

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
Kenilworth Avenue North, LLC
(Voluntary Design Review @ Square 5113, Lot 806 and Parcel 185/38)
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 on the property located at Square 5113, Lot 806 and Parcel 185/38 (the “Property”) in the RA-1 zone (“Application”). The Applicant requested Voluntary Design Review pursuant to Subtitle X § 601.2 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (the “Zoning Regulations,” to which all references are made unless otherwise specified), including flexibility to allow a height of 60 feet and five 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). The Commission considered the Application for the Project pursuant to Subtitles X and Z. For the reasons below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

Notice

1. Pursuant to Subtitle Z § 301.6, 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 Advisory Neighborhood Commission (“ANC”) 7D, the “affected ANC” per Subtitle Z §101.8. The Applicant also thereafter presented the project to ANC 7D. (Exhibit [“Ex.”] 2D.)
2. 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.)
3. Pursuant to Subtitle Z § 402, on May 2, 2019, the Office of Zoning (“OZ”) published the Notice of Public Hearing. (Ex. 5, 6.)

The Property

4. The Property contains approximately 122,866 square feet (2.82 acres) of land area. The Property is located at the intersection of Kenilworth Avenue and Eastern Avenue, near the D.C.-Maryland line. (Ex. 9A.)
5. 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 the Kenilworth Parkside Apartments and 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. Directly to the north of the Property is Anacostia Park, which is part of the Kenilworth Aquatic Gardens. (Ex. 9A.)
6. The Deanwood Metrorail Station is located approximately 0.4-mile walking distance south of the Property. (Ex. 2.)
7. 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.
8. The northern portion of the Property is located within the floodplain as depicted on the Federal Emergency Management Agency (“FEMA”) Flood Insurance Rate Map. (Ex. 2E2.)
9. The Application states that the Property is currently vacant and was previously subjected to illegal dumping, forest clearcutting, and sporadic asphalt paving under prior ownership.
10. 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” (Subtitle F §§ 300.1(a), 300.2.)

Application

11. The Application proposes to develop the Property with an all-affordable CCRC (assisted living facility) with 155 age-restricted residential units (the “Project”). All of the units will be affordable for households earning up to 60% of the Median Family Income (“MFI”). (Ex. 2.)
12. The Application notes that upon completion, the Project will be one of only two planned affordable assisted living facilities in Wards 7 and 8. (Ex. 2.)
13. The proposed assisted living facility is expected to employ approximately 80 full-time employees, including an on-site nurse, caregivers, and staff. (Ex. 2.)
14. The Application proposes a U-shaped building which will be 60 feet (five stories) in height, 20 feet above the maximum height permitted by right. The Project will have an FAR of 0.99

and lot occupancy of 23%, below the maximum 1.08 FAR and 40% lot occupancy permitted in the RA-1 zone, and it will have a rear yard of approximately 157.8 feet, well in excess of the minimum 20 feet required. (Ex. 9A.)

15. The Application notes that 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 feature along the front façade facing on the second-floor outdoor patio. (Ex. 9A.)
16. The Project will incorporate numerous environmentally sustainable design features, including rooftop solar arrays that will generate up to three percent of the building's energy annually, and vegetative roof areas. (Ex. 2, 9A, 14.)
17. 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. (Ex. 2, 9A.)
18. The Project will include substantial outdoor amenity spaces for residents. 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. 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. (Ex. 2, 9A, 14.)
19. 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, 14.)
20. The Project will include a 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.)
21. The Application proposes to provide 26 covered parking spaces on the ground level below the west wing of the building, as required. It also proposes 51 long-term bicycle parking spaces and eight short-term bicycle parking spaces. The Application originally proposed surface parking in front of the building, which would have required additional special exception relief. The location of the parking was subsequently revised and the request for

special exception relief was withdrawn in the Applicant's prehearing statement of May 31, 2019. (Ex. 9, 9A.)

22. 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.
23. On May 21, 2019, the Applicant filed a Comprehensive Transportation Review ("CTR") for the Project. (Ex. 8A1-8A2.) The CTR includes the Applicant's proposed Transportation Demand Management ("TDM") measures for the Project.
24. The Application notes that the Applicant has consulted with the District Department of Energy and Environment ("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. (Ex. 2 and 9A.)
25. The Application proposes to exceed these requirements by elevating to at least the 500-year floodplain to provide greater protection to the Project's residents. (Ex. 2, 9A, 14.) The result is a vertically 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.
26. The Applicant states that the floodplain will be altered to be removed from the development area by submission and approval of a Conditional Letter of Map Revision (CLOMR) as required by 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). (June 20, 2019 Public Hearing Transcript ("Tr.") at 31.)

