

IN THE MATTER OF : BEFORE THE
W.H. Boyer, Inc. : HOWARD COUNTY
 Petitioner : HEARING EXAMINER
 : Case No. BA-19-018C
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ORDER

The undersigned, serving as the Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure and the Howard County Zoning Regulations, considered a request from W.H. Boyer, Inc., dated March 25, 2022, in Board of Appeals Case No. BA-19-018C, W.H. Boyer, Inc., for an extension of the time period to obtain building permits for the First Phase Structures (structure Nos. 25, 27 and 30 on the Conditional Use Plan) and Second Phase Structures (structure Nos. 29, 31 and 32) in an RR-DEO (Rural Residential: Density Exchange Option Overlay) zoning district approved as a conditional use by the Hearing Examiner in a Decision and Order dated May 19, 2020.

The May 19, 2020 Order provided the following conditions No. 9 and 10:

9. First Phase Structures. This Decision and Order shall become void as to the structure Nos. 25, 27 and 30 on the Conditional Use Plan unless a building permit conforming to the Conditional Use Plan is obtained within two (2) years, and substantial construction in accordance therewith is completed within three (3) years from the date of this decision. If a building permit is not necessary for structure Nos. 25, 27 or 30, this Decision and Order shall become void as to those structures unless the use commences within two (2) years from the date of this decision.

10. Second Phase Structures. As to the second phase of the Conditional Use Plan -- structure Nos. 29, 31 and 32 -- this Decision and Order shall become void unless a building permit conforming to the Conditional Use Plan is obtained within five (5) years, and substantial construction in accordance therewith is completed within six (6) years from the date of this decision. If a building permit is not necessary for structure Nos. 29, 31 and 32, this Decision and Order shall

become void as to those structures unless the use commences within (5) years from the date of this decision.

Under Section 131.0.I.3. of the Howard County Zoning Regulations:

- a. Except as provided in Subsections b, c, d and e below, a Decision and Order approving a Conditional Use shall become void unless a building permit conforming to the plans for which the approval was granted is obtained within two years, and substantial construction in accordance therewith is completed within three years from the date of the decision. A Decision and Order approving a Conditional Use for which a building permit is not necessary shall become void unless the use commences within two years from the date of the decision. If a decision is appealed, the time period for the use being appealed shall be measured from the date of the last decision.
- b. The Hearing Authority may approve a phasing plan, in which only the first phase of a Conditional Use plan is subject to the time limits given above. The approval for future phases shall become void unless such phases are completed within a time period specified in the Hearing Authority's Decision and Order.
- c. The Hearing Authority may grant as many as two extensions of the time limits given above. The extensions shall be for a period of time not to exceed three years each, and may be granted in accordance with the following procedures:
 - (1) A request for an extension shall be submitted by the property owner prior to the expiration of the Conditional Use approval, explaining in detail the steps that have been taken to establish the use.
 - (2) The property owner shall certify that a copy of the request for an extension has been sent by certified mail to adjoining property owners and to the addresses given in the official record of the Conditional Use case for all persons who testified at the public hearing on the petition.
 - (3) The Hearing Authority shall provide opportunity for oral argument on the request at a work session if requested by any person receiving notice of the request. If no response is received within 15 days of the date of the written notification, a decision on the request may be made by the Hearing Authority without hearing oral argument.
 - (4) The Hearing Authority may grant the request if it finds that establishment of the use in accordance with the approved Conditional Use plan has been diligently pursued. If oral argument is presented on the request, the Hearing Authority may deny the request if any of the oral arguments allege that changes have taken place in the circumstances which led to the original decision to approve the Conditional Use.

In a letter dated March 25, 2022, and delivered to the County on the same day, and in accordance with Section 131.0.I.3.c. of the Howard County Zoning Regulations, the petitioner requested an extension of two (2) years of the time allowed to obtain building permits. While the request does not expressly request an extension to substantially complete all improvements of the First Phase and Second Phase Structures, it is assumed that such request was implied. In accordance with Section 131.0.I.3.c.(2) of the Howard County Zoning Regulations, the petitioner's counsel certified that he sent copies of the extension request to the adjoining property owners March 25, 2022. (There was no opposition at the hearing in the matter and no one other than the petitioner and petitioner's representatives testified at the hearing.) Fifteen (15) days have now passed since the date of the letter on which certified letters to the adjacent property owners were sent. No person receiving notice has requested to be heard and no response has been received by any of the adjacent property owners. Thus, under Section 131.0.I.3.c.(3) of the Howard County Zoning Regulations a decision may be made without hearing oral argument.

Having read and considered the Petitioner's request, I find under Section 131.0.I.3.c.(4) of the Howard County Zoning Regulations that the Petitioner has diligently pursued the establishment of the use in accordance with the approved conditional use plan, that the extension request was timely filed and that despite proper notice no adjacent property owners have responded or requested to be heard on the matter.

Based upon the foregoing, it is this 5th day of May 2022, by the Howard County Hearing Examiner, ORDERED that:

As to the First Phase Structures, the two-year time period for obtaining necessary building permits as required by Section 131.0.I.3.a. of the Howard County Zoning

Regulations shall be and hereby is EXTENDED for an additional two (2) years until May 19, 2024, and the three-year time period for completion of substantial construction as required by Section 131.0.I.3.a. of the Howard County Zoning Regulations shall be and hereby is EXTENDED for an additional two (2) years until May 19, 2025. If a building permit is not necessary, the Decision and Order shall become void as to those structures unless the use commences within four (4) years from the date of the May 19, 2020, Decision and Order.

As to the Second Phase Structures, the five (5) year time period for obtaining necessary building permits as required by the May 19, 2020, Decision and Order shall be and hereby is EXTENDED for an additional two (2) years until May 19, 2027, and the six (6) year time period for completion of substantial construction shall be and hereby is EXTENDED for an additional two (2) years until May 30, 2028. If a building permit is not necessary, the Decision and Order shall become void as to those structures unless the use commences within seven (7) years from the date of the May 19, 2020, Decision and Order.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Katherine L. Taylor

Date Mailed: _____

NOTICE: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.