

## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Maxine Brown-Roberts, Project Manager  
Joel Lawson, Associate Director Development Review  
**DATE:** December 31, 2020

**SUBJECT:** BZA 20350 – Continuing Care Retirement Community at 401 Anacostia Road, SE

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### **I. OFFICE OF PLANNING RECOMMENDATION**

Mary’s House for Older Adults, Inc. (“Applicant”) proposes a continuing care retirement community (“CCRC”) to accommodate 15 lesbians, gay, bisexual, transgender, queer or same gender loving persons (LGBTQ/SGL), 60-years or older at 401 Anacostia Road, SE. To accommodate the proposal, the Office of Planning (“OP”) recommends **approval** of the requested special exception and variances as follows:

#### Special Exception

- Subtitle U § 203.1(g) for a CCRC use in R-Use Group C, that does not contain assisted living or skilled nursing facilities.

#### Variance

- Subtitle U § 203.1(g)(2) for a CCRC (8 residents maximum, 15 residents proposed);
- Subtitle C § 711.6, driveway width (20 feet required, 8 feet proposed);
- Subtitle D § 304.2, lot occupancy (40% maximum allowed, 47% proposed); and
- Subtitle D § 206.2, Side Yard (8 feet required, 0 feet proposed on the south side).

The Applicant, in the pre-hearing statement (Exhibit 43) has also requested design flexibility to make modifications that may deviate from the architectural plans submitted with the application, provided that such design flexibility does not increase the areas of special exception or variance relief or create any new areas of relief.

### **II. BACKGROUND**

BZA Order 19482, effective May 24, 2017, approved a similar application for a special exception for a Continuing Care Retirement Community and variances from the lot occupancy, side yard and drive isle width requirements on the subject property. The applicant had two-years in which to get building permits and begin construction. The Applicant states that due to a lack of funding, they were unable to obtain building permits, begin construction and the BZA Order expired. The new application is for the same use, number of units and residents. The building would be the same square footage with the same number of parking spaces. The major change is to the façade of the building, the roof layout and the drive isle has been relocated from the northern portion of the building to the southern portion.

**III. LOCATION AND SITE DESCRIPTION**

Address	401 Anacostia Road, SE
Legal Description	Square 5433, Lot 9/Parcel 203
Ward/ANC	7/7F
Lot Characteristics	The lot is nearly rectangular, with an area of 8,885 square feet (152.80 feet x 60 feet), and fronts on Anacostia Road, SE.
Zoning	R-3 - intended for rowhouses on small lots. A Continuing Care Retirement Community is permitted within the zone subject to special exception review.
Existing Development	The site is improved with a two story, single family detached house which is currently vacant. There are also several large trees on the site.
Historic District	Not within a historic district.
Adjacent Properties	To the north are the Stoneridge apartments in the RA-1 zone; to the east are the Anacostia Gardens apartments in the RA-1 zone; and to the south and west is the Congregation of Jehovahs Witnesses Kingdom Hall and its parking lot in the R-3 zone.
Surrounding Neighborhood Character	The surrounding community consists of apartments, single family detached, and institutional uses.



Site Location



Photograph of Site

**IV. APPLICATION-IN-BRIEF**

The proposed CCRC would specifically serve LGBTQ/SGL persons, 60-years or older. The proposed three-story building would have 12,002 square foot of space (above grade) with 15 units (bedroom, bathroom, living area) and a common area and central laundry on the upper floors; one unit, a communal kitchen, dining area and living room on the first floor; and an exercise room, small conference room and computer room are in the basement. Four parking spaces would be located to the rear of the building. The building would also have a roof terrace with approximately 2,414 square feet of green roof.

**V. ZONING REQUIREMENTS AND RELIEF REQUESTED**

The table below shows how the proposal meets the requirements of the R-3 zone.

