



City of
Rockville
Get Into It

Planning Commission Staff Report: Zoning Text Amendment TXT2015-00242

MEETING DATE: March 11, 2015

REPORT DATE: March 4, 2015

FROM: Deane Mellander, Zoning Administrator
Planning and Zoning Division
240.314.8224
dmellander@rockvillemd.gov

APPLICANT: Nancy Regelin, Shulman Rogers, for
1900 Chapman Project Owner LLC

APPLICATION DESCRIPTION: The applicant's request is to amend the code to toll the implementation period of a Project Plan or Site Plan approval during the pendency of an administrative appeal. The application also proposes to extend the allowable extensions for site plans from six months to one year each.

FILING DATE: February 6, 2015

RECOMMENDATION: Staff recommends that the proposed text amendment be approved with revisions.

EXECUTIVE SUMMARY: The proposed amendment would allow for the tolling, i.e., suspension of the validity period, of a Project Plan or Site Plan approval where the development proposal has been appealed to the courts. At such time as a final decision has been made by the appellate body with final jurisdiction, the validity period will commence running for a period equal to the tolling period. The text amendment also proposes to extend the allowable extensions to a site plan approval from six months for each extension to one year for each extension.

*Zoning Ordinance of
The City of Rockville
Adopted December 15, 2008
by Ordinance 19-08*

Being Chapter 25 of the Rockville City Code

Effective Date – March 16, 2009

As Amended to
October 13, 2014

Table of Contents

APPLICANT'S PROPOSAL	4
RECOMMENDATION	4
BACKGROUND	4
ANALYSIS	5
ATTACHMENTS	6

APPLICANT'S PROPOSAL

The applicant has submitted a cover letter along with the text amendment application setting forth their reasoning for the proposed amendments (Attachment 1). The staff has reformatted the text in accordance with the City's standard text amendment format for ease of presentation as Attachment 2.

The proposed text amendment would add a new subsection e to Sec. 25.05.08 of the Zoning Ordinance to allow any pending development approval or related permit approval to be tolled throughout the pendency of all appeals instituted during the implementation period. Tolling is the legal term that essentially suspends the time frame for which project implementation is required under the code for as long as an appeal is pursued. Once there is a final action by the appellate body, the validity period resumes from the point at which it was at the time the appeal was filed.

The next proposed changes are in Sec. 25.07.06, "Site Plan Implementation Period". The application proposes to change subsection b, *Extensions*, to change the current extension periods from six months to one year for each of the two extensions. The application also proposes to add two new subsections d and e. New subsection d would allow a project that has been granted extensions totaling one year in the aggregate (the current requirement) to be granted an additional one year extension by the Chief of Planning based on the proposed revision to subsection b.

The new subsection e to this section allows for the tolling of the development approval during the pendency of any administrative appeal.

The final revision proposed by the applicant is to revise Sec. 25.07.07, "Project Plan Review" by adding a new subparagraph (c) to Sec. 25.07.07.18, *Project Plan Implementation Period* to allow for the tolling of the time required for the filing of a site plan to implement the Project Plan (currently six months, or as otherwise approved by the Mayor and Council) during the pendency of an appeal.

RECOMMENDATION

Staff recommends that the proposed text amendment be approved with modifications as recommended by the staff.

BACKGROUND

In May, 2009 the State enacted a bill that gave any approved projects in the state an automatic extension as a consequence of the economic recession. The extension ran for two and a half years, from January 1, 2008 to June 30, 2010. Projects that would have otherwise expired in the period after January 1, 2008 under the City's regulations retained their approval and could file for building permits and commence construction by June 30, 2010. At that point, however,

unless these projects had additional extension available their validity period would have ended. The City deemed it desirable and necessary to allow the pending projects additional time to implement their approvals. Therefore the Mayor and Council adopted text amendment TXT2010-00227, which tolled any pending approvals for an additional two years, to July 1, 2012. A new section 25.07.16 was added to the Zoning Ordinance to achieve this purpose. The ordinance was adopted on June 21, 2010. The Zoning Ordinance defines "Toll" as "to suspend or stop temporarily".

The applicant owns property at 1900 Chapman Avenue near the Twinbrook Metro station. In August, 2012 the Planning Commission approved site plan application STP2012-00227 for this site. That approval was appealed to the courts, and the litigation was not finally adjudicated until October of 2014, by which time the initial two-year implementation period had expired. The Planning Commission granted two extensions totaling one year, as currently set forth in the code. The final extension will expire in August, 2015.

