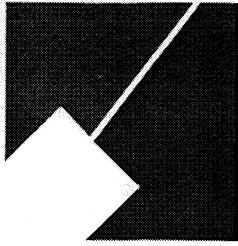


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MCPB
Item # 3
3/25/04

DATE: March 19, 2004
TO: Montgomery County Planning Board
VIA: Carlton Gilbert, Zoning Supervisor *CG*
FROM: Greg Russ, Zoning Coordinator
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To limit the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

TEXT AMENDMENT: No. 04-02
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: District Council at request of Hearing Examiner
INTRODUCED DATE: February 10, 2004
PLANNING BOARD REVIEW: March 11, 2004; March 25, 2004
PUBLIC HEARING: March 16, 2004; 1:30 p.m.

STAFF RECOMMENDATION: APPROVAL with modifications

PURPOSE OF THE TEXT AMENDMENT

To limit the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

BACKGROUND

The Board of Appeals is recommending that the number and duration of time extensions the Board may grant for implementation of variance and special exception cases be limited.

At the March 11, 2004, Planning Board public hearing, several land use attorneys stated concerns with the proposed limit on the number of extensions, stating that projects sometimes need longer than four years to implement approved special exception applications. Attachment 2 includes a copy of these concerns. The Planning Board deferred decision on the subject proposal and requested further clarification on the Board of Appeals rationale for the proposed text amendment. Staff has contacted the Board of Appeals and requested that a representative attend the March 25, 2004 Planning Board meeting to further explain the intent of the text amendment. Staff has included as Attachment 1 a copy of the March 5, 2004, staff memorandum.

GR

Attachments

1. Staff Report for ZTA 04-02 dated March 5, 2004
2. Copy of Testimonies and Recommendations to modify text language


MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

 THE MARYLAND-NATIONAL CAPITAL
 PARK AND PLANNING COMMISSION

 8787 Georgia Avenue
 Silver Spring, Maryland 20910-3760
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ATTACHMENT 1

 et al. I
 von
 the R. Cloris
 Richard P.

MCPB
Item # 6
3/11/04

DATE: March 5, 2004
TO: Montgomery County Planning Board
VIA: Carlton Gilbert, Zoning Supervisor
FROM: Greg Russ, Zoning Coordinator
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To limit the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

TEXT AMENDMENT: No. 04-02
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: District Council at request of Hearing Examiner
INTRODUCED DATE: February 10, 2004

PLANNING BOARD REVIEW: March 11, 2004
PUBLIC HEARING: March 16, 2004; 1:30 p.m.

STAFF RECOMMENDATION: APPROVAL with modifications

PURPOSE OF THE TEXT AMENDMENT

To limit the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

BACKGROUND

The Board of Appeals is recommending that the number and duration of time extensions the Board may grant for implementation of variance and special exception cases be limited. The proposed language modifications are described in the analysis section below.

ANALYSIS

Proposed Text Amendment

The proposed text amendment language is as follows:

59-A-4.5. Decision. * * *

59-A-4.53. Duration of validity.

- (a) **Variance.** *A decision of the Board granting a variance is valid for 12 months, during which time a building permit must be obtained and the erection or alteration started.*
- (b) **Special exception.**
 - (1) *A decision of the Board, Hearing Examiner, or County Council approving the special exception is valid for 24 months.*
 - (2) *A special exception is not valid after 24 months if the use is not established or a building permit is not obtained and construction started within the period.*
- (c) **Extension of time.** *The Board may extend the time limit for a variance or special exception 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. [For a special exception, each] Each extension must not exceed 12 months. If the Board grants an extension, the Board must set a date by which the erection or alteration of the building must be started or the use established. The Board may grant no more than two extensions of time for any variance or special exception.*

The proposed amendment would limit each extension of time for a variance to 12 months, consistent with the timeframe for special exception extensions. In addition, the language limits the number of extensions for variances and special exceptions to no more than two. As such, the Board of Appeals language allows a maximum of four years for the start of construction of a project. If the project has not commenced by that time then a new application must be submitted to the Board.

Staff has no objection with the proposed text amendment. Staff is proposing one plain language clarification on line 22, adding the word "approved" between the words "any" and "variance". It

should be noted that several land use attorneys have stated concerns with the proposed limit on the number of extensions, stating that projects sometimes need longer than four years to implement approved special exception applications.

