

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for**

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CASE NO. CU 20-09

FLOURNOY DEVELOPMENT, INC.

ORDER EXTENDING VALIDITY PERIOD OF CONDITIONAL USE

A. Background

On December 21, 2020, Hearing Examiner Derek Baumgardner approved the above conditional use application filed by Flournoy Development Company (Flournoy) to operate a residential care facility for more than 16 persons on property located at 19115 Liberty Mill Road in Germantown, Maryland.

On October 19, 2022, Flournoy submitted a request to extend the time within which it must implement the conditional use. According to Flournoy (Exhibit 65), it has made “substantial efforts to implement to implement CU 20-09 within its initial 24-month validity period.” Flournoy states, however, “that additional time is needed to secure another equity limited partner in order to complete all the outstanding Project tasks, including, without limitation, close on the acquisition of the Property, plat the Property, obtain a building permit and commence construction.” *Id.*

Flournoy states that it has taken many actions to implement the conditional use, which it lists in an appendix to its request. *Id.*, Exhibit A. Many of these were amendments to a preliminary plan filed to combine two lots to one lot. *Id.*, Exhibits A, B. The Planning Board resolution approving the preliminary plan is attached to the request as Exhibit B.

Flournoy has also requested and been granted two minor amendments to its original conditional use approval. The first included changes designed to “reevaluate the project’s economic viability, resident unit mix and design, and amenities” due to rising construction costs during the COVID-19 pandemic. CU 20-09, *Hearing Examiner’s Order Administratively Approving a Minor Amendment* (August 23, 2021). The second amendment corrected the height mistakenly noted on the conditional use plan, made small changes to the footprint to accommodate electrical rooms, and requested changes to the façade to make the building more functional for residents, among other items. CU 20-09, *Hearing Examiner’s Order Administratively Approving a Minor Amendment* (March 22, 2022).

On October 28, 2022, the Hearing Examiner requested Staff of the Montgomery County Department of Permitting Services (DPS) to inspect the property and determine whether there were

any pending zoning violations. Exhibit 66. Staff found that there were no zoning violations or “outstanding complaints, service requests, or enforcement cases for this property in DPS’ database.” Staff also advised that “the Applicant has been remitting the annual Conditional Use fees to our department.” Exhibit 67.

II. Analysis and Opinion

Under Section 59.7.3.1.I.1 of the Montgomery County Zoning Ordinance (2014), conditional use approvals are valid for two years after the date of issuance. That same section permits the Hearing Examiner to “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.” *Zoning Ordinance*, Section 59.7.3.1.I.2. Extensions are limited to a term of 12 months. *Id.*

The validity period of the current conditional use approval extends to December 21, 2022, two years after it was initially approved. The record here establishes that Flournoy has actively pursued finalizing its approvals by obtaining an approved preliminary plan and two amendments to its conditional use but has had to amend its approvals either to address changes made by the preliminary plan or market changes arising from the COVID 19 pandemic, which were beyond the control of the applicant.

The Hearing Examiner finds that the request to extend the validity period of the conditional use meets the requirements of the Zoning Ordinance and hereby extends the validity period of the conditional use by one year, to **December 21, 2023**. All conditions of approval of the original conditional use, as modified on August 23, 2021, and March 22, 2022, remain in full force and effect.

So Ordered this 1st day of November 2022.



Lynn Robeson Hannan
Hearing Examiner

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