**, in duplicate, prepared by the Surveyor of the District of Columbia, upon which the Applicant shall indicate in ink and to the same scale dimensions of the following;

(1) All existing and proposed structures;

(2) The number, size, and shape of all open parking spaces, open loading berths, and approaches to all parking and loading facilities, and

(3) Other information necessary to determine compliance with the provisions of this title.

85. The information supplied on July 10, 2000, was incomplete and inaccurate. No matter-of-right use was claimed ("Residential" includes both matter-of-right uses and uses requiring a special exception). The July 10, 2000 application did not meet the requirements to be vested under R-5-D. The

86. The ZA claimed that an application fee **will not be accepted** until an application is complete with all items necessary for evaluation of that application and that acceptance of the fee determines that the application is vested under the Zoning District current when that fee is accepted. The ZA then conceded that applications are not checked for completeness at the time the fee is accepted. (ZA Testimony Aug. 3, 2001)

87. The fee for 590AA was accepted without site plan, (Plan Correction List dated July 19, 2000), use (Plan Correction List dated Nov 13, 2000), intake zoning approval (Application 590-AA, dated July 10, 2000) and other required information. These materials were supplied with the REVISED application, dated Feb. 5, 2001, which is the date on which the Zoning District is vested. The application did not achieve vesting status at the time the initial fee was paid on July 10, 2000.

88. The application was not vested under R-5-D zoning district at the time it was submitted. It did not meet vesting requirements before the setdown date on October 16, 2000. The permit, B435464, is not vested under R-5-D zoning district.

FAX

To: Office of Zoning
Date: August 29, 2001
FAX: 202-727-6072

From: Page Chiapella
Nebraska Avenue Neighborhood Association
Tel: W: 301-443-4715
H: 202-966-9619

Re: Case No. 16716
Corrected Findings of Fact – 3 pages

Attached are 3 pages which had typographical errors. Please insert these in the Findings of Fact submitted by the Nebraska Avenue Neighborhood Association on August 28, 2001.

The Findings of Fact have been served to the the Zoning Administrator and Intervenor (Sunrise).

Thank you

BZA
Case No. 16716
Exhibit No. _____

ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

August 28, 2001

BY HAND DELIVERY

Ms. Sheila Cross Reid, Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

Re: Sunrise Connecticut Avenue Assisted Living LLC (the "Property Owner")
5111 Connecticut Avenue, N.W. - BZA Appeal No. 16716

Dear Ms. Reid and Members of the Board:

On behalf of the Property Owner, enclosed please find the Proposed Findings of Fact and Conclusions of Law for the above-mentioned appeal. In addition, the accompanying letter sets forth the Property Owner's comments on the post-hearing submission of Olutoye Bello, Chief of the Zoning Review Branch. Finally, we have enclosed 10 copies of a drawing that depicts the tower embellishment at the rear edge of the building.

The Property Owner looks forward to a decision on this appeal at the Board of Zoning Adjustment's September 4, 2001 public meeting.

Very truly yours,

Maureen E. Dwyer

Allison C. Prince

Paul A. Tummonds, Jr.

Enclosure
cc: See attached Certificate of Service

BZA
Case No. 16716
Exhibit No. 51

Document #: 1157603 v.1

2300 N Street, NW Washington, DC 20037-1128 | 202.663.8000 Fax: 202.663.8007 | www.shawpittman.com

Washington, DC
Northern Virginia
New York
Los Angeles
London

ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

August 28, 2001

Sheila Cross Reid, Chair
Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, D.C. 20001

Re: BZA Appeal No. 16716
Response of Sunrise Connecticut Avenue Assisted Living, LLC, (the "Property Owner") to Memorandum from DCRA to BZA dated August 15, 2001

Dear Chairperson Reid and Members of the Board:

The purpose of this letter is to respond to the memorandum of Olutoye Bello, Chief of the Zoning Review Branch, Office of the Zoning Administrator, dated August 15, 2001. In the memorandum, Mr. Bello addressed the issue of why the tower element that encloses an elevator room is not subject to the setback requirements of Section 400.7(b) of the Zoning Regulations. On behalf of the Property Owner, we fully support Mr. Bello's conclusions in the August 15, 2001 memorandum. Specifically, we support his conclusion that the tower element constitutes an architectural embellishment designed for the predominant purpose of the architectural uniformity of the roof plan. While the Zoning Regulations historically have been interpreted to preclude the location of habitable space within an architectural embellishment, the regulations do not preclude the location of mechanical equipment in such an embellishment. There are numerous examples of embellishments that contain mechanical equipment, some of which were cited in Mr. Bello's memorandum.

