

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 19-09
Z.C. Case No. 19-09
Voluntary Design Review
Kenilworth Avenue North, LLC
July 29, 2019

Pursuant to notice, the Zoning Commission of the District of Columbia (the “Commission”) held a public hearing on June 20, 2019 to consider the application of Kenilworth Avenue North, LLC (the “Applicant”) for Voluntary Design Review approval to construct a new assisted living facility (the “Project”) on the property located at Square 5113, Lot 806 and Parcel 185/38 (the “Property”) in the RA-1 Zone District (“Application”). The Applicant requested Voluntary Design Review pursuant to Subtitle X § 601.2 of the District of Columbia Zoning Regulations (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations (“DCMR”), including flexibility to allow a height of 60 feet and five (5) stories pursuant to Subtitle X § 603.1. In addition, pursuant to Subtitle X § 603.3, the Applicant requested a special exception for a continuing care retirement community (“CCRC”) use in the RA-1 zone pursuant to Subtitle U § 420.1(i) and a special exception to utilize the Inclusionary Zoning (“IZ”) bonus density for projects opting into IZ pursuant to Subtitle C § 1001.2(e).¹

The Commission considered the application for the Project pursuant to Subtitles X and Z of the Zoning Regulations. For the reasons below, the Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

¹ Under the Zoning Regulations in effect at the time of the public hearing and the vote in final action to approve the application, the Project was subject to IZ and could utilize the IZ bonus density permitted under Subtitle C § 1002.3 as a matter-of-right. However, prior to the Commission taking action to approve the Application, the Commission took final action to amend the IZ regulations in Z.C. Case No. 04-33I, which included amendments to exempt assisted living facilities from IZ. These amendments were not in effect at the time of the final vote to approve the application, but would result in the Project being required to opt in to IZ and to request special exception approval under Subtitle C § 1001.2(e) to utilize IZ bonus density in the event that the amendments became effective before this order became effective. The final order for Z.C. Case No. 04-33I was issued before this order, so those amendments became effective and necessitated special exception relief to utilize IZ bonus density is required for the Project. Anticipating this procedural issue, the Applicant prospectively sought special exception relief to use the IZ bonus density. In addition, the Application initially requested special exception relief from the parking location requirements pursuant to Subtitle C § 710.3, but the Applicant subsequently revised the design to eliminate the need for this relief and, accordingly, withdrew this request. (Exhibit (“Ex.”) 9 and 9A.)

1. The Application requests Voluntary Design Review approval pursuant to Subtitle X § 601.2 of the Zoning Regulations, including flexibility pursuant to Subtitle X § 603.1 to allow a height of 60 feet and five (5) stories where a maximum of height of 40 feet and three (3) stories is otherwise permitted. Pursuant to Subtitle X § 603.3, the Application also requests a special exception for a CCRC use in the RA-1 zone pursuant to Subtitle U § 420.1(i) and requests a special exception to utilize the IZ bonus density for projects opting into IZ pursuant to Subtitle C § 1001.2(e). Lastly, the Application requests flexibility for the final design of the Project, including specific requests for flexibility to (i) vary the final design a configuration of the Project’s outdoor terrace/patio to accommodate any adjustments needed to comply with environmental review and approval requirements and (ii) vary the design of the signage for the Project located at the Property entrance on Kenilworth Avenue NE, subject to compliance with the D.C. Building Code and consistent with the indicated dimensions. (Ex. 2, 9, 9A, 9B, and 14.)
2. The Applicant engaged extensively with the community as well as with the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), and the Department of Energy and Environment (“DOEE”) prior to, and after, filing the Application. The Applicant made several presentations to Neighborhood Commission (“ANC”) 7D, the ANC within which the Property is located, regarding the Project, met multiple times with OP, DDOT, and DOEE, and met with the Kenilworth Parkside Management Corporation Resident Council, which represents residents of the Kenilworth Parkside development to the south of the Property. (Ex. 2.)
3. On March 5, 2019, the Applicant mailed a Notice of Intent to file a Voluntary Design Review application to all property owners within 200 feet of the Property and to ANC 7D. The Applicant also thereafter presented the Project to ANC 7D. (Ex. 2D.)
4. On April 25, 2019, the Applicant submitted the Application as contract purchaser of the Property on behalf of the owner, requesting Voluntary Design Review approval for the Project. (Ex. 1–2F.)
5. On May 21, 2019, the Applicant filed a Comprehensive Transportation Review (“CTR”) for the Project. (Ex. 8A.) The CTR included the Applicant’s proposed Transportation Demand Management (“TDM”) measures for the Project.
6. On May 31, 2019, the Applicant filed a prehearing statement with updated architectural plans, including elimination of the originally proposed surface parking in front of the building and withdrawal of the related request for relief from parking location requirements. As part of the prehearing submission, the Applicant requested flexibility for the final design of the Project, including the specific requests for flexibility regarding the final configuration of the Project’s outdoor terrace/patio and the design of the Project signage proposed for the Property entrance on Kenilworth Avenue. (Ex. 9–9D.)
7. On June 19, 2019, Vincent Gray, the District Councilmember for Ward 7, submitted a letter in support of the Project. (Ex. 13.)

