BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

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

Nebraska Avenue Neighborhood Association Statement
In support of the Sua Sponte Review

The Nebraska Avenue Neighborhood Association (NANA) respectfully offers the following statement relating to the sua sponte review by the Zoning Commission of the Decision and Order of the Board of Zoning Adjustment, dated October 12, 2001. That order rejects BZA Appeal No. 16716--an appeal of the Zoning Administrator's decision to issue building permit No. 435464 for construction of a Community Residence Facility to house 130 residents on the subject property located in an R-2/R-5-D zoning district. NANA has carefully examined all available materials provided to it by DCRA relating to the building permit applications (initial and revised), plans and various communications. In our examination, we identified substantial noncompliance with Title 11 Zoning Regulations of the District of Columbia (11 DCMR).

With regard to the roof structures and Office of Planning review of the Roof Structure Plan, deficiencies relating to the Office of the Zoning Administrator (OZA) action include the following:

A. The application is not in compliance with 11 DCMR requirements relating to penthouses in several regards.

B. In approving the permit, the OZA relied on unverified and unrelated "precedence" claimed by the OZA, rather than on 11 DCMR.

BZA
Case No. 16716
Exhibit No. 63

ZONING COMMISSION
District of Columbia
Case No. 01-26 / 16716
EXHIBIT NO. 3

ZONING COMMISSION
District of Columbia
CASE NO.01-26
EXHIBIT NO.3

C. The OZA ignored the 11DCMR procedural requirement to refer roof structure plans to the Office of Planning for review.

These deficiencies are described in more detail as follows:

A. Penthouses and other structures on the main roof are nonconforming with 11 DCMR:

1. Roof structure setback requirement: At the August 3, 2001 BZA hearing, all Parties (Appellants, OZA, Intervenor) testified or agreed under cross-examination that the roof structures (elevator and stairwell penthouses) did not comply with the 11DCMR §400.7(b) requirement that a roof structure must be setback from all exterior walls by a distance at least equal to its height above the roof upon which it is located.

2. Single roof structure requirement: The elevator penthouse is a separate structure from the stairwell penthouse/machine room. In themselves these two structures are nonconforming to the requirement for a single roof structure requirement (11 DCMR §411.3).

3. Enclosing wall setback: The 15 to16 feet high cornice and roof are claimed as a curtain or enclosing wall in order to form a single roof structure which is required by 11DCMR §411.3. It does not meet the setback requirement but actually extend outside the main wall.

4. Inconsistent claim as embellishment or roof structure: The OZA claimed inconsistently that the cornice & roof is embellishments (to exclude it from setback, height and FAR requirements) or enclosing curtain wall (to combine the separate roof structures into a single structure).

5. Enclosing wall requirements: Roof structure enclosing walls are not of equal height above the main roof and do not rise vertically to a roof, as required by 11DCMR §411.5

6. Roof structure height limitation: The elevator penthouse exceeds the 18.5 feet maximum height allowed for roof structures by 11DCMR §400.7 (c).

B. The OZA improperly assumes DCRA precedence over-rides DC zoning regulations:

1. In an August 15, 2001, post-hearing memorandum submitted by the OZA (Attachment A), the OZA attempted to justify the nonconformity of roof structures to zoning code based on precedence of previous OZA actions. Precedence is claimed through the examples of three District of Columbia properties. Three previous wrongs do not make this project's nonconformity conforming!

2. The OZA essentially claims that it is within the discretion of the OZA to overrule mandatory requirements of 11DCMR and establish OZA precedence as the standard. Allowing OZA such unregulated discretion in enforcing the regulations:

    (a) jeopardizes the enforceability of the regulations by the Zoning Commission and BZA;

    (b) jeopardizes appeals of non-conforming building permits;

    (c) gives excessive discretion and authority to the OZA in setting the standards which it applies to building permit applications and applying those standards unevenly to various applications;

    (d) makes a sham of regulatory standards.

3. Not only is the claim of precedence improper, no precedence has been established. Visual inspection of the referenced properties, all of which are in high density commercial zones,[1] shows that none of these buildings have non-conforming elevator or stairwell penthouses; none have similar surrounding and/or protruding roofs. The approval of this building permit application sets new precedence in allowing these features as "a matter of right."

C. Lack of submission of the roof structure plan to the Office of Planing for review:

1. All Parties (Appellants, OZA and Intervener) agree that the Roof Structure Plan was not submitted to the Office of Planning, as required by 11DCMR §411.

2. The OZA testified that plans were available to the OP as part of the Environmental Impact Screening Form (EISF) evaluation process. However, no building plans what-so-ever accompanied the EISF (Attachment B). On the EISF, the applicant misrepresented the 7-story building as 23 feet 2 inches high. The Office of Planning and other reviewing agencies were misinformed of the size and setting of the building.