Since the purpose of the penthouse setback requirement is to hide equipment from public view and the purpose of an embellishment is to add a design feature that is clearly within the public view, an embellishment that fully encloses mechanical equipment is entirely consistent with the purposes of the setback requirements. The mechanical equipment is fully out of view and the embellishment is permitted to serve its decorative function.

The enclosed drawing clearly shows that the tower feature constitutes an architectural embellishment. It should be noted that the peaked metal roof over the tower is purely decorative and contains no equipment whatsoever and that the building height of 83 feet was measured to the base of the peaked roof.[1]

Mr. Bello also attached to his post-hearing submission, a receipt demonstrating that the property owner submitted the required $2,000 filing fee to the Permit Processing Division on July 10, 2000, the date upon which the building permit was filed. DCRA's acceptance of the filing fee demonstrates that the application was deemed sufficient for filing.

Mr. Bello's memorandum fully clarifies the architectural embellishment issue as well as the sufficiency of the building permit filing. The Appellants have failed to satisfy their burden of proof and the building permit should be upheld.

Very truly yours,

Maureen E. Dwyer

Allison C. Prince

Paul A. Tummonds, Jr.

Enclosure

Document #: 1156725 v.1

[1] The Appellants have also argued that the tower constitutes an illegal eighth story. Since the parapet level of the tower is seven feet below the maximum permitted height and since the tower contains only 600 feet of gross floor area, even if it were considered as an eighth story, the building would fully comply with the Zoning Regulations because it would be within the height limit and the maximum permitted FAR. Such a determination is not necessary however, because the tower feature clearly constitutes an architectural embellishment consistent with the other structures on the roof.

PROPERTY OWNERS'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

Appeal No. 16716 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 8, 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 49-157 and 161).

HEARING DATE: **August 3, 2001**

DECISION DATE: **September 4, 2001**

PROCEDURAL HISTORY:

1. This appeal was filed on March 16, 2001, by the Nebraska Avenue Neighborhood Association (hereinafter referred to as "NANA" or the "Appellants") to challenge the Zoning Administrator's approval of the issuance of Building Permit No. B435464, involving the Sunrise assisted living facility at 5111 Connecticut Avenue, N.W. Advisory Neighborhood Commission ("ANC") 3G joined in this appeal with NANA in challenging the Zoning Administrator's decision.

2. 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 (hereinafter "Sunrise" or "owner"). 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.

PRELIMINARY MATTERS:

1. On May 7, 2001, Sunrise filed a motion to recuse Board Member Anne Renshaw. On July 10, 2001, after reviewing the motion and the responses thereto and debating the matter in a public meeting, four members of the Board requested that Member Renshaw voluntarily recuse herself. When Ms. Renshaw refused to recuse herself, the Board voted 4-1-0 to recuse her. An Order evidencing this decision was mailed to all parties to this appeal on July 26, 2001. No challenge of that order has been filed.

2. On July 16, 2001, NANA filed a request for clarification of the status of Sunrise as the property owner, a request to strike from the record a portion of the Property Owner's Statement and a motion for the participation of four Board Members requesting that the Board not proceed with the hearing with fewer than four Board members participating. After confirming the Board's right to consider any application or appeal with a quorum of three members, the Board noted that the request was moot since four members were in attendance. Further, the Board confirmed that Sunrise is the owner of all the property that is the subject of the appeal and that there was no basis for striking a portion of the Property Owner's Statement.

