

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

for

MONTGOMERY COUNTY

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CASE NO. CU 20-09

FLOURNOY DEVELOPMENT, INC.

**THIRD ORDER EXTENDING VALIDITY PERIOD OF CONDITIONAL USE**

**A. Background**

On October 17, 2024, 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 third extension of the validity of this Conditional Use. 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 two 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 Flourney 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.*

*“Flourney 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, Flourney has yet to secure an equity partner for this Project because of the current market constraints.”*

In addition to financing constraints, Flourney 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. Flourney 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.* Flourney 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.

In support of this present request for a third extension Flourney argues that the market conditions have not improved sufficiently since the last application for an extension, necessitating a further extension.

## **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.*

The current conditional use approval is valid until December 21, 2024, four years after it was initially approved. The record here establishes that Flourney has actively pursued its approvals by obtaining an approved preliminary plan and two amendments and is now actively

searching for financing.

Applicant's request explains:

*"Flournoy, as the contract purchaser of the Property, requires an equity partner and bank financing to close on the Property purchase, plat and prepare the Property for construction and commence construction of the approved residential care facility. However, interest rates have been held at high rates over the last year to combat inflation on a national level. This continues to make the prospect of borrowing money economically prohibitive for Flournoy. Again, echoing Flournoy's immediately prior extension request, construction material costs have still 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 to be financed at unattainably high interest rates.*

*"Although the Federal Reserve cut interest rates by 50 basis points on September 18, 2024, the capital markets unique to senior housing, especially for new senior housing developments, remain frozen and banks continue to have low risk tolerance for lending. It takes time for an interest rate cut to positively impact the market and it typically impacts refinances before an impact, if any, is seen on new construction financing". **Exhibit 71.***

Applicant's request outlines active efforts to seek financing despite these challenges:

*"Flournoy also continues to make efforts to identify an equity partner, including attending the National Investment Center for Senior Housing & Care ("NIC") Fall Conference in Washington D.C. from September 23-25, 2024, that convened senior housing equity partners, lenders, owners and operators to address industry challenges." Id. p. 2.*

The present request for an extension includes a detailed outline of the substantial investments in time and money in furtherance of the residential care facility project, all of which would be lost without this extension. Id. p.3., Exhibits A and B.

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 twelve months, to **December 21, 2025**. 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 29<sup>th</sup> day of October, 2024.

Office of Zoning and Administrative Hearings



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Khandikile Mvunga Sokoni  
Hearing Examiner

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