3. The OZA claims authority to omit submission of roof plans to the OP based on its own precedence (testimony, 8/3/01). The OZA oversteps its powers in claiming authority to override this 11 DCMR mandatory requirement.

There is a significant material impact on the surrounding neighborhood of these improper roof structures, especially from increasing the height of the building by 15 to 20 feet which these nonconforming roof structures have done. It is noteworthy that no environmental impact evaluation was done due to the architect's sworn statement on the EISF that this building is only

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[1]: The addresses are: 1725 I St NW, 1818 H St NW and 2590 L St, NW.

23 feet high (Attachment C). No plans were submitted with the EISF to the reviewing agencies, including the Office of Planning, to negate this claimed low height. It is also noteworthy that even with BZA approval of some deviation from the requirements of 11 DCMR §§411.3 through 411.6, the BZA may do so only if the light and air of adjacent buildings shall not be affected adversely (§411.11), a condition which does not hold in this case.

For the reasons stated above[2], NANA respectfully requests the Zoning Commission to reverse the decision of the OZA and BZA and sustain the appeal of Building Permit No. 435464.

Yours truly,

Page Chiapella

Page Chiapella
President, Nebraska Ave. Neighborhood Assn.

Martha Thompson

Martha Thompson
Vice Pres, Nebraska Ave. Neighborhood Assn.

Attachments

Cc: Maureen Dwyer, Esq. (Sunrise)
Ellen McCarthy, Office of Planning
Michael Johnson, Zoning Administrator
Charlotte W. Parker, Esq., Corporation Council

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[2]The issuance of the subject permit deviates from zoning code in several other ways, including: the rear yard setback which does not extend across the entire rear of the building; FAR greater than 3.5; residential use as a CRF serving 130 residents on a lot zoned R-2 / R-5-D; and commercial adjunct on the 4th floor and within less than 500 feet of a commercial district. All these were granted without special exceptions, variances or request for reasonable accommodation.

ATTACHMENT A

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 # 16716
Exhibit # 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

003/003

08/15/01 15:48 FAX 2024424871

ATTACHMENT B

Steingasser, Jennifer (OP)

From: Chiapella, Page (NIAAA) [pchiapel@willco.niaaa.nih.gov]
Sent: Friday, October 19, 2001 4:41 PM
To: McCarthy, Ellen (OP)
Cc: Steingasser, Jennifer (OP)
Subject: Follow-up on 5111 Connecticut

After reviewing transcripts for the BZA evaluation of the 5111 Connecticut, NW (Sunrise) project, the following questions arose relating to OP review of roof structure plans. We would appreciate receiving OP confirmation of the following points.
Thank you in advance for your attention to this matter.
Page Chiapella

1. Does OP have a written or unwritten agreement requesting DCRA to not send roof structure plans to OP under 11 DCRA Section 4.11?
____ YES X NO

2. Within the last 2 years, has OP reviewed any roof structure plans submitted to them by DCRA under 11 DCMR 4.11?
X YES ____ NO

3. Did DCRA submit the full set of plans for 5111 Connecticut Ave., NW to OP (with the EISF form or at any other time)?
____ YES X NO

We understand from a previous communication that the 5111 Connecticut Ave. roof structure plans were not submitted to OP (confirmed to Toye Bello of DCRA). Question 3 evaluates whether the roof structure plans were included among the full set of plans if those were submitted to OP. These plans include approximately 178 large sheets.

Thank you for your response to these questions regarding roof structure plan review.

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ATTACHMENT C

I. INTRODUCTION AND PURPOSE

A. INTRODUCTION

Sunny and Louis Reyes, *et al,* the property owners, propose to construct an 102-unit, assisted living complex for seniors, most of whom require substantial medical and/or allied health services. Each unit will be approximately 400 to 600 square feet, with a private bathroom. The facility will have a common dining room with a centralized kitchen. The proposed structure at 5111 Connecticut Avenue, NW measures twenty-three (23) feet and two (2) inches high, by seventy (70) feet and eleven (11) inches wide, by one hundred and sixty-eight (168) feet and two (2) inches long. The site for the project includes 0.634 acres, all of which will be developed. The gross floor space will include 80,620 square feet. The proposed construction will replace several apartment buildings presently on the site. The current zoning classification of the site is R-5-D.

B. PURPOSE FOR THE PROPOSED ACTION

The proposed structure will be used commercially to provide assisted living residences and services.

height 23 ft 2 in.

DISTRICT OF COLUMBIA GOVERNMENT
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
ENVIRONMENTAL REGULATION ADMINISTRATION

ENVIRONMENTAL IMPACT SCREENING FORM
(EISF)

The Environmental Impact Screening Form (EISF) is designed to help applicants and District government agencies determine, in a orderly manner weather, a "major action", as defined in the District of Columbia Environmental Policy Act of1989, would likely result in significant adverse environmental impacts, either during the construction or operation phase of the project. The question of whether an impact is significant is not always easy to answer. Frequently there are aspects of a project which are subjective or unmeasureable. The EISF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to specific project or action.