BACKGROUND INFORMATION:

1. The property that is the subject of these applications is located at 5111 Connecticut Avenue, N.W., Lots 49-57 and 161, Square 1989 ("subject property"). The

subject property is an irregularly shaped lot that includes frontage on Connecticut Avenue, N.W. and Chevy Chase Parkway, N.W.

2. On October 15, 1998, Sunrise met with the Deputy Zoning Administrator at that time, Gladys Hicks, to discuss the proposed use of the property as an assisted living facility. On December 17, 1998, Sunrise received written confirmation from Ms. Hicks that the proposed assisted living use would be permitted as a matter of right, once the proposed amendments to the Zoning Regulations were adopted regarding housing for the handicapped.[1]. Sunrise received additional confirmation from Ms. Hicks on March 8, 1999, regarding the number of required parking spaces and loading berths for the assisted living facility. (Property Owner's Statement p. 5, Exhibit 34 of the record.)

3. The Appellants became aware of Sunrise's plans early in the process. An alley closing application was filed by Sunrise on August 2, 1999, to close the alley stub in Square 1989 adjacent to the subject property. The ANC and the community decided to oppose the alley closing application. As a result of this opposition and despite the fact that none of the reviewing District of Columbia agencies had objected to the alley closing, Sunrise abandoned the alley closing application and pursued a building design that did not require closure of the alley. (Property Owner's Statement p. 6, Exhibit 34 of the record.)

4. On May 2, 2000, Sunrise met with the current Zoning Administrator, Michael Johnson, to review the matter-of-right zoning requirements for the proposed building, including height, rear yard setback, side yard setback and court determinations. On July

[1] The D.C. Zoning Commission adopted these amendments to the Zoning Regulations in Zoning Commission Order No. 869, which became effective on April 30, 1999.

8, 2000, Michael Johnson provided written confirmation of the appropriate development parameters for the proposed assisted living facility on the site. (Property Owner's Statement p. 6-7, Exhibit 34 of the record.)

5. On July 10, 2000, Sunrise filed a building permit application with the Building and Land Regulation Administration ("BLRA") of the Department of Consumer and Regulatory Affairs ("DCRA"). The detailed working drawings that were filed with the application included 178 pages and showed the construction of an assisted living facility for seniors. (Property Owner's Statement p. 7, Exhibit 34 of the record.)

6. After a heavily scrutinized, eight-month review process, Building Permit No. B43564 was issued on March 8, 2001, authorizing the construction of a seven story cast in place concrete structure containing assisted living residences (CRF, housing for the handicapped as the term is defined in the fair housing act) with underground parking. (Property Owner's Statement p. 7, Exhibit 34 of the record.)

FINDINGS OF FACT:

1. The Appellants raised seven issues on appeal which it asserts constitute error on the part of the Zoning Administrator, and which form the basis for their argument that the building permit should be revoked. The issues are:

(a) the building permit application was not complete before the Zoning Commission setdown date for the rezoning of the property

(b) incomplete and inaccurate information on the Building Permit Application materials invalidates these forms

(c) the approved building violates the FAR requirements

(d) the building has an inadequate rear yard setback

(e) the height of the building exceeds the permitted height in the R-5-D zone

(f) the housing for the mechanical equipment and the elevator penthouse is improper

(g) the parking spaces and loading areas are inappropriate

(h) the proposed facility does not meet all applicable code and licensing requirements of 22 DCMR 3242 and 3257.

2. Building Permit Application. As to the issue whether Sunrise filed a complete Building Permit Application before October 16, 2000, the Zoning Commission setdown date for the rezoning of the subject property, and whether alleged incomplete and inaccurate information provided in the building permit application materials invalidates these forms, the Board finds as follows:

(a) A complete Building Permit Application had to be filed by October 16, 2000, in order to allow the processing of the building under the R-5-D zoning.

(b) Mr. Olutoye Bello, the Chief of the Zoning Review Branch, testified that a complete Building Permit Application was filed on July 10, 2000. In a post-hearing submission on August 15, 2001, he submitted a receipt evidencing that the filing fee was paid on July 10, 2000. At the hearing, he testified that the acceptance of the filing fee constitutes verification that the application was deemed complete by the intake officials at the Permit Review Branch.