8. The Wayne Turnage, Director of the District Department of Health Care Finance, submitted a letter dated June 19, 2019, in support of the Project. (Ex. 15.)
9. On June 20, 2019, the National Park Service (“NPS”) submitted a letter requesting that the Commission not take action on the Application pending review and investigation relating to outstanding resource injuries/violations associated with the Property. (Ex. 18.)
10. ANC Report. At its regularly scheduled and duly noticed public meeting on March 26, 2019, ANC 7D voted 6-0-0 to support the application for design review and the requested relief. (Ex. 4.) In addition to the ANC’s report, Dorothy Douglas, the Single Member District (“SMD”) Representative for SMD 7D03, in which the Property is located, submitted two letters in support of the Project (Ex. 15 and 16) and testified in support of the Application at the Commission’s June 20, 2019 hearing (June 20, 2019 Public Hearing Transcript (“Tr.”) at 49-52).
11. OP Report. OP filed a report, dated June 10, 2019, recommending approval of the Project and testified accordingly at the public hearing. OP’s report supported the requested design review flexibility for the proposed building height, the special exception relief for the CCRC use, and the flexibility for the Project’s final design. OP also found that the Project is not inconsistent with the designation for the Property on the Comprehensive Plan’s Future Land Use Map and Generalized Policy Map. Similarly, OP concluded that the Project conforms to the Comprehensive Plan and furthers policies in the Comprehensive Plan’s Land Use, Housing, Environmental Protection, Economic Development, Parks, Recreation, and Open Space, Community and Facilities, and Far Northeast and Southeast Area Elements. OP examined the Project against the design review criteria and found that the Project satisfies each relevant condition. OP’s report also included comments from DOEE that commended the Applicant on the Project’s design and incorporation of environmental features and compliance and provided additional information and comments for further review during permitting. OP requested that the Project provide screened-in outdoor spaces for residents, in addition to the other outdoor spaces proposed. (Ex. 11; Tr. at 38-40).
12. DDOT Report. DDOT filed a report dated June 10, 2019, stating that it had no objection to the approval of the Project and testified accordingly at the public hearing. DDOT made a number of findings in its report, including that the Applicant’s traffic impact analysis of the addition of a new leg to the intersection of Kenilworth Avenue NE and Eastern Avenue NE is acceptable. DDOT recommended the following conditions to approval of the Application: (i) that the Applicant be required to fund any changes to the existing signal or roadway geometrics at this intersection, subject to DDOT approval; (ii) that the Applicant implement the TDM measures proposed in the Applicant’s CTR, subject to minor additions requested by DDOT in its report; and (iii) that the Applicant dedicate the right-of-way necessary to accommodate extensions of both Eastern Avenue NE and Anacostia Avenue NE through the site should those extensions be constructed in the future. (Ex. 10.) At the public hearing, DDOT confirmed agreement with the Applicant’s clarification that the Project is required not obstruct nor ask for compensation for the land required for an extension of either right-of-way, but that such land was not required to be

dedicated. At the hearing, DDOT also acknowledged agreement to the Applicant's minor refinements to the TDM plan, as modified by DDOT. (Tr. at 45-46.)

13. After proper notice, the Commission held a hearing on the Application on June 20, 2019. Apart from the Applicant and the ANC, there were no parties to this proceeding. Aside from the Applicant's representatives, Dorothy Douglas, the SMD Representative for the Property, [REDACTED] Brown, and Cornelia Mack testified in support of the Application. No persons testified in opposition to the Application. Expert witnesses appearing on behalf of the Applicant included Robert Schiesel, of Gorove/Slade Associates, as an expert in transportation planning engineering and Ryan Connor, of Urban Ltd., as an expert in civil engineering. Brian Coltrane of e4h Architecture, the project designer, testified also on behalf of the Applicant.² Juan Cardona, Oussama Souadi, Vance Gragg, and Haaziq Gragg testified on behalf of the Applicant. At the hearing, the Applicant presented the Project and responded to questions from the Commission, including clarifying the final proposed TDM measures as coordinated with DDOT and identifying the location of screened-in outdoor spaces, as requested by OP in its report. (Tr. at 20-22 and 26.) The Applicant also agreed to meet with NPS regarding its concerns related to its objections, and confirmed that it would fully cooperate with any investigation conducted by NPS regarding any past illegal activities that may have occurred on the site. (Tr. at 59-60.)
14. On July 15, 2019, the Applicant filed a post-hearing submission with responses to the issues raised by the Commission at the June 20, 2019 hearing. In the submission, as requested by the Commission, the Applicant provided plans showing the original design of the Project that included rear balconies on each floor, which were subsequently removed in the Applicant's current plans. The Applicant also provided the Commission with information regarding its communications with NPS and resolution of NPS' objections to further processing of the Application raised in its June 20, 2019 letter. Lastly, the Applicant added a request for provisional special exception relief for the Project to opt into Inclusionary Zoning ("IZ") and utilize the IZ bonus density in the event that the amendments to the IZ regulations approved in Z.C. Case No. 04-33I become effective prior to Commission's order approving this Application becomes effective. (Ex. [REDACTED].)
15. On July [REDACTED], 2019, NPS submitted a letter indicating that it had met with the Applicant to discuss the Project and _____. (Ex. [REDACTED].)
16. At its regularly scheduled public meeting on July 29, 2019, the Commission took action to approve the Application with the plans submitted into the record and the relief requested. (Tr. at [REDACTED].)