<b>R-3 Zone</b>	<b>Regulation</b>	<b>Proposed</b>	<b>Relief</b>
Continuing Care Retirement Community, Subtitle U § § 203.1(g)	Independent Living Facility	Independent Living Facility	<b>Special Exception</b>
Continuing Care Retirement Community, Subtitle U § § 203.1(g)(2)	Independent Living Facility for 8 persons	Independent Living Facility for 15 persons	<b>Variance</b>
Lot Area, Subtitle D § 302.1	4, 000 sf.	8,885 sf.	None
Lot Width, Subtitle D § 302.1	40 ft.	60 ft.	None
Height, Subtitle D § 303.1	40 ft./3 stories	38 ft./ 3 stories	None
Penthouse Height, Subtitle D, § 303.2	12 ft.	11 ft.	None
Lot Occupancy, Subtitle D § 304.1	40% max.	47%	<b>Variance</b>
Rear Yard, Subtitle D § 306.2	20 ft. min.	20 ft.	None
Side Yard, Subtitle D § 206.2	Two (2) side yards, each a minimum of eight feet (8 ft.) in width, shall be provided for detached buildings.	North Side: 0 ft. South Side: 8 ft.	<b>Variance</b>
Pervious Surface, Subtitle D § 308.3	20%	32%	None
Parking, Subtitle C § 701.5	1 space/4 units for publicly assisted <sup>1</sup> housing reserved for the elderly and/or handicapped = 4 spaces	4 spaces	None
Parking, Driveway Width, Subtitle C § 711.6	20 ft.	8 ft.	<b>Variance</b>

**VI. OFFICE OF PLANNING ANALYSIS**

The Zoning Regulations at Subtitle B § 100.2 defines “continuing care retirement community” as follows:

*Continuing Care Retirement Community: A building or group of buildings providing a continuity of residential occupancy and health care for elderly persons. This facility includes dwelling units for independent living, assisted living facilities, or a skilled nursing*

<sup>1</sup> The applicant states that they will seek public funds to finance construction of the project.

*care facility of a suitable size to provide treatment or care of the residents; it may also include ancillary facilities for the further enjoyment, service, or care of the residents. The facility is restricted to persons sixty (60) years of age or older or married couples or domestic partners where either the spouse or domestic partner is sixty (60) years of age or older.*

The proposed CCRC would be an independent living facility specifically for LGBTQ/SGL persons, sixty years or older with ancillary facilities for the enjoyment and service for the residents.

### **Special Exception**

Subtitle § 203.1(g)(1) for a CCRC use.

- (g) *Continuing care retirement community, subject to the provisions of this paragraph:*
- (1) *The use shall include one or more of the following services:*
- (A) *Dwelling units for independent living;*
  - (B) *Assisted living facilities; or*
  - (C) *A licensed skilled nursing care facility;*

The proposed use would have dwelling units for seniors independent living.

- (2) *If the use does not include assisted living or skilled nursing facilities, the number of residents shall not exceed eight (8);*

The proposed facility would not include assisted living or be a skilled nursing facility and therefore the maximum number of residents allowed by-right would be eight residents. The applicant is continuing to propose 15 residents, similar to the previously approved BZA case. To exceed the eight residents, variance relief is required and is addressed below in the Variance section of this report.

- (3) *The use may include ancillary uses for the further enjoyment, service, or care of the residents;*

The facility would include communal space within the building and the penthouse which would include spaces for residents to share meals, congregate, and enjoy recreational activities, small conference room, a computer room with private stations, and an exercise room.

- (4) *The use and related facilities shall provide sufficient off-street parking spaces for employees, residents, and visitors;*

The proposal would provide sufficient off-street parking, as with a requirement of one space per unit for publicly assisted housing reserved for the elderly and/or handicapped, four spaces are required, and four spaces would be provided. In addition, the property would be served by Metrobus routes V2 and V4 with stops located within 0.1 mile of the property along Minnesota Avenue, SE on their way to and from the Minnesota Avenue/Benning Road Metro Station. The applicant states the property is also served by bus lines U5 and U6 nearby. The property is also within 0.3 miles from a Capital Bikeshare station at the intersection of Ely Place and 37<sup>th</sup> Place, SE. There is also unrestricted parking along Anacostia Road.

