

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for**

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CASE NO. CU 20-05

HSB POTOMAC, LLC

**ORDER GRANTING SECOND EXTENSION
OF VALIDITY PERIOD FOR CONDITIONAL USE**

A. Background

On December 21, 2020, the Hearing Examiner approved the above conditional use application filed by Spectrum Retirement Communities LLC (now HSB Potomac, LLC, hereinafter “HSB” or “Applicant”) to operate a residential care facility for more than 16 persons on property located at 9545 River Road, Potomac, Maryland 20854.¹

On January 30, 2024, HSB, submitted a second request to extend the time within which it must implement the conditional use. HSB states that it received approval of a record plat for the property on February 3, 2023, which it calls a “significant milestone” due to the number of agencies involved in the approval process. It also submitted its building permit application to the Department of Permitting Services on February 27, 2023. According to HSB, there were three rounds of review requiring a resubmission on January 15, 2024. HSB anticipates that DPS may issue the demolition permit and the building permit “within the next three months”. HSB requests a further extension of the validity period because:

...issuance of both the demolition and building permit are held up by the Sediment and Erosion Control permit. In 2023, the County changed their procedures as a result of the Maryland Department of Environment’s (MDE) requirements to a “General Permit for Discharges of Stormwater Associated with Construction Activity” (MDE Permit”). As a result of this change, DPS will not issue a Sediment and Erosion Control permit, or allow any construction or clearing to occur on the property, until the Petitioner has received notice to proceed from the State, in connection with the MDE Permit. This effectively adds 2 months to the project permit schedule, which was unanticipated at the start of the process. Thus, although the demolition and building permits are likely to be ready for issuance prior to the

¹ The Hearing Examiner issued an Errata making technical changes to its decision on March 9, 2021. Spectrum transferred the conditional use to HSB Potomac, LLC on August 23, 2023. On March 7, 2023, the Hearing Examiner approved minor amendments to the conditional use plan and extended its validity period to March 9, 2024. The Hearing Examiner approved additional minor amendments on January 24, 2024.

current expiration of the Conditional Use validity period, the Petitioner will not be able to pull these permits as a result of delays associated with the Sediment and Erosion Control permit.

II. 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 March 9, 2024. Despite the length of time since the initial approval, the record here establishes that Flournoy has actively pursued finalizing its approvals by obtaining a record plat, actively pursuing a building permit, and seeking a State discharge permit.

HSB did not request a specific length of time needed to extend the validity period, although it “anticipates” it will finalize all permits needed to grade the property within five months. As HSB has demonstrated significant progress toward implementing the conditional use, and given that it does not control the agencies responsible for approving the project, the Hearing Examiner grants HSB an additional year.

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 12 months, to **March 9, 2025**. All conditions of approval of the original conditional use, as modified in the Orders dated March 7, 2023, and January 24, 2024, remain in full force and effect.

So Ordered this 27th day of February, 2024.



Lynn Robeson Hannan
Hearing Examiner

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