The Property

² The Applicant initially proffered Mr. Coltrane as an expert in architecture but subsequently withdrew that request at the hearing.

17. The Property contains approximately 122,866 square feet (2.82 acres) of land area and is located in the RA-1 Zone District. The Property is located at the intersection of Kenilworth Avenue and Eastern Avenue, near the D.C.-Maryland line.
18. The majority of the Property area is set back from the street, with a “pipe stem” that extends to Kenilworth Avenue. The Property is bounded by undeveloped land to the east (just beyond which is the Maryland-D.C. border), Kenilworth Avenue to the south, and a large multifamily apartment complex to the west. The adjacent apartment complex is owned by the U.S. Department of Housing and Urban Development and the D.C. Housing Authority, and it is the site of the planned mixed-use, mixed-income Kenilworth Courts redevelopment Planned Unit Development (“PUD”) approved by the Commission in Z.C. Case No. 15-21. Directly to the north of the Property is Anacostia Park, which is part of the Kenilworth Aquatic Gardens. The Deanwood Metrorail Station is located approximately 0.4 mile walking distance south of the Property. (Ex. 2.)
19. The Property is currently vacant and was previously subjected to illegal dumping, forest clearcutting, and sporadic asphalt paving under prior ownership. In its current state, the Property sits unused and suffers from frequent littering. The northern portion of the Property is located within the floodplain as depicted on the FEMA Flood Insurance Rate Map, so the Project will incorporate the necessary studies and modifications to remove the floodplain from the development area as required by DOEE and FEMA. (Ex. 2 and 9A.)

Project Overview

20. The Applicant proposes to develop the Property with an all-affordable CCRC (assisted living facility) with 155 age-restricted residential units. The proposed building will be 60 feet (five (5) stories) in height with a U-shaped configuration. The Project will be subject to IZ, and all of the units will be affordable for households earning up to 60% of the Median Family Income. Upon completion, the Project will be one of only two planned affordable assisted living facilities in Wards 7 and 8. Development of the Project will include major landscape revitalization efforts by the Applicant that will add extensive landscaping and plantings to the site and restore many of the natural features of the Property. The proposed assisted living facility is expected to employ approximately 80 full-time employees, including on-site nurse caregivers and staff. (Ex. 2.)
21. The Project will be constructed entirely above-grade due to the existing floodplain on the Property, and it will provide 26 covered parking spaces on the ground level below the west wing of the building. The Project provides a vertical oriented design that focuses the building towards the south side of the Property and away from the wetlands on the Property to the greatest extent possible in order to maximize the amount of green space on the site and minimize any impact to the existing landscape and natural environment. The Applicant has consulted with DOEE in preparing the design of the Project to minimize risk of adverse impact from the floodplain and on the wetlands. In addition to complying with all applicable floodplain regulations, the Project will remediate the floodplain risks by raising the grade for the finished first floor of the building to at least the 500-year floodplain event elevation. The applicable regulations require elevating to 1.5’ above the 100-year

floodplain, but the Applicant will exceed that by elevating to at least the 500-year floodplain to provide greater protection to the Project's residents. (Ex. 2, 9A, and 14.)

22. Because of the significant costs, high level of individualized services, and specific operational requirements associated with operating an assisted living facility, such projects are generally feasible only within a very limited size range — roughly 100,000 to 150,000 square feet of gross floor area — which allows operators to take advantage of economies of scale while still maintaining a program capacity and size that is manageable, given the individual needs and level of care required for residents. Therefore, the Applicant was faced with finding a site large enough to support this amount of density in a zone that allows for this use and at a price that is economically feasible for an affordable project. In addition, the Applicant sought to find suitable development sites in Wards 7 and 8 because of the significant need for affordable assisted living in these Wards in particular. After extensive searching and study, the Property was determined to be the best of the proposed development sites suited to feasibly support the successful development and operation of the proposed affordable assisted living community. (Ex. 2.)
23. The floodplain will be altered to be removed from the development area by submission and approval of a Conditional Letter of Map Revision (CLOMR) through DOEE and FEMA. Upon completion of construction, a Letter of Map Revision (LOMR) will be processed to finalize the map revision on the FEMA FIRM (Flood Insurance Rate Map). (Tr. at 31.)
24. The first floor of the building will include open seating areas, offices for the facility, a general store and computer room, and service areas, in addition to kitchen and dining areas. Residential units will all be located on the second through fifth floors, which also will include nursing offices and library, kitchen and/or gym spaces, varying by floor. The second floor also will include large and small activity rooms for residents. An outdoor terrace on the east (front) end of the second floor will include seating space, screened-in pergolas, and green roof elements. (Ex. 2 and 9A.)
25. The Project will utilize a variety of high quality materials to achieve a greater degree of façade articulation for the building, incorporating stacked stone veneer, rainscreen metal panel, solid phenolic panel, and fibrous cement panel elements into the façade, as well as operable aluminum storefront windows for the resident units and a tall glazed curtainwall central. In addition, the Project will incorporate numerous environmentally sustainable design features, including rooftop solar arrays that will generate up to 3% of the building's energy annually, and vegetative roof areas. (Ex. 2, 9A, and 14.)
26. The Project will include substantial outdoor amenity spaces for residents, including a large outdoor terrace on the ground floor at the rear of the building facing the extensive green open space on the north side (rear) of the Property. The site plan will include a pedestrian boardwalk with seating on the west side of the site to provide residents and visitors with direct access to the restored green space at the rear of the building and the nearby Kenilworth Aquatic Gardens. On the front of the building facing south, there will be a large outdoor terrace on the second floor as well as a covered terrace on the ground floor near the building entrance. (Ex. 2, 9A, and 14.)

