

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for

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CASE NO. CU 20-09

FLOURNOY DEVELOPMENT, INC.

FOURTH ORDER EXTENDING VALIDITY PERIOD OF CONDITIONAL USE

A. Background

On November 17, 2025, the Office of Zoning and Administrative Hearings (OZAH) received an email request from Casey L. Cirner, Esq., of Miles and Stockbridge, P.C., for the applicant, seeking a fourth extension of the validity of this Conditional Use for another twelve months until December 21, 2026. This request was sent concurrently by mail and accompanied by a check for \$240. The subject Conditional Use was first approved by the Hearing Examiner on December 21, 2020 regarding an 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.

Prior to this request the Hearing Examiner has on three previous occasions approved requests for an extension as follows:

On October 19, 2022, Flournoy submitted a request to extend the time within which it must implement the conditional use. The Hearing Examiner granted the request on November 1, 2022, finding that the record established that Flournoy had actively pursued finalizing its approvals by obtaining an approved preliminary plan and two amendments to its conditional use but 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. **Exhibit 68.**

On November 3, 2023, Flournoy requested a second extension of the conditional use, to December 21, 2024. In support of its request, Flournoy stated (**Exhibit 69**):

“The requested extension is justified to continue the validity of CU 20-09 until the market improves to where Flournoy can access the bank and equity financing necessary to complete all the outstanding Project tasks (close on the Property acquisition, plat the Property, obtain civil and building permits) prepare the Property and commence construction of the residential care facility. Right now, the market includes rising interest rates to combat inflation on a national level, making the prospect of borrowing money

economically prohibitive for many commercial developments. This prohibits Flournoy from borrowing money to close on the Property purchase, plat and prepare the Property and commence construction.

“On top of that, construction materials costs increased exponentially during the COVID-19 pandemic and have not returned to pre-pandemic rates, increasing the amount of money to be borrowed to construct the residential care facility, and therefore the overall cost and at all time high interest rates. Most significant is that Flournoy continues to grapple with frozen capital markets unique to senior housing in this specific area that prevent it from securing an equity partner for the Project, which is needed to secure the bank financing once at reasonable interest rates.

“Flournoy understands that the major senior housing equity partner that typically invests in senior housing is not currently investing in new projects in this specific locale because of its existing investments. This seems to have caused other equity partners to shy away from investments in this area too and some senior housing providers to depart the market or focus solely on skilled nursing homes. Despite its best efforts, Flournoy has yet to secure an equity partner for this Project because of the current market constraints.”

In addition to financing constraints, Flournoy also pointed out the money that it had already spent up until that point to finish the project, some of which formed the basis of the first extension request. **Exhibit 69, Exhibit A.** These included two minor modifications to the conditional use (approved by the Hearing Examiner on August 23, 2021, and March 17, 2022), negotiating easements necessary for stormwater management, obtaining certain permits from the Department of Permitting Services and WSSC. Flournoy stated that these efforts were “derailed” in March 2022, when its equity limited partner reconsidered its investment in the project due in part to rising interest rates, the performance of unrelated project and “escalations in the market.” *Id.* Flournoy stated that it intended to pursue the project when financing can be obtained. *Id.*, p. 2.

The second request for an extension was granted on November 23, 2023, extending the Conditional Use approval to December 21, 2024.

On October 17, 2024, Fluornoy presented a third extension request explaining at the time that the third request “...mimics the justification for Fluornoy’s second extension because unfortunately, the market largely remains unchanged for the development and construction of new senior residential care facilities...”.

In support of this present request for a fourth extension Fluornoy argues that the market conditions have not improved sufficiently since the last application for an extension, necessitating a further extension. The request outlined in Exhibit B the project timeline showing the following updates since the last extension:

- January 13, 2025: Preliminary Plan Amendment 12017021D Regulatory Extension Request.
- May 29, 2025: Preliminary Plan Amendment 12017021D Planning Board of M-NCPPC Public Hearing – Approved by Planning Board of M-NCPPC.
- July 7, 2025: Preliminary Plan Amendment 12017021D Resolution Mailed.

II. Analysis, Findings 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.* Clearly, the District Council by placing a limit on validity of conditional uses did not intend for them to be remain open-ended without being implemented.

As noted earlier the current conditional use approval was valid until December 21, 2025¹, five years after it was initially approved. The record here establishes that while Flournoy has actively pursued its approvals by obtaining an approved preliminary plan and three amendments at this point the main reason for seeking an extension is to continue to wait out the market until financing terms are more favorable. For the reasons outlined in the Hearing Examiner’s prior Order granting an extension the Hearing Examiner grants a further extension until December 21, 2026, with a caveat that barring new circumstances this is the final extension.

The Hearing Examiner finds that while the request to extend the validity period of the conditional use meets the requirements of the Zoning Ordinance, waiting on market conditions to become favorable being the main basis for seeking an extension at this point warrants the imposition of a limit on further extensions and hereby extends the validity period of the conditional use by twelve months, to **December 21, 2026, as a final extension of this conditional use approval.** All conditions of approval of the original conditional use, as modified including those dated August 23, 2021, and March 17, 2022, remain in full force and effect.

So Ordered this 28th day of January, 2026.

Office of Zoning and Administrative Hearings



Khandikile Mvunga Sokoni
Hearing Examiner

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¹ Because this request was timely filed, and the delay in rendering a decision was due to staffing at OZAH, and was no fault of the applicant, the Hearing Examiner notified Flournoy’s Counsel that the prior approval would be tolled until a decision was made.