(c) The Chief of the Zoning Review Branch testified that once plans are filed,

it is extremely common for the various permit reviewers to comment on aspects of the plans and in some cases require additional drawings in order to clarify specific issues. He concluded that the clarifications associated with the subject Building Permit Application were typical of the building permit process.

(d) The Chief of the Zoning Review Branch testified that the Building Permit Application correctly referred to the proposed use as an assisted living facility. He testified that any internal notes made on the Building Permit Application by the permit intake personnel did not invalidate or in any way affect the owner's representation of the proposed use.

(e) Mr. Armando Lourenco, admitted as an expert in zoning and building code matters, (hereinafter "the owner's zoning expert"), testified that a full and complete set of drawings was accepted by the Department of Consumer and Regulatory Affairs on July 10, 2000.

(f) Mr. Steve Ruiz, admitted as an expert in architecture, (hereinafter "the owner's architect"), testified regarding the extensive level of work associated with preparation of the 178-sheet set of permit drawings. He testified that the set was full and complete in all respects.

3. The Use of the Proposed Building as a Community Residence Facility. Regarding the question whether the use of the proposed building as a community residence facility (providing housing for the handicapped) constitutes a matter-of-right use in the R-5-D zone, the Board makes the following findings:

(a) Mr. Bello, the Chief of the Zoning Review Branch, testified that a

community residence facility providing housing for the handicapped is permitted as a matter-of-right in the R-5-D zone pursuant to Section 330.5(i) of the Zoning Regulations.

(b) The owner's zoning expert supported Mr. Bello's conclusion and testified that the Zoning Regulations clearly permit a community residence facility ("CRF") as a matter-of-right in the R-4 and higher zone districts provided that the Zoning Administrator determines that the CRF is intended to be operated as housing for the handicapped as that term is defined in the Fair Housing Act. The zoning expert noted that this section was added to the Zoning Regulations to address restrictions previously contained in the Zoning Regulations, as a result of the Justice Department's determination that the original requirements in the regulations were volatize of the non-discrimination provisions of the Federal Fair Housing Act.

(c) The owner's zoning expert also testified that the law, the Assisted Living Regulatory Reform Act of 2000, and federal court precedent is clear that an assisted living facility constitutes housing for the handicapped and that an assisted living facility is a type of a community residence facility. He concluded that the proposed facility, as an assisted living facility providing housing for the handicapped, is permitted as a matter-of-right on the subject property given its R-5-D zoning.

(d) The Appellants did not challenge the determination that the facility would provide housing for the handicapped.

4. FLOOR AREA RATIO ("FAR"). As to the issue of whether the approved building violates the FAR requirements of the R-5-D zone, the Board makes the following findings:

(a) The Chief of the Zoning Review Branch stated that the FAR for the project was calculated correctly and that all proper exclusions were taken. As an example, he stated that contrary to allegations of the Appellants, the third floor roof terrace is not countable to FAR because it does not constitute habitable space and is not under roof.

(b) The Chief of the Zoning Review Branch also testified that the structures on the roof, including penthouses and architectural embellishments were correctly excluded from the building's FAR calculation.

(c) The owner's zoning expert testified that the building's FAR of 3.47 is in full compliance with the 3.5 limit applicable in the R-5-D zone. He testified that the computation was properly calculated because the architect included in the gross floor area the portions of the building that are to be counted pursuant to the definition of gross floor area and correctly excluded the areas for which the Zoning Regulations specifically provide exemptions. He testified that the plans correctly excluded, for example, ventilation and utility shafts and rooftop terraces. He also testified that the portion of the lower level that qualifies as basement was correctly counted towards the building's FAR. Finally, the owner's zoning expert noted that

all FAR calculations were based on the lot area of the R-5-D portion of the split-zoned site and no credit was sought for the R-2 portion of the subject property.