RECOMMENDATION

The staff supports the proposed text amendment to limit the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

Attachment 1 depicts the proposed text amendment as modified by staff. Underlining indicates text that is added to existing laws by the original text amendment. [Single boldface brackets] indicate text that is deleted from existing law by the original text amendment. Double underlining indicates text that is added to the text amendment by amendment (staff's changes). [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment (staff's changes).

GR

Attachments

1. Proposed Text Amendment 04-02

ATTACHMENT 1

Zoning Text Amendment No: ~~04-02~~
Concerning: Variances and Special
Exceptions
Draft No. & Date: 1 - 2/04/04
Introduced: February 10, 2004
Public Hearing: March 16, 2004; 1:30 p.m.
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the request of the Board of Appeals

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- limiting the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and
- limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-4 "COUNTY BOARD OF APPEALS"
Section 59-A-4.5 "Decision"
Section 59-A-4.53 "Duration of Validity"

EXPLANATION: **Boldface** indicates a heading or a defined term.
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. Section 59-A-4.5 is amended as follows:**

2 **59-A-4.5. Decision. * * ***

3 **59-A-4.53. Duration of validity.**

- 4 (a) **Variance.** A decision of the Board granting a variance is valid for 12
5 months, during which time a building permit must be obtained and the
6 erection or alteration started.
- 7 (b) **Special exception.**
- 8 (1) A decision of the Board, Hearing Examiner, or County Council
9 approving the special exception is valid for 24 months.
- 10 (2) A special exception is not valid after 24 months if the use is not
11 established or a building permit is not obtained and construction
12 started within the period.
- 13 (c) **Extension of time.** The Board may extend the time limit for a
14 variance or special exception if the evidence of record establishes that
15 drawing of architectural plans, preparation of the land, or other factors
16 involved in the particular use will delay the start of construction or the
17 establishment of the use beyond the period of validity. [For a special
18 exception, each] Each extension must not exceed 12 months. If the
19 Board grants an extension, the Board must set a date by which the
20 erection or alteration of the building must be started or the use
21 established. The Board may grant no more than two extensions of
22 time for any approved variance or special exception.
- 23 (d) **Appeal.** If a decision on a variance or a special exception is appealed
24 to a court, the time limits in this section run from the date of the final
25 court order in the appeal.
- 26

26 **Sec. 2. Effective date.** This ordinance becomes effective ~~20 days after the~~ _____
27 date of Council adoption. _____

28

29 This is a correct copy of Council action.

30

31

32 _____

33 Mary A. Edgar, CMC

34 Clerk of the Council



**SHULMAN
ROGERS
GANDAL
PORDY &
ECKER, P.A.**

Lawrence A. Shulman
Donald R. Rogers
Karl L. Ecker†
David A. Pordy +
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Samuel M. Spiritos +
Martin Levine
Worthington H. Talcott, Jr. +
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Morton A. Faller
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James M. Hoffman
Michael V. Nakamura
Jay M. Eisenberg +
Douglas K. Hirsch
Ross D. Cooper
Glenn C. Etelson
Karl J. Prottil, Jr. +
Timothy Dugan +
Kim Viti Fiorentino
Sean P. Sherman +

Rebecca Oshoway
Ashley Joel Gardner
Michael J. Froehlich
William C. Davis, III
Patrick M. Martyn
Elizabeth A. White
Sandy David Baron
Christine M. Sorge
Michael L. Kabik
Gregory D. Grant +
Jeffrey W. Rubin
Stephen G. Janoski
Simon M. Nadler
Karl W. Means
Debra S. Friedman +
Matthew M. Moore +

Dar
Eric
Mia
Ga:
Jason M. Kerben
Mark S. Guberman
Cara A. Frye +
Sarit Keinan
Heather L. Howard
Stephen A. Metz
Hong Suk "Paul" Chung
Lisa C. DeLessio +
Alexander Nemiroff
Patrick J. Howley
Glenn W.D. Golding +

ATTACHMENT 2

Larry A. Gordon +
David E. Weisman
Lawrence Eisenberg
Deborah L. Moran
Michelle L. Lazerow +
Karen M. Doherty +
Mimi L. Magyar
Maryland and D.C.
except as noted:
+ Virginia also
• Maryland only
• D.C. only
• Retired
■ Federal practice only

Writer's Direct Dial Number:

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March 10, 2004

The Honorable Steven Silverman
President
Montgomery County Council
The Stella B. Werner County Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: ZTA 04-02 Limitation of Time Extensions for Special Exceptions and Variances
And
Recommendations Concerning The APFO Validity Period

Dear President Silverman and Members of the County Council:

We represent Sunrise Senior Living, Inc. and Sunrise Development, Inc. ("Sunrise"). Sunrise is the developer of the Fox Hill project. Fox Hill will be a substantial senior housing project on 17 acres at the northwest corner of Burdette Road and River Road.¹

We welcome the Council's consideration of the zoning text amendment. The ZTA is a timely vehicle for explaining why the Special Exception Validity Period and the Preliminary Plan APFO Validity Period ought to coincide, in the numerous cases where a development must obtain both special exception approval and preliminary plan approval.

We provide a lengthy discussion below; therefore, the following table should facilitate your review.

1) Summary Recommendation.....	2
2) Recommended Amendment to the ZTA for the Special Exception Validity Period and Extensions	3
3) Recommended Addition to the ZTA For APFO Validity Period and Extensions	4
4) Coinciding Related Deadlines or "Validity Periods"	6

¹ Marriott Senior Living Services, Inc. was the name of the original developer. Sunrise acquired Marriott Senior Living Services, Inc. during 2003.

a) Special Exception Validity Period	6
b) Interpretation of "Construction Started"	7
c) APFO Validity Period	7
d) Recommendation That the Special Exception Validity Period Coincide with the APFO Validity Period	7
5) Sunrise Fox Hill: Approval History and Impact of the Proposed Legislation	8
6) Sunrise's Estimated Time for Satisfying Outstanding Development Steps	8
7) Conclusion	10

1) Summary Recommendation

Coinciding the two time periods would be a logical and efficient streamlining of the development approval process without negatively affecting the substance of the special exception approval.

As a related matter, the Council should provide some flexibility to address three matters pertaining to the APFO Validity Period, at the very least for senior housing subject to the State's Department of Aging approval processes. First, the Council should confirm that the Planning Board already has the authority re-determine an original APFO Validity Period, where the original determination is for less than the maximum 12 years, just as it may reconsider and amend any number of other preliminary plan conditions of approval. Second, if the original determination may not be changed, the Council should grant the Planning Board the authority to re-determine the original APFO Validity Period. Third, as an alternative, the Council should grant the Planning Board the authority to grant extensions to accommodate senior housing developments that must undergo the lengthy State Department of Aging approval process. Today, the Planning Board is authorized to grant extensions only for multi-phase office developments.²

Senior housing projects, like Sunrise's Fox Hill, are complicated in themselves. They must also undergo a complicated development process. In addition to the approval process required by Montgomery County and the M-NCPPC, they must pass a multi-year, lengthy, State Department of Aging approval process, which includes achieving a minimum of 65% presales before construction.³ The Council should provide reasonable flexibility to foster the development of such necessary facilities.

Based upon its estimated timetable for obtaining the State approvals, Sunrise is anxious about meeting its 5-year APFO Validity, which expires on or about July 18, 2007. Sunrise's estimated timetable is provided at page 9 below. For financing and for greater certainty, Sunrise must have more time.

² Subdivision Regulations Section 50-20(c)(3)(iv), Chapter 50; Pages 50-18 and 19.
³ Art. 70B, Section 11, Maryland Code Annotated (1998 Repl. Vol.), page 449.

Thus, we recommend that the proposed zoning text amendment be amended. The Special Exception Validity Period should coincide with the Preliminary Plan APFO Validity Period. The timing applicable to both approvals would be established by the Planning Board at the time of the Preliminary Plan. The result would not be unsettling. For typical cases, the APFO Validity Period is for the minimum 5 year period.

Also, we are urging the Council to: (1) confirm or establish the Planning Board's authority to re-determine the original APFO Validity Period; and (2) authorize the Planning Board to grant extensions pertaining to senior housing projects that must undergo the State Department of Aging process.

2) Recommended Amendment to the ZTA for the Special Exception Validity Period and Extensions

Our recommended amendments to ZTA 04-02 are indicated below in bold and underlined. Immediately following, we include our recommended amendments to the APFO Validity Period language.

59-A-4.53

...

(b) Special Exception.