- (5) *The use, including any outdoor spaces provided, shall be located and designed so that it is not likely to become objectionable to neighboring properties because of noise, traffic, or other objectionable conditions; and*

The proposed facility with 15 residents is not anticipated to result in negative impacts on the adjacent apartments, which have a larger population and would be separated from the proposed building by a large parking lot. Given that the residents would be 60-years and older and the on-site activities would be mainly located indoors, it is not envisioned that they would generate significant amount of noise to disturb the adjacent apartments, the adjacent Kingdom Hall or the wider community. Even though the building would be placed along the northern property line, it would be separated from the adjacent apartment building by a large parking lot. The adjacent church would be separated by the eight-foot wide side yard on the property in addition to the side yard of the church. Due to the size of the property, there little area for outdoor active uses. In addition, the building should not negatively impact the church parking lot to the west. It is not envisioned that the four parking spaces should generate many trips to and from the site or to negatively impact adjacent buildings or traffic in the area. The driveway to the parking to the rear of the property has been located along the southern property line so as not to conflict with the entrance to the adjacent parking lot which serves the apartments.

The light and air to the adjacent Kingdom Hall and apartments should not be negatively impacted due to the significant setback from the apartments and the required setback from the Kingdom Hall which has no residential units.

- (6) *The Board of Zoning Adjustment may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it deems necessary to protect adjacent and nearby properties.*

OP does not propose any additional screening or signage. However, OP recommended to the Applicant to consider incorporating some brick to the façade of the building to be in keeping with all the buildings along this block of Anacostia Road and the surrounding community which has buildings of all or predominantly brick facades.

## **VariANCES**

### 1. CCRC with 15 residents

Subtitle § 203.1(g)(2) allows for a CCRC with eight residents. The proposal is for 15 residents.

- i. *Extraordinary or Exceptional Situation or Condition Resulting in Peculiar and Exceptional Practical Difficulties to the Property Owner;*
- a. *Extraordinary or Exceptional Situation*

The property owner, Mary's House for Older Adults, Inc., is presented with an exceptional situation in that they are a non-profit organization who provides transitional housing for persons who identify as LGBTQ/SGL, aged 60-years and older. The population of persons are highly undeserved and would be the first of its kind in the District. The condition of limiting the CCRC to eight residents would impose an undue burden as the proposal was approved in 2017 for 15 residents under previous regulations which did not limit the facility to eight residents.

*b. Exceptional Practical Difficulties*

Due to funding related circumstances beyond its control, the Applicant was unable to submit for a building permit that would have vested the previous approval prior to enactment of the new regulations. The Applicant states that funding was finally secured for 15 units and a redesign of the project to eight units could jeopardize the funding and thus making the project unbuildable.

*ii. No Substantial Detriment to the Public Good*

The CCRC use and specifically an independent living facility, is deemed by the Regulations to be a compatible use in the R-3 zone and would house persons 60-years and older. Housing this population of 15 persons would be a public good as it would be the first of its type of much needed housing in the District. The facility with 15 persons aged 60-years above would be a compatible residential use and is not envisioned to generate any excessive noise or sounds to disturb the adjacent residential or Kingdom Hall uses.

*iii. No Substantial Impairment to the Intent, Purpose, and Integrity of the Zoning Regulations*

The R-3 zone permits a variety of residential uses by right or with special exception review, with CCRC uses being a compatible use if it meets the requirements of Subtitle § 203.1(g). As demonstrated above, the proposed CCRC would continue to meet those requirements as proposed, thereby maintaining the integrity of the zone.

2. Driveway Width

Variance relief from Subtitle C § 711.6, driveway width (20 feet required, 8 feet proposed);

*i. Extraordinary or Exceptional Situation or Condition Resulting in Peculiar and Exceptional Practical Difficulties to the Property Owner;*

*a. Extraordinary or Exceptional Situation*

The lot has a width of 60 feet and unlike many of the other R-3 zoned properties in the square it is surrounded on three sides by other properties without an access from an alley which is an exceptional situation. This relief was part of the previous approval in BZA Case 19482 (expired).