27. The Project will include comprehensive landscaping and tree planting program as part of the Applicant's restoration of the site, including planting ornamental and canopy trees along the Property's entry drive, the front of the building and along the rear of the Property. The planting program will also include an evergreen hedge along the front drive of the building, meadow plantings in the wetlands area facing the rear terrace, and perennials and shrubs closer to the building to the rear. (Ex. 9A.)
28. The site plan will include many features to maximize access for residents, visitors, and employees. The proposed assisted living community will provide comprehensive shuttle service to residents to cover all transportation needs, including regular doctor's visits, grocery and other shopping, and other off-site activities. The Project will provide two vehicular access/egress points. The main access point will be from Kenilworth Avenue to the south. The secondary access/egress point will be from the planned Shaw Drive to the west, which is currently a public alley and is proposed to be converted to a private street as part of the Kenilworth Courts PUD in the future. In addition, the Project will include sidewalk and pedestrian pathway connections leading from Kenilworth Avenue through the site, and the proposed nature boardwalk will connect to the existing sidewalk along Anacostia Avenue to the north of the Property to provide pedestrian porosity through the site and the ability for residents to engage in outdoor activity without leaving the Property. (Ex. 2, 9A, and 14.)

Zoning Overview

29. The Property is located in the RA-1 zone. In general, the purpose of the RA-1 zone is to, among other things, "[p]ermit flexibility of design by permitting all types of urban residential development . . ." and to provide "for areas predominantly developed with low-to moderate-density development . . ." 11 DCMR Subtitle F §§ 300.1(a) and 300.2. The Project achieves these goals by providing a moderate-density assisted living development that has less density and more open space than otherwise limited/required by the matter-of-right standards in the zone.
30. Because of the constraints placed on the Project by the Property's natural conditions and the need to minimize the building footprint, the Applicant requested flexibility to construct the building to a height of 60 feet and five (5) stories permitted under Subtitle X § 603.1, whereas a maximum height of 40 feet and three (3) stories is permitted as a matter of right in the RA-1 zone. Otherwise the Project will conform to the matter-of-right development standards in the RA-1 zone and will have less massing than is otherwise permitted. The Project will have an FAR of 0.97 and lot occupancy of 23%, well below the maximum 1.08 FAR and 40% lot occupancy permitted in the RA 1 zone, and it will have a rear yard well in excess of the minimum 20 feet required. The Project will provide 26 parking spaces, as required, as well as 51 long-term bicycle parking spaces and eight (8) short term bicycle parking spaces.
31. Further, the Application includes special exception approval to permit the Project to utilize the IZ bonus density for the Project to opt into IZ pursuant to Subtitle C § 1001.2(e), with

a proposed FAR of approximately 0.97, within the maximum 1.08 FAR permitted for an IZ project in the RA-1 zone.

Design Approval

32. The Applicant sought Voluntary Design Review approval pursuant to Subtitle X § 601.3 of the Zoning Regulations. The Commission has jurisdiction to grant Voluntary Design Review approval for the proposed development and the requested special exception relief pursuant to Subtitle X §§ 601.2, 603.1, and 603.3 of the Zoning Regulations.
33. Pursuant to Subtitle X § 601.3, the minimum area required for a Voluntary Design Review application in the RA-1 zone is two (2) acres. The Property has a land area of approximately 2.82 acres. Under Subtitle X § 601.4, all of the property included in a Voluntary Design Review application is required to be contiguous or separated only by a public street, alley, or right-of-way. The entire Property is contiguous.

General Design Review Criteria.

34. The Project satisfies the general design review criteria of Subtitle X § 604. Section 604 requires that in order for the Commission to approve a design review application it must: (a) find that the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) find that the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9; (c) review the urban design of the site and the building according to certain enumerated criteria set forth below; and (d) find that the criteria of Subtitle X § 604.7 are met in a way that is superior to any matter-of-right development possible on the site.
35. The Future Land Use Map of the Comprehensive Plan designates the Property as appropriate for moderate density residential uses. The Comprehensive Plan Framework Element defines the moderate density residential designation as consisting of “the District’s row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings.” The proposed development is not inconsistent with this designation.
36. Notably, in this case, a height of 60 feet is appropriate for a moderate density residential designation. The proposed additional height is not needed to accommodate additional density or volume for the Project, and is not requested in order to permit a larger than appropriate building. The proposed FAR of 0.97 and lot occupancy of 23% are well below the maximum permitted in the RA-1 zone (1.08 FAR for IZ projects and 40%, respectively), and the rear yard and side yards will be much greater than the minimum required. The additional height is necessary only to accommodate the constraints

associated with the floodplain condition on the Property and the need to minimize the building footprint to preserve as much open space and wetlands areas as possible. The proposed height allows a more compact and efficient building design that still attains the necessary density for an affordable assisted living facility. Moreover, the siting of the building as well as the Property's topography will minimize any impact that the proposed height might otherwise have on the character of the surrounding area. As shown on the architectural plans at Exhibit 9A of the record, the Project will appear shorter than its measured height, as compared to surrounding buildings because of grade changes, and it will have ample separations from any nearby properties to preserve the garden apartment character of the neighborhood. Further, the requested height of 60 feet is within the limit permitted for a PUD in the RA-1 zone, and under Subtitle X § 603.2, the Commission may grant height relief up to the maximum height permitted for a PUD. For all these reasons, the Project is consistent with the Property's moderate density residential designation in the Future Land Use Map.

37. In addition, the Project is not inconsistent with the Comprehensive Plan's Generalized Policy Map, which designates the Property as a Neighborhood Enhancement Area. The Framework Element provides, "[t]he guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development 'fits-in' and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land use designation on the Future Land Use Map. The unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected as development takes place." The Project furthers the above-stated goals of the Neighborhood Enhancement Area designation. The Project will create new housing for an underserved demographic at a density level that is on par with the surrounding development, both existing and proposed for the Kenilworth Courts project. The Project will conserve and restore the special natural qualities of the site, thereby making a substantial contribution to the character of the neighborhood as a whole.
38. In addition, the Project is not inconsistent with the following relevant elements of the Comprehensive Plan.
 - a. Land Use Element. The Project furthers the following policies contained in the Land Use Element: *Policy LU-1.3.2 Development Around Metrorail Stations*; *Policy LU-1.3.3 Housing Around Metrorail Stations*; *Policy LU-1.4.1 Infill Development*; *Policy LU-1.4.2 Long-Term Vacant Sites*; and *Policy LU-2.2.4 Neighborhood Beautification*. The Project furthers these policies by redeveloping a long-term vacant site that has suffered from environmental degradation with infill development consisting of an affordable assisted living facility that is approximately 0.4 mile away from the Deanwood Metro Station. Moreover, the Project will revitalize the natural features of the Property with a robust landscaping plan and respectful programming features to facilitate direct access to the green space on site for residents and visitors.
 - b. Housing Element. The Project furthers the following policies contained in the Housing Element: *Policy H-1.1.1 Private Sector Support*; *Policy H-1.1.3 Balanced Growth*;

Policy H-1.1.5 Housing Policy; Policy H-1.2.1 Affordable Housing Production as a Civic Priority; Policy H-1.2.2 Production Targets; Policy H-1.3.3 Assisted Living and Skilled Nursing; Policy H-4.2.2 Housing Choice for Seniors; and Policy H-4.2.3 Neighborhood-Based Senior Housing. The Project furthers these goals by redeveloping vacant and underutilized land that currently suffers from frequent littering to provide an affordable senior living community serving a key demographic in a greatly underserved area of the city. Notably, upon completion, the Project will be one of only two planned affordable assisted living facilities in Wards 7 and 8. Furthermore, that all of the units in the Project will be affordable will provide opportunities for District residents to live in a facility that otherwise may not be available to them.

- c. Far Northeast and Southeast Area Element. The Project furthers the following policies contained in this element: *Policy FNS-1.1.2 Development of New Housing* and *Policy FNS-2.2.4 Deanwood Metro Station.* The Project furthers these policies by redeveloping an extant vacant lot with new senior housing within 0.4 mile of the Deanwood Metro Station.
 - d. Environmental Protection Element. The Project furthers the following policies contained in this element: *Policy E-1.1.3 Landscaping; Policy E-3.1.1 Maximizing Permeable Surfaces; and Policy E-4.6.3 Discouraging Illegal Dumping.* The Project furthers these policies by incorporating extensive landscaping that restores much of the Property from its currently degraded condition, which includes dumped trash, patches of asphalt, concrete and destroyed vegetation areas, to its natural state. In addition to a robust landscaping program, the Project will utilize permeable paving in various locations, planter boxes, green roofs and other features to meet the stormwater management goals and guidelines. Furthermore, the Project's rooftop will incorporate solar panels to minimize its energy consumption from less sustainable sources.
 - e. Economic Development Element. The Project furthers the following policies contained in this element: *Policy ED-2.4.1 Institutional Growth* and *Policy ED-4.2.7 Living Wage Jobs.* The Project furthers these goals by adding 80 new living wage jobs, boosting employment opportunities in Ward 7, and particularly jobs in the health care sector.
 - f. Other Comprehensive Plan Polices. The Project also furthers other applicable policies contained in the Community Services and Facilities Element, the Transportation Element, and the Parks, Recreation and Open Space Element, namely: *Policy CSF-2.3.1 Senior Care Facilities; Policy T-1.1.4 Transit-Oriented Development; and Policy PROS-4.3.3 Common Open Space in New Development.* Specifically, Project furthers these policies by establishing a new affordable senior care facility that is less than one-half mile from a Metro station and includes revitalization efforts to create a common open space for residents and visitors of the Project in the form of restored green space accessible via a pedestrian boardwalk.
39. The Project satisfies the general special exception criteria of Subtitle X, Chapter 9 because the Project will be harmonious with the general purpose and intent of the Zoning

Regulations and Zoning Maps for the RA-1 zone and comply with the Zoning Regulations in terms of development standards, including FAR, proposed uses, and parking, except for the requested flexibility for the Project's height. In addition, the Project will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, and instead the Project is designed to fit in and operate compatibly with neighboring properties and uses.

40. The Project is consistent with each of the urban design criteria listed in Subtitle X § 604.7 and provided in italics below.
- a. *Street frontages are designed to be safe, comfortable, and encourage pedestrian activity, including: (i) Multiple pedestrian entrances for large developments; (ii) Direct driveway or garage access to the street is discouraged; (iii) Commercial ground floors contain active uses with clear, inviting windows; (iv) Blank facades are prevented or minimized; and (v) Wide sidewalks are provided:* The Project maximizes connectivity and vehicular and pedestrian porosity through the site. The Project will provide two access points: one on Kenilworth Avenue and one on (planned) Shaw Drive. This will ensure that vehicles will always have two means to access and exit the Property both for the convenience of traffic flow and in the event of emergency. In addition, the Project will include a pedestrian pathway from Kenilworth Avenue through the site and a direct connection from the proposed nature boardwalk to Anacostia Avenue (and Anacostia Park/Kenilworth Aquatic Gardens) to the north. From a site access perspective, the Project will integrate with Kenilworth Courts, and, upon that project's completion, it will complement the planning principles represented in that project to create a comprehensive pedestrian-friendly and interconnected neighborhood environment.
 - b. *Public gathering spaces and open spaces are encouraged, especially in the following situations: (i) Where neighborhood open space is lacking; (ii) Near transit stations or hubs; and (iii) When they can enhance existing parks and the waterfront:* The Project will include substantial green open space with a pedestrian boardwalk with seating, providing access through and passive recreation in this park-like environment and connecting through the site to Anacostia Avenue and Kenilworth Aquatic Gardens.
 - c. *New development respects the historic character of Washington's neighborhoods, including: (a) Developments near the District's major boulevards and public spaces should reinforce the existing urban form; (b) Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and (c) Development should respect and protect key landscape vistas and axial views of landmarks and important places:* As an infill development on a currently vacant site, the Project will provide much-needed affordable senior housing in an underserved part of the city while doing so in a way that respects the existing character of the surrounding area and restores natural features of the Property and establishes multiple connections to this outdoor amenity from surrounding locations. The Project will maintain the moderate density residential character of the area by providing a multi-story residential building with significant surrounding open space, which is commensurate with nearby

development. The Project design will achieve this moderate density character by balancing the building design with additional height but with less density, a smaller footprint, and a large rear yard to accommodate the programmatic and density needs of an assisted living facility in this neighborhood.

- d. *Buildings strive for attractive and inspired façade design that: (a) Reinforces the pedestrian realm with elevated detailing and design of first and second stories; and (b) Incorporates contextual and quality building materials and fenestration:* The Project will incorporate high-quality and durable building materials to achieve a greater degree of façade articulation. The Project will include stacked stone veneer, rainscreen metal panel, “wood look” solid phenolic panel, and fibrous cement panel elements into the façade. The architectural features will complement adjacent woodlands and nearby aquatic gardens by incorporating natural looking materials such as wood and stone as well as providing vistas from the rear elevator lobbies on each floor. The Project will include outdoor gathering spaces designed to maximize residents’ and visitors’ access to, and enjoyment of, the natural surroundings. These features include the large outdoor terraces on the ground floor at the rear of the building and on the ground and second floors at the front of the building.
- e. *Sites are designed with sustainable landscaping:* The Project will include extensive sustainable landscaping to be incorporated throughout the site as a major component of the proposed redevelopment effort.
- f. *Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including: (i) Pedestrian pathways through developments increase mobility and link neighborhoods to transit; (ii) The development incorporates transit and bicycle facilities and amenities; (iii) Streets, easements, and open spaces are designed to be safe and pedestrian friendly; (iv) Large sites are integrated into the surrounding community through street and pedestrian connections; and (e) Waterfront development contains high quality trail and shoreline design as well as ensuring access and view corridors to the waterfront:* The Project is designed to facilitate connectivity through multiple access points. Primary vehicular access will be from Kenilworth Avenue, with secondary vehicular access to/from planned Shaw Drive. In addition, the site design includes sidewalks and pedestrian pathways from Kenilworth Avenue through the site connecting to the proposed nature boardwalk that will then connect to Anacostia Avenue. The Project will also include the approximately 51 long-term bicycle parking spaces and eight (8) short-term bicycle parking spaces to accommodate staff and visitors who choose to travel by bike.
- g. The Project satisfies the urban design criteria of Subtitle X § 604.7 in a way that is superior to any matter-of-right development possible on the Property. The Project exemplifies the superior design, site planning, safe pedestrian access, and other features that are superior to typical matter-of-right development. Superior urban design attributes include the Project’s rich detailing, materials selection and other design features, including the Project’s design orientation towards, and restoration of, the

Property's natural features, including creation of the nature boardwalk to the rear of the building.

