

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for**

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CASE NO. CU 20-09

FLOURNOY DEVELOPMENT, INC.

SECOND ORDER EXTENDING VALIDITY PERIOD OF CONDITIONAL USE

A. Background

On December 21, 2020, the Hearing Examiner 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. The Hearing Examiner granted the request on November 1, 2023, finding that:

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.

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 states (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 points out the money that it has already spent 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 April 23, 2021 and March 22, 2022, negotiating easements necessary for stormwater management, obtained certain permits from the Department of Permitting Services and WSSC. Flournoy states 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 states that it intends to pursue the project when financing can be obtained. *Id.*, p. 2.

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, 2023, three years after it was initially approved. The record here establishes that in 2022 Flournoy was actively pursuing its approvals by obtaining an approved preliminary plan and two amendments and is now actively searching for financing.

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, 2024**. 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 20th day of November 2023.



Lynn Robeson Hannan
Hearing Examiner

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