(1) **Except as provided in (3) below, a** decision of the Board, Hearing Examiner, or County Council approving the special exception is valid for 24 months.

(2) **Except as provided in (3) below, a** special exception is not valid after 24 months if the use is not established or a building permit is not obtained and construction started within the period.

(3) Where a special exception may not be established or a building permit may not be obtained without the approval or modification of a preliminary plan, including those special exceptions already granted before the effective date of this legislation,

(i) A decision of the Board, Hearing Examiner, or County Council approving the special exception must be valid for the same-time period as the APFO Validity Period, including any extensions, determined by the



**Planning Board under Chapter 50,
Section 50-20(c).**

(ii) Such a special exception is not valid if the use is not established or a building permit is not obtained and construction started within the same time period as the APFO Validity Period determined, including any extensions, by the Planning Board under Chapter 50, Section 50-20(c).

(c) Extension of Time. Except as provided in (3) above, the Board may extend the time limit for a variance or special exception 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. [For a special exception] Each extension must not exceed 12 months. If the Board grants an extension, the Board must set a date by which the erection or alteration of the building must be started or the use established. The Board may grant no more than two extensions of time for any variance or special exception.

(d) Appeal. If a decision on a variance or a special exception is appealed to a court, the time limits in this section run from the date of the final court order in the appeal.

Again, the proposed language would allow the Special Exception Validity Period and the APFO Validity Period to coincide. We expect that the changes would streamline the development approval process without changing the substance of the Special Exception approval.

3) Recommended Addition to the ZTA For APFO Validity Period and Extensions

The law is not clear that the Planning Board has the authority to amend its original APFO Validity Period determination, if it granted a period for five years or more, but less than the maximum of twelve years.⁴ Again, only certain multi-phase office parks may obtain permission to extend their APFO Validity Periods.

We recommend clarifying that the Planning Board may modify its original APFO Validity Period determination. At least with respect to senior housing, the extension provisions ought to accommodate them as long as their Maryland State

⁴ Subdivision Regulations Section 50-20(c)(3)(iii), Chapter 50; Page 50-18.



Department of Aging approval is pending. We recommend the following modifications indicated in bold and underlined.

ARTICLE III. SUBDIVISION REGULATIONS GENERALLY.

Section 50-20. Limitations on issuance of building permits.

50-20(c)(2)

Except as provided in paragraph (4) of this subsection and article IV of chapter 8, a building permit may be issued only if a timely determination of the existence of adequate public facilities to serve the proposed development has been made under this chapter.

50-20(c)(3)

A determination of adequate public facilities made under this chapter is timely and remains valid:

(iii) For no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision, **and as may be amended**, for projects approved after October 19, 1999.

(xx = new subparagraph number) The determination of adequate public facilities for a preliminary plan of subdivision for senior housing may be extended by the Planning Board beyond the validity periods in (i), (ii) and (iii) if:

(A) The record plat has been recorded;

(B) An application for approval is pending with the State Department of Aging.

(vii) The length of the extension of the validity period allowed under (iv) **or (xx = new subparagraph number)** above must be based on the approved new development schedule under (vi)(A) above, but must not exceed 2 ½ years for projects up to 150,000 square feet, or 6 years for projects 15,000 square feet or greater. The extension expires if the

development is not proceeding in accordance with the phasing plan, unless a revision to the schedule or phasing plan is approved by the Planning Board.

(viii) An amendment to the new development schedule approved under subsection (vi)(A) may be approved by the Planning Board if documentation is provided to show financing has been secured for either: (1) completion of at least one new building in the next stage of the amended development schedule; **or** (2) completion of infrastructure required to serve the next stage of the amended development schedule, **or (3) an application for approval is pending with the State Department of Aging.**

4) Coinciding Related Deadlines or "Validity Periods"

This section describes the two "validity periods" germane to our discussion. My intention is to illustrate why they ought to be coordinated. In general, the term "validity period" is used to indicate the time within which a certain action must be underway or completed. A summary chart follows.

Description	Deadline for "Validity Period" and Currently Available Extensions	Citation
Special Exception	2 Years from Special Exception Approval The Board of Appeals may grant as many extensions as it deems proper.	59-A-4.53
APFO Validity Period	Typically 5 Years from Preliminary Plan Approval. However, the Planning Board may grant an original approval for up to 12 years. It may grant extensions only for nonresidential office parks.	50-20(c)

a) Special Exception Validity Period

The special exception "validity period" means the time within which the special exception must be established or the project must be under construction, under Section 59-A-4.53(b)(2), as follows:

A special exception is not valid after **24 months** if the use is not established or a building permit is not obtained and construction started within the period.