(d) The owner's zoning expert testified that ANC 3G's computations of FAR were defective in many respects. For example, the rooftop terrace over the low roof of the second floor was improperly counted toward FAR by the ANC as if it were an exterior balcony. In addition, he testified that ANC 3G did not apply the perimeter wall computation correctly in determining the gross floor area of the lower level of the building. In determining whether portions of the perimeter constituted basement or cellar, he testified that ANC 3G incorrectly measured from adjacent finished grade to the underside of the slab rather than the finished ceiling. This error resulted in an overstatement of the basement area and, accordingly, an overstatement of gross floor area.

5. Rear Yard. As to the issue of whether the Zoning Administrator correctly designated the project's rear yard, the Board finds as follows:

(a) The Chief of the Zoning Review Branch testified that the side and rear yard computations had been determined appropriately given the highly unusual configuration of the lot. He testified that corner lots, by definition, have more than one front and that once a front is chosen for purposes of determining yards, the rear yard is designated as the yard opposite the chosen front. He testified that in the case of unusually shaped lots, the Zoning Administrator must make a judgment call.

(b) The owner's zoning expert concurred with the Chief of the Zoning Review Branch and testified that the manner in which the rear yard was computed for this irregularly configured lot was reasonable and consistent with the longstanding interpretation of the Zoning Regulations by the Office of the Zoning Administrator and does not yield an unnatural result. He testified that given the lot's highly unusual configuration, the Zoning Administrator correctly determined that with Connecticut Avenue as the front, the portion of the lot east of the building (abutting the north-south rear alley that runs roughly parallel to Connecticut Avenue) was the rear.

(c) The owner's zoning expert concluded that given the Zoning Administrator's interpretation, the rear yard depth of 34 feet was correctly measured as the depth of the yard located between the rear building line and the north-south alley. He also noted that while a side yard is not required in the R-5-D zone, there is an extremely generous open space between the proposed building and the residential properties to the north, because the entire R-2 zoned portion of the site will contain no building area. He concluded that the ruling of the Zoning Administrator yielded an appropriate and natural result because it will ensure ample open space surrounding the building, consistent with the intent of the Zoning Regulations.

6. Building Height. As to the issue of whether the proposed building exceeds the permitted height in the R-5-D zone. The Board finds as follows:

(a) The Chief of the Zoning Review Branch testified that the building height, as measured from the middle of the curb in front of the building to the highest point of the roof or parapet, was 83 feet which is seven feet less than the maximum permitted height of 90 feet. He testified that the penthouse and the architectural embellishments are not countable toward building height.

(b) The owner's zoning expert concurred with the Chief of the Zoning Review Branch and testified that the building height was measured properly. He explained that the accurate measurement of height requires a detailed knowledge of the regulations and the correct classification of the architectural and structural features that are permitted on rooftops. He testified that the building height is the vertical distance between the level of the curb at the middle of the front of the building to the highest point of the roof or parapet. He noted that in determining the height of the subject building, the height was measured to the top of the three-foot parapet.

(c) The owner's zoning expert testified that the roof contained several structures that do not count toward the determination of the height of the building as allowed by the regulations. These structures include a mechanical penthouse that houses mechanical equipment, a stairway and an elevator machine room. He also noted that architectural embellishments above the parapet line that do not constitute habitable space and do not count toward the building's height under Section 400.8

of the Zoning Regulations. These embellishments include towers such as the one that houses the elevator equipment which is capped with a purely decorative peaked roof element as well as the other architectural embellishments that simulate the look of a mansard roof around the building's perimeter.

(d) The owner's zoning expert concluded that the building height is 83 feet, well below the allowable 90 foot height in the R-5-D zone and that the Zoning Administrator's determination that the height of the building was in compliance with the Zoning Regulations was correct and followed standard review procedures that had been used in thousands of cases since 1958.

(e) The Appellants were unable to refute the accuracy of the datum points that formed the basis of the measurement of the building height.