The Environmental Impact Screening Form is comprised of three parts:

Part 1: Provides objective data and information about a given project and its site. By identifying basic project data, it assists the government reviewers in the analysis that takes place in Parts 2 and 3. This part must be filled out by the applicant.

Part 2: Identifies the range of possible impacts that may occur from a project during construction or afterwards. It provides guidance (by example) as to whether an impact is to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced. This part is filled out by the lead agency reviewers.

Part 3: If any impact in Part 2 is identified as potentially-large, even if it can be mitigated, then Part 3 is used to evaluate whether or not the impact is significant. This part is completed by the lead agency reviewers.

PART 1 - PROJECT INFORMATION

NOTICE: This document is designed to assist in determining whether the action proposed will likely have a significant adverse impact on the environment. The applicant must answer all the questions in Part 1. Answers to the questions will be considered as part of the application for approval and will be subject to further verification. Further information may be required. Provide any additional information you believe will be needed to complete Parts 2 and 3 of this form.

Name of Project 5111 Connecticut Ave., N.W.		
Location of Project (Street Address) 5111 Connecticut Ave., N.W.	Lot 49-57 & 161	Square 1989
Name of Applicant Mario Escalante	Telephone 703-744-1830	
Mailing Address 5111 Connecticut Ave., N.W.		
City Washington	State DC	Zip 20015
Name of Owner Sunny & Louis Reyes, Et. Al	Telephone	
Mailing Address P.O. Box 501		
City College Park	State MD	Zip 20741-0501

B. PROJECT DESCRIPTION

Physical dimensions and scale of project (fill in dimensions as appropriate)

a. Project area to be developed: 27,650/0.634 (sq. ft./acres)

b. Project area to remain undeveloped: 0 (sq. ft./acres)

c. Dimensions of proposed structure: 23'-2" height; 70'-11" width; 168'-2" length

d. Gross floor acre of proposed structure: [redacted]80,620 sq. ft.

h. Depth of any escavation: 13' average; 15' maximum

2. Does the proposed action involve a planning or zoning decision? ☐Yes ☒No

If Yes indicate decision requared:

☐zoning variance ☐special exception ☐special use permit

☐subdivision ☐large tract review ☐other_____

3. a. Will the proposed project contain residential premises, apartment dwellings, housing subdivisions or other housing complexes designed to house fifty (50) of more families? ☐Yes ☒No

b. Will the proposed projects consist of shopping and/or office and/or commercial facilities having 50,000 or more square feet of gross floor space? ☐Yes ☒No

c. Will the proposed project consist of entertainment and/or recreational facilities including but not limited to theaters, auditoriums, sports stadiums, bowling alleys, etc. having a capacity to accommodate more than 400 persons at one time? ☐Yes ☒No

d. Will the proposed projects consist of or include parking facilities (garages, surface lots, etc.) having a capacity of 50 or more vehicles? ☐Yes ☒No

e. Will the proposed project increase traffic volume which would result in a street volume-to-capacity ratio of 0.90 or greater (Street Level-of-Service E or F)? ☐Yes ☒No 6 a.m. peak hour trips 17 p.m. peak hour trips

f. Will the proposed project increase traffic volume which would result in a vehicle delay of 40.1 or more seconds at any signalized intersection (Intersection Level-of-Service E or F)? ☐Yes ☒No

NOTE: If you answered YES to any of the questions 3. (a. through f.) you are required to submit an air quality analysis of emissions (in pounds or tons of pollutants per day) of Carbon Monoxide (CO), volatile organic compounds (VOCs), and nitrogen oxides (NO_x) resulting from the operation of mobile sources associated with the proposed project. The most current version of the U.S. Environmental Protection Agency's (EPA's) "MOBILE" emissions factor model must be used in deriving the emissions estimates. In addition, an analysis of the impact from mobile sources on CO concentrations (in parts per million) in the vicinity of the proposed project must also be provided. This analysis, at a minimum, must be conducted in accordance with the procedures identified in the EPA guidance document entitled Guidelines for Air Quality Maintenance Planning and Analysis Volume 9: Evaluating Indirect Sources (Publication No. EPA-450/4-74-10) using an approved air quality dispersion model and must include a comparison of the resulting air quality with both the one (1) hour average and eight (8) hour average National Ambient Air Quality Stantards (NAAQS) for CO.

