

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
**Stella B. Werner Council Office Building**  
**Rockville, Maryland 20850**  
**(240) 777-6660**

**IN THE MATTER OF:**  
**GARRETT GATEWAY PARTNERS, LLC**  
**Applicant**

Dean Packard  
William Landfair  
Steve Mulholland  
Michael Lenhart  
For the Application

Stephen J. Orens, Esquire  
Attorney for the Applicant

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OZAH Case No. CU 16-11

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Before: Martin L. Grossman, Hearing Examiner  
Director, Office of Zoning and Administrative Hearings

**HEARING EXAMINER’S ORDER GRANTING THE CONDITIONAL USE HOLDER’S  
REQUEST FOR A SECOND EXTENSION UNTIL JUNE 30, 2020, TO OBTAIN  
BUILDING PERMITS TO IMPLEMENT THE CONDITIONAL USE**

**I. BACKGROUND**

On February 4, 2016, the Applicant, Garrett Gateway Partners, LLC, filed an application seeking approval of a conditional use for a Townhouse Living project consisting of 19 townhouse units, pursuant to Zoning Ordinance §59.3.3.1.D.2.b. The project has been dubbed “Cashell Estates.” The subject site is on a two-acre property in the RE-1 zone, located at 7009 Garrett Road, in Derwood, at the intersection of Garrett Road and Redland Road. It is described as Part of Lot 5, Block B in the Cashell Estates Subdivision and is subject to the 2004 Upper Rock Creek Master Plan. The property is owned by the Applicant and bears Tax Account No. 04-00118126 (Ex. 32).

The proposal is the first to utilize the so-called “Design for Life” conditional use standards adopted by the County Council on April 21, 2015, effective May 11, 2015, in Ordinance No. 18-02 (Zoning Text Amendment No. 15-02). ZTA 15-02 created a new conditional use allowing the establishment of “Design for Life” communities that include features to make access easier for visitors and residents. As noted in the Council’s Opinion accompanying ZTA 15-02, the new conditional use allows an increase in the number of dwelling units per acre over a site’s base zoning, but requires “Level II accommodations,” which include features that allow easy access for the disabled.<sup>1</sup>

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<sup>1</sup> The Level II Accessibility Standards are referenced in Zoning Ordinance §59.3.3.1.D.2.b.i. as “established by Section 52-106 and detailed in Section 52-107.”

On September 23, 2016, Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report recommending approval of the application, subject to six proposed conditions. Exhibit 49. The Montgomery County Planning Board (Planning Board) met on October 6, 2016, and in a letter dated October 7, 2016, unanimously recommended approval of the application, adopting the conditions recommended by Staff and adding two additional proposed conditions. Exhibit 50. The Planning Board advised in its letter that it had also unanimously approved the Applicant's Preliminary Forest Conservation Plan (PFCP CU2016-11) associated with this conditional use application.

The public hearing proceeded as noticed on October 14, 2016, and the Applicant called four witnesses. There were no community witnesses, and there was no opposition in this case. After the filing of some additional documents, including Technical Staff's supplemental comments, the record closed on November 3, 2016.

On December 2, 2016, the Hearing Examiner approved the conditional use application, subject to 10 conditions, for the reasons set forth at length in his Report and Decision.

On May 22, 2019, the Hearing Examiner granted the Conditional Use Holder's request to extend the implementation period of the conditional use until December 2, 2019, to allow time for plan revisions required by Technical Staff of the Maryland-National Capital Park and Planning Commission. Exhibits 63 and 64.

On October 11, 2019, the Hearing Examiner administratively approved a minor amendment of the conditional use to conform it to relatively minor plan changes directed by the Planning Department. Exhibits 65 through 77. No request for a public hearing on the Hearing Examiner's action was received within 15 days after that decision was issued, and it is therefore now final.