*b. Exceptional Practical Difficulties*

The lack of the alley and the requirement to place the parking spaces at the rear of the building necessitates the need for a drive isle. Having to meet the required side yards in addition to the drive isle presents a practical difficulty to the applicant as it would significantly affect the size of the building and making the project not viable.

*ii. No Substantial Detriment to the Public Good*

The drive isle would provide access to the four parking spaces to the rear of the property. If the minimized drive isle is not allowed, it could result in a significant reduction in the size of the building which could result in a loss of units, or in the loss of the parking spaces. Therefore, the drive isle with a reduced width still allows access to the parking spaces and would have no impact on the adjacent properties.

*iii. No Substantial Impairment to the Intent, Purpose, and Integrity of the Zoning Regulations*

Granting the request for a reduction in drive isle width would not cause a substantial impairment to the intent, purpose, and integrity of the zone plan. The drive isle is needed to give access to the four required parking spaces at the rear of the property. Due to the small number of spaces, the reduced drive isle would not be highly or frequently travelled. If the minimized drive isle is not allowed, the parking spaces could not be accessed and would result in on-street parking, and a need for additional relief from the parking regulations themselves to not provide any parking onsite.

3. Lot Occupancy and Side Yard

*i. Extraordinary or Exceptional Situation or Condition Resulting in Peculiar and Exceptional Practical Difficulties to the Property Owner;*

*a. Extraordinary or Exceptional Situation*

These were also part of the previous approval in BZA Case 19482. The applicant is presented with an exceptional situation in that Mary's House is a non-profit organization providing a facility for persons who identify as LGBTQ/SGL, aged 60-years and older and the building required to be built with institutional necessities such as meeting ADA requirements on all floors and within each space. The building is required to provide a larger floorplate in order to meet ADA requirements on all levels which results in a building lot occupancy that is larger than allowed.

*b. Exceptional Practical Difficulties*

If the Applicant were required to meet the lot occupancy requirements and provide the required side yard on both sides, the CCRC building would have to be significantly reduced in size, making it practically difficult for the project to adequately serve the needs of the residents and project would not be viable.

*ii. No Substantial Detriment to the Public Good*

The relief for lot occupancy and side yard on the northern portion of the site would not be a substantial detriment to the adjacent properties as even with the increased lot occupancy and the reduced side yard, the building would be setback and would likely not affect the light and air to the residents of the adjacent apartments and the Kingdom Hall. Providing the side yard along the southern property line would provide some separation from the Kingdom Hall.

*iii. No Substantial Impairment to the Intent, Purpose, and Integrity of the Zoning Regulations*

Lot occupancy and side yard requirements are designed to allow adequate light, air and privacy between buildings. In this case, due to the context, granting the request for an increase in lot occupancy and a reduced side yard should not cause a substantial impairment to the intent, purpose, and integrity of the zone plan or the public good. The parking lot that serves the apartment building provides substantial separation from the adjacent apartments, and should not affect the light, air, and privacy of the apartment units. The Kingdom Hall is set back from the property line plus the eight feet that the proposed building would be set back and does not have residencies. Although, the

proposed building would be larger than the adjacent one-story Kingdom Hall, with the Kingdom Hall being setback back, plus the eight feet setback of the proposed building, the light, air and privacy to the Kingdom Hall should not be substantially impacted.

## **VII. COMMENTS OF OTHER DISTRICT AGENCIES**

The subject property has several large trees which would have to be removed to accommodate the proposed building. The Department of Transportation (DDOT) informed OP that an assessment of the trees will be done at the time of permitting. DDOT is expected to submit a report on this proposal under separate cover.

## **VII. ANC COMMENTS**

The property is within ANC-7F. At its September 15, 2020 meeting the ANC voted to recommend approval of the proposal (Exhibit 16).

## **VIII. COMMUNITY COMMENTS**

To date, there are no letters from community members.