Relief Requested

27. 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 stories where a maximum of height of 40 feet and three stories is otherwise permitted. The additional 20 feet is within the limit permitted for a PUD in the RA-1 zone (X § 303.7), and under Subtitle X § 603.2, the Commission may grant height relief up to the maximum height permitted for a PUD in a Design Review case.
28. 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).

29. Lastly, should the Commission approve the voluntary design review, the Application requests design flexibility from the final approved plans, including specific requests for flexibility to:
- (a) Vary the final design and configuration of the Project's outdoor terrace/patio to accommodate any adjustments needed to comply with environmental review and approval requirements; and
 - (b) Vary the design of the signage for the Project located at the Property entrance on Kenilworth Avenue N.E., subject to compliance with the D.C. Building Code and consistent with the indicated dimensions. (Ex. 2, 9, 9A, 9B, 14.)

Responses to Application

30. The Application states that the Applicant made several presentations to ANC 7D, regarding the Project, met multiple times with Office of Planning ("OP"), District Department of Transportation ("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.)

OP Report

31. OP filed a report, dated June 10, 2019 ("OP Report"), recommending approval of the Application and testified accordingly at the public hearing. OP's report supports the requested design review flexibility for the proposed building height, the special exception relief for the CCRC use, and the additional design flexibility from the Final Plans. (Ex. 11.)
32. OP examined the Project against the design review criteria and found that the Project satisfies each relevant condition. 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 Services and Facilities; and Far Northeast and Southeast Area Elements.
33. OP's report also includes 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.
34. OP also 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.)

DDOT Report

35. DDOT filed a report dated June 10, 2019 ("DDOT Report"), stating that it had no objection to the approval of the Project and testified accordingly at the public hearing. (Ex. 10.) 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, N.E. and

Eastern Avenue, N.E. is acceptable. DDOT recommended the following conditions to approval of the Application:

- (a) That the Applicant be required to fund any changes to the existing signal or roadway geometrics at this intersection, subject to DDOT approval;
 - (b) That the Applicant implement the TDM measures proposed in the Applicant's CTR, subject to minor additions requested by DDOT in its report; and
 - (c) That the Applicant dedicate the right-of-way necessary to accommodate extensions of both Eastern Avenue, N.E. and Anacostia Avenue, N.E. through the site should those extensions be constructed in the future. (Ex. 10.)
36. At the public hearing, DDOT confirmed agreement with the Applicant's clarification that the Project is required to neither 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.)

ANC Report

37. At its regularly scheduled and duly noticed public meeting on March 26, 2019, ANC 7D voted to support the application for design review and the requested relief (the "ANC Report"). (Ex. 4.)
38. The ANC report notes no issues or concerns. ANC 7D found that the Project will enhance the neighborhood by developing a vacant site and providing ample outdoor recreation space for residents and the community. The ANC also notes that the proposed building and its landscaping will be attractive and high quality and will add to the visual environment of the neighborhood. The ANC's report states that the site design will ensure that parking and traffic will be well managed and will not adversely affect nearby streets. Finally, the ANC Report noted that the Applicant had engaged consistently and intentionally with the ANC, and the greater community, regarding the Project and that the ANC expected this engagement to continue as the Project is developed.
39. 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 and testified in support of the Application at the Commission's June 20, 2019 hearing. (Ex. 15, 16; Tr. at 49-52.)

Other Responses

40. On June 19, 2019, Vincent Gray, the District Councilmember for Ward 7, submitted a letter in support of the Project. (Ex. 13.)
41. 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.)

42. 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.)