## **II. THE REQUEST TO FURTHER EXTEND THE IMPLEMENTATION PERIOD OF THE CONDITIONAL USE UNTIL JUNE 30, 2020**

On October 23, 2019, the Conditional Use Holder's attorney, Stephen J. Orens, Esquire, filed a request with OZAH (Exhibit 78) seeking a second extension of the implementation period of the conditional use until June 30, 2020, since changes to the plans required by the Planning Department have delayed approval of the Final Record Plat, which is a prerequisite to issuance of building permits by the Department of Permitting Services. The body of that letter is reproduced below:

Garrett Gateway Partners, LLC, the applicant in the above captioned Conditional Use application hereby requests a second extension of time until June 30, 2020 to obtain building permits and commence construction to vest approved Conditional Use Case No. CU 16- 11. The extension of time is necessary in order for the Applicant to complete and secure approval and recordation of the Final Record Plat and secure building permit approval from the Department of Permitting Services ("DPS"). As you are aware DPS will not approve building permit applications until the Final Plat is recorded. Final Plat approval is now scheduled for Planning Board action on November 7, 2019.

The Staff required additional plan revisions to the Certified Preliminary Plan which have now been approved and the Planning Board's consideration of the Final Plat scheduled by M-NCPPC Staff. As soon as the Final Plat has been approved on November 7, 2019 the Applicant will complete the submission of the building permit applications to the Department of Permitting Services and commence construction as soon thereafter as possible. As we previously informed you the project will be constructed in phases with the final permits issued approximately by June 2020.

Thank you for your consideration of this request. If we are required to submit anything additional please so advise me. Thank you for your attention to this request.

### III. OPINION AND ORDER

Zoning Ordinance §59.7.3.1.I.2, provides criteria for granting an extension of the two-year time period for implementation specified in §59.7.3.1.I.1.

Zoning Ordinance §59.7.3.1.I. provides:

#### **Duration of Approval**

*1. A conditional use that is not established or has not obtained a building permit within 24 months from the date of the issuance of the decision or resolution expires, unless a longer period is established by the decision or resolution.*

*2. After the decision, the Board of Appeals or the Hearing Examiner may extend the time limit for a conditional use to be established or obtain a building permit if the evidence of record establishes that drawing of architectural plans, preparation of the land, or other factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity. An individual extension must not exceed 12 months. If the Board of Appeals or the Hearing Examiner grants an extension, it must set a date by which the erection or alteration of the building must begin or the use must be established.*

\* \* \*

The section does not prohibit a request for a second extension from being granted.

The statutory provision does require a showing by the conditional use holder that “*factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity.*”

Garrett Gateway Partners, LLC, has met this standard by showing that the delays in implementation of the conditional use have been occasioned by plan revisions required by Technical Staff of the Maryland-National Capital Park and Planning Commission. Those plan changes have delayed approval of the Final Record Plat, which is a prerequisite to issuance of building permits by the Department of Permitting Services. As stated by the conditional use holder, “The extension of time is necessary in order for the Applicant to complete and secure approval and recordation of the Final Record Plat and secure building permit approval from the Department of Permitting Services (‘DPS’).”

The Hearing Examiner finds that the reason for the further delay in implementing the conditional use is a legitimate basis for further extending the implementation period until June 30, 2020, as requested by Garrett Gateway Partners, LLC.

Therefore, it is, this 31<sup>st</sup> day of October, 2019,

ORDERED: That the record in CU 16-11, Garrett Gateway Partners, LLC, is hereby re-opened to receive Garrett Gateway Partners, LLC,'s letter received on October 23, 2019 (Exhibit 78) and this Order; and it is

FURTHER ORDERED: That the Conditional Use Holder's request to further extend the implementation period for CU 16-11 until June 30, 2020 is hereby GRANTED; and it is

FURTHER ORDERED: That the implementation period for CU 16-11, is hereby extended until June 30, 2020; and it is

FURTHER ORDERED: That all the conditions imposed in the grant of the conditional use on December 2, 2016, as modified by the Hearing Examiner's Order of October 11, 2019, shall remain in effect unless and until further modified by the Hearing Examiner.



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Martin L. Grossman  
Hearing Examiner

Copies To:

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