ANALYSIS

The applicant is requesting that the City enact a formal tolling provision that would extend the implementation period for approved projects for a time period equal to the time period of the litigation. The proposed amendment would therefore add additional language to Section 25.05.08, "Extension of Implementation Period", that essentially provides that for any project approval that is subject to a timely filed administrative appeal, the implementation period will be tolled until a final action by the appellant body with final jurisdiction. The staff is supportive of this proposal in concept, and it is a reasonable extension of the tolling provisions previously adopted by the Mayor and Council with text amendment TXT2010-00227 as noted above.

In consultation with the City Attorney, staff recommends that the proposed language submitted by the applicant be revised for clarity of intent. In Attachment 3, staff illustrates the proposed revisions with strikethroughs deleting the applicant's proposed language and double underlining illustrating the new language proposed by staff.

The revisions proposed by the staff in the first paragraph of new subsection e to Sec. 25.05.08 are to clarify that the tolling applies to administrative appeals and that the tolling begins on the date the appeal is filed. In the second paragraph, the proper terms "tolled" and "tolling" replace the terms "extended" and "extension" for consistent terminology.

Under Section 25.07.06, "Site Plan Implementation Period", the applicant proposes to revise subsection b, "Extensions", to change the length of the extensions from six months to one year each. This proposal would return the allowable extensions to what had been available prior the comprehensive zoning ordinance provisions of 2008. While not directly tied to the tolling procedures, the applicant is reflecting the length of time it often takes following site plan approval to actually move forward with building permits. From the staff perspective, allowing for two one-year extensions allows the developer sufficient time to complete the permitting

process, as well as time to secure tenant commitments and/or financing. The staff therefore supports this revision.

The applicant proposes to insert two new subsections d and e to Section 25.07.06. The staff has proposed a number of revisions to the submitted text. In subsection d, the staff recommends deleting the applicant's proposed language that appears to allow for extensions to be granted if an extension had already been granted. The staff recommends that the approving authority simply be able to grant whatever extensions are still available under subsection b. If the text in Section 25.07.06.b is amended to increase the extensions from six months to one year, the additional extension time would be available.

In subsection e the submitted text would seem to institute the tolling procedure in case of an appeal only after the appeal has lasted more than six months. This conflicts with the intent of the proposed language in Section 25.05.08 and does not seem to serve any purpose. The staff therefore recommends that subsection e simply provide a cross-reference to Section 25.05.08 and have the tolling period begin with the timely filing of an appeal.

Finally, the applicant proposes to insert a new subparagraph (c) into subsection 18 of Section 25.07.07, "Project Plan Review". The new language proposed by the applicant would have the Chief of Planning grant an extension of the time required for a project plan to file an implementing site plan for tolling purposes. Again, this is at variance with the provisions of subsection e of Section 25.05.08, and the staff recommends that this subparagraph (c) be revised to act as only as a cross-reference to the tolling provisions proposed in new Section 25.05.08.e.

Therefore, with the modifications and revisions proposed, the staff recommends that text amendment TXT2015-00242 be approved.

ATTACHMENTS

- 1. Text Amendment Application and Cover Letter**
- 2. Text Amendment Reformatted**
- 3. Proposed Text Revisions by Staff**

NANCY P. REGELIN, ESQUIRE | SHAREHOLDER
T 301.230.5224 E nregelin@shulmanrogers.com
February 6, 2015

Mayor and Council of Rockville
c/o Mr. James Wasilak, Chief of Planning
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

2015 FEB -6 PM 1:01

CITY OF ROCKVILLE

Re: Zoning Text Amendment to Codify Tolling
During Pendency of Appeals of Development Approvals
Our File No. 115798-0008

Dear Mr. Wasilak:

On behalf of our client, 1900 Chapman Project Owner, LLC (“Applicant”), we have filed a zoning text amendment to Sections 25.05.08, 25.07.06, and 25.07.07.18 of the Zoning Ordinance to amend the implementation periods of development approvals (i.e. validity periods) to recognize tolling of those periods during the pendency of appeals.

Tolling of the implementation period during the pendency of an appeal of a development approval preserves fairness for all parties – aggrieved parties can file an appeal and pursue the merits of their objections in court while the applicant is not prejudiced by the running out of the validity period of their approvals.