(Emphasis added.)

b) Interpretation of "Construction Started"

The term "construction started" is interpreted by the Planning Staff to mean that construction of the building itself must be underway. Merely clearing and rough grading do not constitute "under construction."

c) APFO Validity Period

The APFO Validity Period means that the determination of the existence of adequate public facilities remains valid for at least five years after the Planning Board's preliminary plan approval, under Section 50-20(c), as follows:

50-20(c)(2)

[A] building permit may be issued only if a timely determination of the existence of adequate public facilities to serve the proposed development has been made under this chapter.

50-20(c)(3)

A determination of adequate public facilities made under this chapter is timely and remains valid:

...
(iii) For no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision, for projects approved after October 19, 1999.

Therefore, a building permit to construct the building must be issued and construction of the building must be started before the expiration of the APFO Validity Period.

d) Recommendation That the Special Exception Validity Period Coincide with the APFO Validity Period

We recommend that a single validity period govern both the special exception validity period and the APFO Validity Period where a development must obtain both approvals. We are unable to identify a substantive reason for having two different time periods.

According to the established procedure, the Board of Appeals would grant the special exception application first, before the preliminary plan is considered by the Planning Board. Thus, the Board of Appeals' resolution would necessarily provide that the special exception validity period must coincide with the preliminary plan's APFO Validity Period.

In most instances, the APFO Validity Period is 5 years, as provided under Section 50-20(c)(iii); however, the Planning Board has the authority to make an APFO determination for up to 12 years. Accordingly, the two approvals could have a validity period for up to twelve years.

5) Sunrise Fox Hill: Approval History and Impact of the Proposed Legislation

On July 1, 2002, the Board of Appeals issued its Opinion granting Sunrise's Fox Hill special exception. About two weeks later, on July 18, 2002, the Planning Board approved the preliminary plan application. Although Sunrise requested the Planning Staff to recommend an original 8-year APFO Validity Period, Sunrise was only granted a 5 year APFO Validity Period. However, Fox Hill is not expected to commence construction until about March-June 2007, assuming that no unexpected delays occur. No substantive reason exists warranting the expiration of the special exception approval.

As ZTA 04-02 is written, Sunrise's special exception, with all extensions, would expire on July 1, 2006. (Original approval: 2 years (2002-2004); plus two, 1-year extensions (2005 and 2006)). Thus, Sunrise's special exception approval would expire about one to two years too early, even under perfect circumstances, with no unexpected delays.

Fox Hill's APFO Validity Period will expire on July 18, 2007. The timing might be an adequate period of time within which to commence construction; however, the "breathing room" is minimal. (Please see the estimated timetable that follows.) In the case of other developments, the APFO Validity Period seems significantly more generous. Sunrise wishes to have more "breathing room" in order that the project does not appear uncertain in the capital markets. Similarly, considering the lengthy approval timeline, it is unlikely that all of the development steps will perform as punctually as the estimated timetable might imply.

We urge the Council to enact the amendments to ensure that the Planning Board may grant adequate "breathing room" to continue through the State-imposed approval processes and to commence construction.

6) Sunrise's Estimated Time for Satisfying Outstanding Development Steps

On March 1, 2004, the Board of Appeals granted Sunrise's petition for a one year extension to July 1, 2005. Sunrise's petition included its best estimate of the



development approval timetable through opening Fox Hill's doors. It shows that it is possible for Sunrise to commence in time. However, if any unanticipated delays occur, Fox Hill will not be able to proceed, and the Planning Board would be helpless to assist them. The law should be changed as we recommended to grant the Planning Board authority to allow more "breathing room" for worthy projects. The estimated timetable is as follows:

