

BZA Case No. 21250 – 7410 Eastern Avenue, NE

After reviewing the record, the following (legally relevant) concerns were raised, and these conditions are being proposed in order to mitigate those concerns:

- Two letters in opposition:
 - Exhibit 25: No legally relevant concerns, only concerns related to licensing and ADA requirements which will be addressed by DOH, DOB and the other respective agencies responsible for overseeing these facilities.
 - Exhibit 34: After the record was closed, in an exhibit not requested by the Board, an ANC commissioner, who is not the SMD for the Property, submitted a letter in opposition. The primary concerns were related to facility operations—answers to which are detailed in another exhibit with this submission, as well as a detailed manual in Exhibit 17F. Other concerns raised are parking and traffic, addressed via conditions herein.
- ANC Resolution:
 - No directly relevant concerns related to the criteria for approval; regardless, the concerns raised by the ANC have been addressed in a separate exhibit with this filing. The concern regarding medical waste, which is not produced as part of an Assisted Living Residence, is addressed below under trash.

PROPOSED CONDITIONS

1. The healthcare facility shall have a maximum capacity of 14 residents.

- The Applicant would like to clarify that this will be licensed as an Assisted Living Residence which is licensed under the District of Columbia Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*).
- This number is based on the licensing requirements and minimums for an assisted living residence.
- There is no specific ‘assisted living’ use or definition in the Zoning Regulations. It is under the umbrella term of “Healthcare Facility” which is defined as “A facility that meets the definition for and is licensed under the District of Columbia Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*).”
- However, the Certificate of Occupancy and the License that will be issued is for an Assisted Living Facility.

2. Visitor hours shall be from 7am-9pm.

- **OPTIONAL: Each resident shall be assigned a 3-hour visitor window. Within this window, 4 residents can be accommodated per day without overlap, ensuring that each visitor has access to the designated visitor parking space. With 14 total residents, this rotation allows each resident to receive 2 visits per week, depending on scheduling demand and availability.**
- The Applicant reviewed the conditions approved in BZA Case No. 21240 and 21249 and tried to revise accordingly and appropriately for this Property. The Applicant is providing this as an option since there is no available parking on site in this facility.
- The Applicant would note that, even without the visitor window policy, there would still be no adverse parking or traffic impacts created by the facilities if there are, at most, two employees parked and an occasional visitor vehicle or two. This is especially true considering the closing of the curb cut will add 2-3 new spaces in front of the Property. Even without the newly added spaces, as evidenced by photographs in Exhibit 30 pp. 17-20, there is ample street parking available. Accordingly, this mitigates any alleged concerns about 'parking and traffic' raised.
- There is only one adjoining property. Other properties in this area (such as those along 7th Street and the adjoining neighbor) have not been required to close their curb cuts and have private dedicated parking spaces. Also, many of the properties along the alley utilize their alley access in the rear. It appears that most properties have private dedicated parking spaces.

3. Housekeeping services shall take place in the morning, between the hours of 6am-11am.

- The housekeeping services typically come in one van/car between 7am and are done by 9am at the Applicant's current assisted living facility on Clay. In the cases for Clay and Eads Street (Case Nos. 21240 and 21249), the Applicant had a window from 6am-10am. The Board suggested this may be too tight of a window. The Applicant therefore provided a bit of flexibility in the condition.
- Given that the housekeeping is done quickly and there is evidence in the record that there is ample street parking during that time of day, and the fact that the housekeeping service would be a daily occurrence for the 8-bed by-right facility with no limitations (and could be utilized by a single-family home for hours without any limits), this mitigates any alleged concerns about parking and traffic.

4. Meal Delivery services shall take place in the morning and the drop off shall be complete by 9am.

- The meal delivery services typically come between 6am-7am and are done with drop-off within 10-15 minutes at the Applicant's current assisted living facility on Clay.

- The Applicant originally put a condition for its other cases, referenced above, that had a window from 6am-10am. The Board suggested this may be too tight of a window. The Applicant therefore provided a bit of flexibility in the condition.
- Given that the meal delivery is done quickly and there is evidence in the record that there is ample street parking during that time of day, and the fact that the housekeeping service would be a daily occurrence for the 8-bed by-right facility with no limitations (and could be utilized by a single-family home without any limits), this mitigates any alleged concerns about parking and traffic.

Other deliveries

- There are no other special delivery services for this use. This particular use would not expect to have increased UPS, USPS, and FedEx/Amazon deliveries relative to a home delivery, and certainly not relative to an 8 bed residence.

5. The Applicant shall hire a private trash contractor to collect trash from the Property from the alley side. Trash pick-up shall occur 6x per week, Monday-Saturday and shall be collected between the hours of 6am and 11am. If hazardous materials are produced, they shall be placed outside and stored in a screened enclosure at the rear of the property.

- No medical waste is produced at an assisted living facility. Medical waste needing special disposal includes: materials that are saturated with blood or bodily fluids, sharps like needles and scalpels, pathological wastes, and discarded vaccines. But the Board included the hazardous waste in the conditions for the other cases, so we included it here.
- This is a home-like setting and patients are expected to have doctor's appointments at their respective doctor's offices.
- Trash for the residents is currently picked up on the alley, during the day.

6. The Applicant shall maintain a 6-foot solid privacy fence enclosing the rear yard behind the front façade of the building.

- The Applicant notes that there is only one directly adjoining neighbor. Neither that neighbor, nor the neighbor across the alley, have raised any issues.

7. Daily outdoor activities in the rear yard area and deck shall not begin until sunup and shall be concluded by sundown.

- No directly adjacent/adjoining neighbors are opposing and the Applicant pulled this condition directly from the approved BZA cases 21240 and 21249.

- 8. The Applicant shall designate a community liaison that shall attend ANC meetings on a quarterly basis.**

- 9. The approval shall be valid for a period of five (5) years from the effective date of this order.**

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.

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.