Special Exception Approval for Continuing Care Retirement Community

41. The Applicant also requested special exception approval for a CCRC use pursuant to Subtitle U § 420.1(i). The Project satisfies the standards for the requested special exception.
- a. *The use shall include one or more of the following services: . . . (B) Assisted Living Facilities:* The Project is an assisted living facility.
 - b. *If the use does not include assisted living or skilled nursing facilities, the number of residents shall not exceed eight (8):* Because the Project is an assisted living facility, this criterion is inapplicable.
 - c. *The use may include ancillary uses for the further enjoyment, service, or care of the residents:* Under Subtitle U § 420.1(i), this provision is not applicable to CCRC uses in the RA-1 zone and thus ancillary uses are not permitted for the Project in furtherance of the aims of the RA zones to promote and protect areas of moderate density residential development. Here, the Project does not include any ancillary uses other than those normally associated with an assisted living facility, such as a central dining room, facility offices, and activity areas.
 - d. *The use and related facilities shall provide sufficient off-street parking spaces for employees, residents and visitors:* The Project's proposed 26 spaces will be sufficient to ensure that there will be adequate parking for employees, residents, and visitors.
 - e. *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:* The Project, as designed, will not result in any objectionable conditions for neighboring properties. The Project will provide a significant enhancement from the existing condition by incorporating extensive landscaping and the construction of a high-quality building. Further, the proposed assisted living facility is not expected to generate an unusually high level of noise or traffic, and the site plan includes multiple vehicular access points to ensure that vehicle circulation to and within the site is accommodated without any substantial negative effects on the surrounding transportation network. The Project will meet and exceed all applicable setback requirements.
 - f. *The [Commission] 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:* The Project has been carefully designed in order to site the building and other design features so as to minimize the building footprint and maximize the amount of open space on the Property. Further, the Project will exceed all applicable setback requirements, will be separated a

considerable distance from any neighboring building, and will have ample landscaping buffers. Accordingly, additional special measures are not needed in this case to protect adjacent and nearby properties.

Special Exception Approval for Utilization of the Inclusionary Zoning Bonus Density

42. The Applicant also requested a special exception pursuant to Subtitle C § 1001.2(e) in order to utilize the 20% bonus density provided for IZ projects. Under Subtitle C § 1001.2(e), the Zoning Commission may grant the requested special exception pursuant to the general special exception standards provided in Subtitle X, Chapter 9. As discussed in Finding of Fact No. ____, above, the Commission finds that the Project meets these general special standards.

The Commission's Concerns and the Applicant's Responses

43. At the hearing, the Commission had the opportunity to hear testimony from and ask questions of the Applicant, the Project designer, the Applicant's expert witnesses, and representatives of OP and DDOT. All of the Commission's questions were answered in the course of the proceeding. In addition, the Applicant provided follow up information in its post-hearing submission regarding its meeting and correspondence with NPS with respect to its concerns and resolution of those concerns. The Applicant met with NPS representatives to discuss their concerns and the Project, and NPS stated that they have no objection to the Project.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to Subtitle X § 601.2 for Voluntary Design Review approval by the Commission, including flexibility for the Project's height pursuant to Subtitle X § 603.1. Pursuant to Subtitle X, Section 603.3, the application also sought special exception approval for the proposed CCRC use pursuant to Subtitle U § 420.1(i) and to utilize the IZ bonus density pursuant to Subtitle C § 1001.2(e).
2. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to ANC 7D, OP, and to owners of property within 200 feet of the Property.
3. Pursuant to Subtitle X §§ 603 and 604, the Applicant has satisfied the required burden of proof necessary for the Commission to approve the overall design of the Project. The Commission reviewed the Project against the general design review criteria of Subtitle X § 604, and based on the findings set forth above concludes that the Project satisfies such criteria. The Project is not inconsistent with the Comprehensive Plan and other adopted public policies and active programs, will not tend to adversely affect the use of neighboring property, is harmonious with the general purpose and intent of the Zoning Regulations and Zoning Maps, and satisfies the special exception criteria and urban design objectives in a manner superior to any matter-of-right development possible on the Property.