Parties

43. Apart from the Applicant and the ANC, there were no other parties to this proceeding.

Public Hearing

44. After proper notice, the Commission held a hearing on the Application on June 20, 2019. 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, also testified on behalf of the Applicant¹. In addition, Juan Cardona, Oussama Souadi, Vance Gragg, and Haaziq Gragg testified on behalf of the Applicant.
45. Aside from the Applicant’s representatives, Dorothy Douglas, the SMD Representative for the Property, Tom Brown, and Cornelia Mack testified in support of the Application.
46. No persons testified in opposition to the Application
47. At the hearing, the Applicant presented the Project and responded to questions from the Commission, including explaining the final proposed TDM measures as coordinated with DDOT. The Applicant noted its acceptance of DDOT’s conditions, with minor revisions as discussed with and agreed to by DDOT. (Ex. 14, p. 40-42.)
48. The Applicant also clarified the location of screened-in outdoor spaces, as requested by OP in its report. (Tr. at 20-22, 26.)
49. The Applicant also responded to questions from the Commission regarding the possibility of reincorporating the previously proposed rear balconies into the design. Specifically, the Applicant described the difficulty of providing balconies large enough to be functional while still complying with maximum FAR restrictions. (Tr. at 24-25.)
50. In response to the Commission’s questions, the Applicant stated that it would 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.)
51. At the conclusion of the hearing, the Commission asked the Applicant to provide an illustration of the previously proposed rear balconies and its further communication and coordination with NPS regarding the concerns raised in NPS’ letter to the Commission requesting postponement of the case.

¹ The Applicant initially proffered Mr. Coltrane as an expert in architecture but subsequently withdrew that request at the hearing. (Tr. at 8.)

Post-Hearing Submissions

52. 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, 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's statement explains that the balconies would have needed to project a minimum of six feet in order to be usable. However, this additional gross floor area would have resulted in the Project exceeding the FAR requirements for the zone. The Applicant ultimately decided that providing smaller balconies would not be a benefit to the residents and so removed them entirely. (Ex. 20.)
53. The Applicant also provided the Commission with information regarding its communications with NPS and noted that the Applicant had discussed the Project with NPS representatives, but that a formal meeting had not yet been scheduled. The Applicant noted that it expected NPS to file additional comments prior to final action. (Ex. 20.)
54. 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. 20.)²
55. On July 26, 2019, NPS submitted an email indicating that it had met with the Applicant to discuss the Project. The email noted that NPS had not finalized any plans or wetland mitigation yet, but it intended to continue working with the Applicant to reach a solution. (Ex. 22.)

CONCLUSIONS OF LAW

Design Approval

1. Pursuant to Subtitle X § 600.1, the purpose of the Design Review process is to:
 - (a) *Allow for special projects to be approved by the Zoning Commission after a public hearing and a finding of no adverse impact;*
 - (b) *Recognize that some areas of the District of Columbia warrant special attention due to particular or unique characteristics of an area or project;*
 - (c) *Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density;*
 - (d) *Promote high-quality, contextual design; and*

² The Commission determined that this relief is not required because under Subtitle A § 301.7, a building permit consistent with this Order may be processed under the Zoning Regulations in effect on the date of the vote of the Commission to take final action, which in this case occurred prior to the effective date of the text amendment adopted in Z.C. Case No. 04-33I

- (e) *Provide for flexibility in building bulk control, design, and site placement without an increase in density or a map amendment.*
2. 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.
 3. The Commission concludes that pursuant to Subtitle X § 601.3, the Application has met the two-acre minimum area required for a Voluntary Design Review application in the RA-1 zone because the Property has a land area of approximately 2.82 acres.
 4. 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.
 5. Under Subtitle X § 603.1, the Commission may also grant relief from certain development standards, including height. Pursuant to Subtitle X § 603.2, the flexibility for height is limited to what would be available to a PUD. The Commission concludes that the requested height of 60 feet is allowable under Subtitle X § 303.7.

General Design Review Criteria (X § 604)

6. 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.*
7. The Commission concludes that the Application meets the general Design Review criteria as elaborated below.

Not Inconsistent with the Comprehensive Plan (X § 604(a))

8. The Commission concludes that the Application meets the first prong of the general Design Review criteria – to not be inconsistent with the Comprehensive Plan - because the

Application does not contradict any provisions of the Comprehensive Plan and in fact furthers several principles and elements of the Comprehensive Plan as detailed below.

9. 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:

“[T]he 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.” (10A DCMR § 225.4)

The Project is not inconsistent with this designation as the development will be similar to a low-rise apartment building in scale and character.

10. The Commission finds in this case, that a height of 60 feet is appropriate for a moderate-density residential designation. The proposed additional 20 feet over maximum by-right 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 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.
11. The Commission also notes that 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, 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. (Ex. 9A.)
12. The Commission concludes that the Project furthers the goals of 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 Commission concludes that 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.