7. Elevator Penthouse and Rooftop Mechanical Equipment. As to the issue of whether the housing for the mechanical equipment and the elevator penthouse is improper, the Board finds as follows:

(a) The Chief of the Zoning Review Branch testified that the architectural embellishments and penthouse elements were correctly excluded from both the height and FAR computations.

(b) The Chief of the Zoning Review Branch determined that the mansard roof-like structure that wraps around the perimeter of the building acts as an enclosure of the entire penthouse as required under the Zoning Regulations. Accordingly, the roof plan meets the requirement in the

regulations that the rooftop penthouse be within a single enclosure.

(c) The Chief of the Zoning Review Branch also testified that the elevator tower located at the rear edge of the roof of the building was located within an architectural embellishment and accordingly was not subject to the penthouse setback requirement. In a post-hearing submission dated August 15, 2001, Mr. Bello stated that there is no prohibition against including mechanical equipment within an architectural embellishment. He also provided examples of numerous other buildings in which architectural embellishments that are not set back from the edge of the roof include mechanical equipment. Mr. Bello testified that his office regularly approves tower elements and architectural embellishments that are not set back from the exterior face of the building.

(d) In his post-hearing submission dated August 15, 2001, the Chief of the Zoning Review Branch concluded that the enclosing façade of the elevator penthouse was deemed to be an architectural embellishment design for the purpose of architectural uniformity of the roof plan. Therefore, it was not subject to the set back requirements of Section 400.7(b).

(e) In the post-hearing submission dated August 15, 2001, the Chief of the Zoning Review Branch noted that the determination that the façade was an architectural embellishment is consistent with well-established precedent whereby architectural embellishments such as extensions of a façade or curtain wall above the main roof line of a building have been considered architectural embellishments. The Chief of the Zoning Review Branch

also noted that the Zoning Regulations are silent on the issue of the amount of functionality that is permitted for an architectural embellishment. While architectural embellishments cannot be used to provide habitable space, there is no prohibition of the functional duality afforded by locating mechanical equipment in an architectural embellishment.

(f) The Chief of the Zoning Review Branch also stated that the decision to include the elevator enclosure in the excess FAR allowed penthouses is logical given the roof plan proposal, which was designed to create uniformity with the mansard and turret roofs on other portions of the building, and the function of the penthouse enclosure.

(g) The Chief of the Zoning Review Branch testified that roof plans have not been referred to the Office of Planning by the Office of the Zoning Administrator for several years.

(h) The owner's zoning expert also testified that although Section 411.10 of the Zoning Regulations suggests a need to refer certain roof plans to the Office of Planning, the longstanding practice between the two agencies (and routinely followed by the Office of the Zoning Administrator) is that when structures proposed to be erected clearly fall within the parameters specifically outlined in the Zoning Regulations, no referral is made to the Office of Planning. In addition, the owner's zoning expert testified that this point is moot because in this case, the project underwent a thorough environmental impact review by the Office of Planning and the roof plan

was part of several documents submitted to the Office of Planning in connection with that review. No comments were made by the Office of Planning as to any negative impact of the roof structure on neighboring properties.

8. Parking and Loading. As to the issue whether the project satisfies the parking and loading requirements for a community residence facility in the R-5-D zone, the Board finds as follows:

(a) The Chief of the Zoning Review Branch testified that adequate parking and loading were provided. Since the regulations do not explicitly establish a ratio of required parking spaces for community residence facilities in the R-5-D zone, the Zoning Administrator applied the ratio applicable to publicly-assisted housing for the elderly. In reviewing the permit application, the Chief of the Zoning Review Branch testified that he applied an even more restrictive standard, that for a rooming house or a boarding house. The more restrictive requirements applied by the Chief of the Zoning Review Branch were also satisfied by this project.

(b) The Chief of the Zoning Review Branch testified that the proposed loading facilities fully satisfy the requirements of the Zoning Regulations. He testified that the exact manner in which the loading facilities will function is beyond the purview of the review of the Office of the Zoning Administrator.

(c) The Chief of the Zoning Review Branch testified that the approved plans adequately depict the location of the loading berth, loading platform and

service delivery space. He also testified that the plans show that the loading platform is contiguous to the loading berth and that there is unobstructed access from the berth to the platform.

(d) The owner's zoning expert testified that the plans, which include 31 parking spaces, meet the parking requirement applicable for the subject use. Since the Zoning Regulations do not provide a parking ratio for the proposed use, the owner's zoning expert opined that the Zoning Administrator correctly applied a ratio of required parking spaces for the most similar use for which a ratio is established in the Zoning Regulations, publicly-assisted housing for the elderly. In addition, he testified that since the Zoning Regulations do not provide a ratio for loading spaces, the Zoning Administrator correctly applied the ratio required for any other use in all districts.

9. Licensing Requirements of 22 DCMR 3242 and 3257. As to the issue of whether the facility will meet the licensing requirement of 22 DCMR 3242 and 3257, the Board finds as follows:

(a) Such licensing issues are issues that are beyond the scope of this appeal.

Conclusions of Law and Opinion

The Board of Zoning Adjustment has jurisdiction to hear this appeal and render a decision and order pursuant to D.C. Code Section 5-424(f). Pursuant to 11 DCMR Section 3119.2, the Appellants have the burden of proof in this matter. In considering an application for a building permit, the Zoning Administrator is required to determine whether the plans for the proposed building meet the requirements of the Zoning

Regulations. To reverse the Zoning Administrator's decision approving the issuance of the building permit, the Appellants must demonstrate to the Board, by a preponderance of the evidence, that the building permit was issued in error because the proposed building would violate the Zoning Regulations.

Based on the above findings of fact, the Board concludes that Building Permit No. B435464 was properly issued. The Board concludes that:

(1) The property owner filed a complete Building Permit Application on July 10, 2000, prior to the Zoning Commission setdown date for the rezoning of the subject property.

(2) The proposed community residence facility, providing housing for the handicapped, constitutes a matter-of-right use in the R-5-D zone.

(3) The approved building satisfies the FAR requirements in the R-5-D zone.

(4) The building has an adequate rear yard set back.

(5) The height of the building is less than the maximum permitted height in the R-5-D zone.

(6) The penthouse requirements of the regulations are satisfied and the determinations regarding architectural embellishments were proper.

(7) The parking and loading requirements of the regulations are satisfied.

Complete Building Permit Application. In order to vest its rights under the R-5-D zoning, the owner had to file a complete Building Permit Application prior to October 16, 2000, the date upon which the Zoning Commission set down the application for the downzoning of the site for public hearing. Based on the evidence submitted by the property owner, the testimony of the Chief of the Zoning Review Branch, and evidence in

the record including a receipt evidencing the payment of a filing fee on July 10, 2000, the Board concludes that the property owner filed a complete Building Permit Application on July 10, 2000, well in advance of the October setdown date.

The Proposed Use of the Property. The Board concludes that the property owner's proposed use of the building as a community residence facility providing housing for the handicapped, is permitted as a matter-of-right under the R-5-D zone that governs the Building Permit Application. The Board notes that such use is clearly permitted under Section 330.5(i) of the Zoning Regulations and that the regulations were specifically amended to ensure that they were not volatize of the Federal Fair Housing Amendments Act ("FFHAA"). The Board finds that based on the Assisted Living Regulatory Act of 2000, assisted living facilities constitute a type of community residence facility. Further, the Board notes that historically, assisted living facilities have been treated as a type of community residence facility.

The background of Section 330.5(i) of the Zoning Regulations clarifies this issue. Prior to the revision of Section 330.5(i) in 1998, the Zoning Regulations did not permit a CRF in a residential zone regardless of whether it served handicapped people, unless the facility served fewer than nine people. After the adoption of the FFHAA, the United States Justice Department determined that the District of Columbia Zoning Regulations did not provide equal housing opportunities for handicapped persons to reside in multi-family zones. In practice, many handicapped facilities were deemed CRFs and were subject to limitations that did not apply to housing serving non-handicapped persons. The Justice Department threatened to sue the District government to resolve this differential treatment.