4. Pursuant to Subtitle X § 603.3, the Commission has considered the Applicant's request for special exception relief for the proposed CCRC use requirements of Subtitle U § 420.1(i) and to utilize the IZ bonus density per Subtitle C § 1001.2(e), and the Commission concludes that the Project satisfies the applicable criteria for such relief. Because of the peculiar circumstances of this relief not being necessary at the time of the Commission considering and approving the Application but nevertheless being required when this Order became effective, granting this relief prospective at the time of approval is appropriate. The standard for approving this approval is the general special exception criteria in Subtitle X, Chapter 9, which this Applicant proved would be satisfied through the other areas of relief sought with this Application.
5. The Commission concludes that the Applicant has satisfied all the necessary elements for approval of Voluntary Design Review as well as for the special exception relief requested.
6. The Commission is required under D.C. Official Code § 1-309.10(d) to give "great weight" to the issues and concerns of the affected ANC expressed in its written report. As reflected in the Findings of Fact, at its duly noticed meeting held on March 26, 2019, ANC 7D voted 6-0-0 to support the application for Voluntary Design Review and related zoning relief. The Commission notes that the ANC raised no substantive concerns about the design of the Project and, to the contrary, expressed strong support for the Project in its written report and through the hearing testimony from the ANC SMD representative.
7. No party or person testified or submitted materials in opposition to the Project. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.
8. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04.) As reflected in the Findings of Fact, OP presented a report and testimony at the public hearing in support of the application and the Applicant responded to questions and items raised in OP's report. The Commission gives OP's recommendation to approve the application great weight, concurs with OP's, and concludes that the Applicant's responses appropriately addressed OP's questions and concerns. Accordingly, the Commission has given the requisite great weight to OP's report and recommendation.
9. Finally, the Commission has considered DOEE's comments included in OP's report and DDOT's report and recommendations. The Commission also considered the concerns raised by NPS in its initial letter, as well as its additional comments in its subsequent letter submitted after the hearing. Finally, the Commission has considered the letters in support submitted by the SMD Representative for ANC 7D03, in which the Property is located, as well the SMD Representative's testimony in support at the hearing, and the other letters and testimony in support of the Project that are in the record. The Commission concludes that the Applicant has appropriately addressed issues raised in DOEE and DDOT's comments, as well as those raised by NPS in its letter. Accordingly, the Commission, having given great weight to the ANC's concerns and the OP report and having considered all relevant facts and materials in the record, concludes that the design of the Project

satisfies the requirements of the Zoning Regulations applicable to the design review of the Project and the special exception relief requested.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for Voluntary Design Review, including **APPROVAL** of special exception relief and flexibility requested. This approval is subject to the following conditions, standards, and flexibility:

1. **Project Development.** The Project shall be built in accordance with the plans and elevations dated May 31, 2019 and marked as Exhibit 9A and supplemented by Exhibit 14 of the record (the “**Final Plans**”), and with flexibility from the height requirements, subject to the following areas of flexibility:
 - a. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the order;
 - b. Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
 - c. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - d. Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%), except that (i) the total square footage of the residential dwelling units shall not be reduced, and (ii) the number of units and the square footage reserved for affordable housing shall not be reduced;
 - e. Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking space plus or minus ten percent (10%), so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
 - f. Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
 - g. Signage: To vary the final design of the signage for the Project located at the Property entrance on Kenilworth Avenue, subject to full compliance with

applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions;

- h. To vary the final design and configuration of the Project's rear outdoor terrace/patio in order to accommodate any adjustments needed in order to comply with environmental review and approval requirements.
2. **Kenilworth Avenue and Eastern Avenue Intersection**. The Applicant shall fund, design, and construct any new or relocated traffic signal equipment and all required geometric modifications at the intersection of Kenilworth Avenue NE and Eastern Avenue NE, as required by and subject to approval by DDOT.
3. **Potential Future Right-of-Way Extensions**. The Applicant shall construct the Project so as to not obstruct the land required for the right-of-way necessary to accommodate extensions of both Eastern Avenue and Anacostia Avenue through the Property, shall not seek compensation for such land, and shall allow public access on the Property for such roadway, should any such right-of-way extension be planned, designed, and funded for construction by the District in the future.
4. **Electrical Vehicle ("EV") Charging Station**. The Applicant shall install a minimum of one (1) EV charging station as part of the Project.
5. **Transportation Demand Management Measures**. For the life of the Project, the Applicant shall adhere to the following TDM plan measures:
 - a. Identify a TDM Leader (for planning, construction, and operations) at the building, who will act as a point of contact with DDOT/Zoning Enforcement with annual updates;
 - b. The TDM Leader will work with residents to distribute and market various transportation alternatives and options;
 - c. Provide TDM materials to new residents in the Residential Welcome Package materials;
 - d. Unbundle the cost of residential parking from the cost of lease or purchase of each unit;
 - e. Meet Zoning Regulations short-term bicycle parking requirement by installing eight (8) spaces near the entrance to the Building as indicated on the plans;
 - f. Meet Zoning Regulations long-term bicycle parking requirement by installing 51 internal to the building.
 - g. Work with DDOT and goDCgo (DDOT's TDM program) to implement TDM measures at the site;

- h. Share the full contact information of the TDM Leaders for the site with DDOT and goDCgo;
 - i. Require TDM Leaders to receive training from goDCgo to learn about the TDM conditions for the Project and available options for implementing the plan;
 - j. Post all TDM commitments on the Project's website, publicize availability, and allow the public to see what commitments have been promised;
 - k. Provide links to CommuterConnections.com and goDCgo.com on the Project's website;
 - l. Distribute information on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency;
 - m. Provide a minimum to two (2) showers and 20 lockers for use by employees;
 - n. Provide employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by MWCOG or other comparable service if MWCOG does not offer this service in the future; and
 - o. Require the TDM Leader to demonstrate to goDCgo that the site is in compliance with the DC Commuter Benefits Law by participating in at least one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service).
6. This Application approval shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in 11-Z DCMR § 702.2. Construction must begin within three years after the effective date of this Order. (11-Z DCMR § 702.3.)
7. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On _____, upon the motion of _____, as seconded by _____, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting on July 29, 2019 by a vote of x-x-x ([Anthony J. Hood, Robert E. Miller, Peter Shapiro, Peter G. May, and Michael G. Turnbull]).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on _____.