4. Will the proposed project result in an emission into the atmosphere of odorous or other air pollutants from any source, in any quantity and of any characteristic and duration which is or is likely to be injurious to the public health or welfare or which interferes with the reasonable enjoyment of life and property? ☐Yes ☒No

a. If Yes descsibe:_____

5. How much natural material (rock, earth, etc.) will be removed from the site? 11,700/7,000 tons/cubic yards

6. How much vegetation will be removed from the site? 0.16 sq.ft./acres

7. Will any mature trees or other locally important vegetation be removed from the site? ☐Yes ☒No

9. Will construction be on land where tbe depth to the water table is less than 3 feet? ☐Yes ☒No

Will construction be on land where the bedrock is exposed or is within 3 feet of tite existing ground surface? ☐Yes ☒No

10. Will the construction disturb more than 5,000 square feet of soil? ☒Yes ☐No

11. Will disturbed trees be reclaimed? ☒Yes ☐No ☐N/A
    a. If Yes, for what intended purpose is the site being reclaimed? Building Construction

12. If project is single-phase: Period of construction 14 months (induding demolition)

13. If project is multi-phased:
    a. Total number of phases anticipated:_____
    b. Anticipated date of commencement of phase 1_____month____year
    c. Approximate date of completion of final phase_____month____year
    d. Is phase 1 functionally dependent on subsequent phases? ☐Yes ☐No

14. Will blasting occur during construction? ☐Yes ☒No

15. Will the surface area of an existing water body be increased or decreased by the project? ☐Yes ☒No
    a. If Yes,explain_____

16. Is the project or any portion of the project in a 100 year flood plain? ☐Yes ☒No
17. Will liquid waste be generated, either during construction or afterwards? ☐Yes ☐No
    a. If Yes, indicate type of waste (chemical, industrial, sewage, etc.) and amount_____
    b. How will this waste be disposed of?_____

18. Will the project generate solid, medical, infectious, radioactive or hazardous waste? ☐Yes ☒No
    a. If Yes, what is tbe type and amount per montb?_____type; _____amount
       Will an existing waste disposal facility be used? ☐Yes ☒No
       Give name_____ ; location_____
    b. Will any wastes not go into a waste disposal facility? ☐Yes ☒No
       If Yes, explain_____
19. Will the project produce odors? ☐Yes ☒No
    a. If Yes, describe source of odors and duration_____

20. Will the project produce noise, either during construction or afterwards, exceeding the existing ambient noise levels? ☐Yes ☒No

21. Will any underground storage tanks be installed? ☐Yes ☒No
    a. If Yes, how many tanks will be installed?_____
    Contents:_____Capacity:_____(gallons)

22. Will pesticides (herbicides, insecticides, etc.) be used? ☐Yes ☒No

23. Will the proposed project require the issuance of any permits or other approvals (Certificate of Occupancy, Public Space Pemit, Air Pollution Permit, Stormwater Management Permit, Pretreatment Permit, Zoning Approvals, etc.) from the District Government, in addition to a Construction Pemit? ☐Yes ☐No
    a. If Yes, list alll required permits: Public Space Permit, Stormwater Management Permit, Sediment Control

24. Will the proposed project require the issuance of any permits or other approvals (NPDES, Section 404 Dredge and Fill Permit, etc.) from the Federal Govenment? ☐ Yes ☒ No

a. If Yes, list all required permits: _____

25. What is the Standard Industrial Classification (SIC) Code for the proposed facility? 6513 see attached description

C. INFORMATIONAL DETAILS

Attach any additional information as may be needed to clarify your project. This information could be in the form of a narrative description of the project, brochures descrbing the project or processing equipment, geotechniacl reports, soil surveys, Phase I and Phase II Environmental Assessments, traffic surveys, air quality asalysis, or any other information which may be available which will assist the reviewers in making their determinations. Use separate sheets, if necessary, to expand on any answers or esplainations given in Part 1 of this EISF.

D. VERIFICATION

I CERTIFY THAT THE INFORMATION PROVIDED IN THIS ENVIRONMENTAL IMPACT SCREENING FORM IS TRUE TO THE BEST OF MY KNOWLEDGE.

Applicent/Representative:

Name (Print) Steven M. Ruiz Date September 13, 2000

Signature _____ Title Partner Beery Rio & Associates

Adress 8001 Braddock Road, 4th Floor, Springfield, VA 22151

Telephone Number (703) 426-9057

23 feet high (Attachment C). No plans were submitted with the EISF to the reviewing agencies, including the Office of Planning, to negate this claimed low height. It is also noteworthy that even with BZA approval of some deviation from the requirements of 11 DCMR §§411.3 through 411.6, the BZA may do so only if the light and air of adjacent buildings shall not be affected adversely (§411.11), a condition which does not hold in this case.

For the reasons stated above, NANA respectfully requests the Zoning Commission to reverse the decision of the OZA and BZA and sustain the appeal of Building Permit No. 435464.

Yours truly,

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Attachments

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