No.	Description	Begin	End
1.	Conducting consumer research to confirm the preferred pricing of the independent living units -- whether cooperative or endowment.	1/1/04	3/15/04
2.	Preparation and submittal to the State Office on Aging of the Application for a Certificate of Authority ("C.O.A.") including an economic feasibility study. (Note: Such study is separate from the one formerly required by the Montgomery County Zoning Ordinance.)	3/15/04	8/1/04
3.	State Office on Aging review and approval of the economic feasibility study submitted with the C.O.A. application	8/1/04	1/1/05
4.	State Office on Aging completes its review and approves the entire C.O.A. Application	8/1/04	8/1/05
5.	Pre-construction reservations of independent living units may begin after the State Office on Aging approves the economic feasibility study, even though the complete C.O.A. application is still under review. Sunrise may accept reservations but may not enter into a binding contract with a prospective resident, until the C.O.A. is approved. Under State law, after the C.O.A. is approved, construction may not begin until the actual sales contracts have reached 65% of the independent living units, <i>i.e.</i> , 156 independent living units. It might take 2 years to reach 65% of the independent living units.	1/1/05	1/1/07
6.	Financing work (Note: It is expected to begin before the final approval and the issuance of the C.O.A.)	5/1/06	1/1/07
7.	Construction of Fox Hill	3/1/07	6/1/09

The estimated timetable shows that after obtaining their special exception and preliminary plan approvals, senior housing projects, like Fox Hill, still must proceed

through time-consuming State of Maryland approval processes before they are permitted to commence construction.


7) Conclusion

Fox Hill is proceeding diligently along a reasonable timetable. It would be unable to obtain the necessary approvals and to be under construction unless ZTA 04-02 were modified, and unless the County's laws are clarified or modified to accommodate more than a minimum 5-year APFO Validity Period.

We respectfully request the Council's assistance.

Thank you for your consideration. Please call with your comments, questions and instructions.

Very truly yours,



Timothy Dugan

cc:

The Montgomery County Planning Board
The Montgomery County Board of Appeals
Mr. Ralph D. Wilson
Mr. David Edgerley
Ms. Tina Benjamin
Mr. Greg Russ
Mr. Joseph Davis
Mr. Malcolm Shaneman
Mr. Richard Weaver
Michele Rosenfeld, Esq.



Proposed Amendments to Zoning Text Amendment 04-02

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND

By: District Council at the request of the Board of Appeals

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- limiting the time for which the Board of Appeals may extend the validity of a variance to not more than 12 months for each extension; and
- limiting the number of extensions of time that the Board may grant for a special exception or variance to two extensions.
- allowing the Board to grant special exceptions with validity periods of up to 12 years for long-range development projects that meet certain requirements.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-4 "COUNTY BOARD OF APPEALS"
Section 59-A-4.5 "Decision"
Section 59-A-4.53 "Duration of Validity"

EXPLANATION:

Boldface indicates a heading or a defined term.

Underlining indicates text that is added to existing laws by the original text amendment.

~~*[Single boldface brackets]*~~ indicates text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

~~*[[Double boldface brackets]]*~~ indicate text that is deleted from the text amendment by amendment.

***** indicates existing law unaffected by the text amendment.

Sec. 1. Division 59-A-4.5 is amended as follows:

59-A-4.5. Decision. * * *

59-A-4.53. Duration of validity.

- (a) **Variance.** A decision of the Board granting a variance is valid for 12 months, during which time a building permit must be obtained and the erection or alteration started.
- (b) **Special Exception.**
- (1) A decision of the Board, Hearing Examiner, or County Council approving the special exception is valid for 24 months, unless otherwise exempted under subsection (d) herein.
- (2) A special exception is not valid after 24 months if the use is not established or a building permit is not obtained and construction started within the period, unless otherwise exempted under subsection (d) herein.
- (c) **Extension of time.** The Board may extend the time limit for a variance or special exception 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. [For a special exception, each] Each extension must not exceed 12 months. If the Board grants an extension, the Board must set a date by which the erection or alteration of the building must be started or the use established. The Board may grant no more than two extensions of time for any variance or special exception.

(d) Exemption from Duration of Validity Provisions for Long-Range Development Projects. Notwithstanding the above, the Board, Hearing Examiner, or County Council may grant special exception approval for a long-range development project with a period of validity not to exceed 12 years if it meets the following requirements:

(1) A project master plan is approved by the Board, Hearing Examiner or Council as part of the granting of a special exception.

(2) That components of the master plan are not likely to be implemented within the time limits set forth in subsections (b) and (c) above.

~~[(d)]~~(e) **Appeal.** If a decision on a variance or a special exception is appealed to a court, the time limits in this section run from the date of the final court order in the appeal.

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Mary A. Edgar, CMC

Clerk of the Council