13. In addition, the Commission concludes that the Project furthers 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* 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 miles 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* 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;
 - (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* by redeveloping an extant vacant lot with new senior housing within 0.4 miles 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* 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 by adding 80 new living wage jobs, boosting employment opportunities in Ward 7, and particularly jobs in the health care sector;

- (f) Community Services and Facilities Element. The Project furthers the following policy contained in *Policy CSF-2.3.1 Senior Care Facilities* by establishing a new affordable senior care facility;
- (g) Transportation Element. The Project furthers the following policy contained in *Policy T-1.1.4 Transit-Oriented Development* by constructing a facility that is less than one-half mile from a Metro station; and
- (h) Parks, Recreation and Open Space Element. The Project furthers the following policy contained in *Policy PROS-4.3.3 Common Open Space in New Development* by including 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.

Satisfaction of the General Special Exception Criteria (X § 604(b))

- 14. The Commission concludes that Project satisfies the second prong of the general Design Review criteria by meeting the general special exception criteria of Subtitle X, Chapter 9. The Commission concludes that 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 which the Commission may grant under Voluntary Design Review.
- 15. The Commission also concludes that the Project will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, because the Project is designed to fit in and operate compatibly with neighboring properties and uses. The Commission found the findings of the DDOT Report persuasive with regard to the potential traffic impacts on the intersection of Kenilworth Avenue and Eastern Avenue, N.E. and concludes that the potential impacts can be mitigated through the imposition of the conditions specified in the DDOT Report and the Applicant's TDM Plan.
- 16. The Commission also concludes, based on the comments from DOEE contained in the OP Report, that the environmental issues on the Property will be mitigated and addressed through the environmental permitting process conducted by other District agencies.

Consistency with the Urban Design Criteria (X § 604(c))

- 17. The Commission concludes that the Project meets the third prong of the general Design Review criteria because it is consistent with each of the urban design criteria listed in Subtitle X § 604.7 and provided in italics below:

X § 604.7(a) Street frontages are designed to be safe, comfortable, and encourage pedestrian activity, including:
(1) Multiple pedestrian entrances for large developments;

- (2) *Direct driveway or garage access to the street is discouraged;*
- (3) *Commercial ground floors contain active uses with clear, inviting windows;*
- (4) *Blank facades are prevented or minimized; and*
- (5) *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.

- X § 604.7(b) Public gathering spaces and open spaces are encouraged, especially in the following situations:*
- (1) *Where neighborhood open space is lacking;*
 - (2) *Near transit stations or hubs; and*
 - (3) *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:

- X § 604.7(c) New development respects the historic character of Washington's neighborhoods, including:*
- (1) *Developments near the District's major boulevards and public spaces should reinforce the existing urban form;*
 - (2) *Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and*
 - (3) *Development should respect and protect key landscape vistas and axial views of landmarks and important place:*

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.

- X § 604.7(d) Buildings strive for attractive and inspired façade design that:*
- (1) Reinforces the pedestrian realm with elevated detailing and design of first and second stories; and*
 - (2) 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.

- X § 604.7(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.

- X § 604.7(f) Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including:*
- (1) Pedestrian pathways through developments increase mobility and link neighborhoods to transit;*
 - (2) The development incorporates transit and bicycle facilities and amenities;*
 - (3) Streets, easements, and open spaces are designed to be safe and pedestrian friendly;*
 - (4) Large sites are integrated into the surrounding community through street and pedestrian connections; and*
 - (5) 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 short-term bicycle parking spaces to accommodate staff and visitors who choose to travel by bike.

18. The Project demonstrates superior design, site planning, safe pedestrian access, and other features that are superior to typical matter-of-right development. Because of this, 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.

Special Exception Approval for Continuing Care Retirement Community

19. Pursuant to Subtitle X § 603.3 the Applicant also requested special exception approval for a CCRC use pursuant to Subtitle U §§ 203.1(f) and 420.1(i). The Commission concludes that the Application has met the standards as explained below:

- (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:*

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 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; and

- (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.

“Great Weight” to the Written Report of the ANC

20. The Commission is required to give “great weight” to the issues and concerns of the affected ANC expressed in its written report (§ 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2). To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)
21. ANC 7D, the “affected ANC” in this case, did not raise any issues or concerns in its report and recommended approval. Therefore, the Commission finds it to be persuasive and concurs with its findings.

“Great Weight” to the Recommendations of OP

22. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04 and Subtitle Z § 405.8)
23. 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.

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 the following design flexibility from the Final Plans:

- (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 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 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; and
- (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, N.E. and Eastern Avenue, N.E., 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 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 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 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 Metropolitan Washington Council of Governments (“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.

At its public meeting on July 29, 2019, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. 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 August 16, 2019

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING