

Proposed Conditions

Facility Licensing & Capacity

- The facility shall be licensed as an assisted living facility with a maximum capacity of 16 beds.
- There shall be no minimum age requirement for residents ("guests").

Service Provider Consistency

- The facility shall use the same service providers as those used at the 4231 Clay Street NE facility, including but not limited to:
 - Food delivery
 - Housekeeping and waste management
 - Medical care coordination and emergency services

Medical Emergency Protocol

- The facility shall maintain a documented urgent care protocol aligned with state guidelines, including triaging by on-site staff, on-call medical provider consultation, and EMS activation as needed.

Visitor Management

- Visitors shall be allowed during mealtimes and scheduled activities only.
- Visitors must be scheduled in advance with the facility administrator.

Noise & Quiet Hours

- The facility shall enforce quiet hours from 8:00 PM to 7:00 AM.
- Noise-reducing policies shall be implemented, including signage, supervision of outdoor areas, and restrictions on large gatherings during quiet hours.

Outdoor Space Use

- Recreational use of the outdoor courtyard shall be supervised and shall not include amplified sound or create disturbances to neighbors.

Parking & Transportation

- The facility shall provide four off-street parking spaces at the rear of the building for staff and visitors.
- Parking shall be screened.

Services

- Service providers, such as housekeeping and meal services, shall occur between 6am-10am. (*Typically scheduled between 7am-9am, but added an hour on either end for flexibility*).
- A designated waste storage area shall be maintained on-site, with daily trash pickup to ensure hygiene and cleanliness.

Time Limit

Imposing a time limit on a Board of Zoning Adjustment order for an assisted living facility raises significant concerns due to the nature of the use and the population it serves. Assisted living facilities are not transient operations; they are homes for medically vulnerable individuals. If the time-limited approval expires or is not approved in the future, the facility could be forced to cease operations, potentially displacing residents with little recourse. Even if a condition could be narrowly tailored, no one can anticipate what the zoning regulations and approval will require in 10 years from now. This creates ethical and logistical challenges, as relocating elderly or disabled residents can cause serious health impacts and emotional distress. DOH will likely have issues approving a facility that is subject to a time restriction. And families would certainly not be willing to put loved ones in such a facility knowing they could be forced out.

Because of these reasons, from a regulatory and financial standpoint, temporary zoning relief introduces instability that can deter investment and complicate long-term planning. Lenders may hesitate to finance a facility without assured operational continuity, and the operator/Applicant will struggle with recruitment, licensing, and maintaining care standards amid uncertainty. While time limits might be appropriate for certain conditional uses, applying them to residential care facilities risks undermining the very stability such facilities are meant to provide. The licensing and regulatory procedure required prior to any facility opening its doors takes years, not months. So, by the time the Applicant is approved by the various agencies, including permitting, licensing, and a Department of Health Care Finance (DHCF) Medicare waiver, much of that time limit will have already expired.

A DHCF waiver is a waiver program administered by DHCF and allows the District to waive certain federal Medicaid requirements so that it can use Medicaid funds to provide long-term services and support. This lets eligible residents receive care in home or community settings, which are generally more cost-effective and better for quality of life. The time length process is variable and can be long as the District does not typically respond timely and there are multiple rounds of review. Without this waiver, all occupants must pay out of pocket. The residence on Clay Street, for example, was permitted in 2023, received its

license from DOH in March 2024, and is still under review with DHCF. The current residents all pay out of pocket.

For the foregoing reasons, the Applicant implores the Board to keep this use free from a time limit. A time limit will undermine operations to the point where it would have been better off never to have asked for relief and the Applicant would consider withdrawing the case because the regulatory process with a time limit could create more delay with DOH and DHCF than simply having 8 beds by right. The conditions proposed herein are strong enough, and the regulatory framework surrounding these facilities is ample enough that a time limit is not necessary, especially for a use that can, by right, operate with 8 beds with no conditions.

Further, a time limit does not directly address the ANC's concerns which are related to traffic, parking, commercialization, a lack of community benefits package, and disturbing the adjacent property owners (who support the project). The Applicant will address these concerns raised by the ANC in a forthcoming submission in more detail (due May 9th, per the BZA memo).

While Subtitle X § 901.5 grants the Board of Zoning Adjustment the authority to impose a term limit on a special exception use when it determines that a subsequent evaluation of the actual impact of the use on neighboring properties is appropriate, the regulation also requires the Board to consider the reasonable impacts and expectations of the applicant in doing so. In this case, a time limit does much more harm than good. These are heavily regulated uses monitored by DOB, DOH, DHCF and the Ombudsman organization. A time limit will impede the regulatory process in place for an assisted living facility and undermine its intent to provide stable care for a vulnerable population. X-901.5 The Board of Zoning Adjustment may impose a term limit on a special exception use when it determines that a subsequent evaluation of the actual impact of the use on neighboring properties is appropriate but shall consider the reasonable impacts and expectations of the applicant in doing so.