The Maryland Court recognize tolling as the means of preserving all parties’ rights and to avoid *“the mischief that could otherwise occur if litigation is used solely to cause administrative deadlines to be missed.”*

The Courts of Maryland have adopted equitable tolling in Maryland under the line of reasoning established in a series of cases from Nutter v. City of Baltimore 230 Md. 6 (1962), National Waste Managers, Inc. v. Anne Arundel County, 135Md. App. 585 (2000), City of Bowie v. Prince George’s County, 384 Md. 413 (2004), to Lanzaron v. Anne Arundel County, 402 Md. 140 (2007). This consistent line of cases provide for the tolling of the implementation period of a zoning approval during a period equal to the time that elapsed as a result of the litigation.

Most recently the Court of Appeals has stated, *“we have long held that when a zoning decision has been made authorizing a particular action which, by statute, must be taken by a certain time, that time generally does not ...continue... to run during a period in which opponents ...have created conditions such as ...appeals or other litigation, that block the taking of the particular action.”* Lanzaron v. Anne Arundel County, 402 Md. 140 (2007). *Id* at 151.

Even though the Rockville Code is currently silent on tolling, the Maryland cases all support the application of tolling whether or not the statutory language of that jurisdiction addresses or is silent on tolling.

By codifying Maryland case law on equitable tolling of development approvals during the pendency of appeals, the City will put into place statutory guidelines for the application of tolling. It will also provide for certification by the Chief of Planning of the expiration dates of implementation periods that are subject to appeals. This will provide certainty to property owners and their lenders as to the implementation period of their development approvals.

This text amendment is being filed by the Applicant because it has been severely prejudiced by the pursuit of an appeal of its site plan. Despite the fact that each successive appeals court found for the City and the developer and dismissed the appeal, successive appeals were noted. As the City is aware as they were a party along with the Applicant in an appeal of the Rockville Planning Commission's approval of the site plan for 1900 Chapman Avenue by Mr. Sam Shipkovitz, it took 25 months to exhaust the appeal process which continued from September 2012 until October 2014. The appeal period was longer than the original two year implementation period for the site plan under the zoning ordinance and would have run out the clock. Fortunately, the Rockville Planning Commission granted extensions to the validity period of the Applicant's site plan. The validity period remains in effect for a few more months.

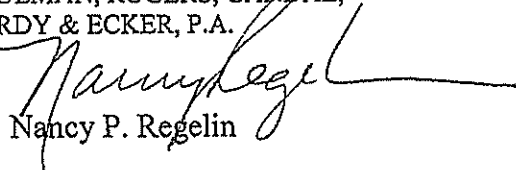
However, the Rockville Planning Commission was limited by the new zoning ordinance to granting only two (2) six-month extensions. For decades, the prior zoning ordinance permitted the Planning Commission to grant two (2) one year extensions, which would have provided sufficient time to overcome the delay from the lengthy appeal, secure all public works and building permits and commence construction to vest the site plan. Therefore, the proposed text amendment includes an amendment to reinstate the two (2) one year extension periods that can be granted to extend development approvals.

The proposed text amendment is just patently fair. It will keep status quo in the face of a court process that neither party can control. The text amendment will provide property owners delayed by appeals that are not sustained by the courts the opportunity to complete the lengthy process of securing City public works permits and building permits in order to vest their site plan and protect their significant investments in the property.

The Applicant continues to proceed with all due diligence and haste to secure a building permit and commence construction. Due to the severity of the damages the Applicant will sustain if the site plan is not extended by tolling to allow it time to secure the permits needed to start construction and vest its development approval, we respectfully request that this be placed on the March 30, 2015 public hearing agenda and thereafter the Mayor and Council undertake expedited consideration and adoption of this text amendment.

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

By


Nancy P. Regelin

cc: Debra Yerg Daniel, City Attorney
Matthew Hurson, Managing Director, Hines for 1900 Chapman Project Owner, LLC



Application for
Text Amendment

RECEIVED
CITY OF ROCKVILLE

2015 FEB -6 PM 1:01

City of Rockville
Department of Community Planning and Development Services

111 Maryland Avenue, Rockville, Maryland 20850
Phone: 240-314-8200 • Fax: 240-314-8210 • E-mail: Cpds@rockvillemd.gov • Web site: www.rockvillemd.gov

Application Information:

Is this an Amendment to Existing Text ? YES NO

Add New Zone Classes: YES NO Add New Uses: YES NO

Number of new uses: _____ Ordinance # _____

Please Print Clearly or Type

Property Address information 1900 Chapman Avenue

Project Description Site Plan Tolling of site plan validity period pending appeal litigation in conformance with Md. case law
general applicability not zone specific

Applicant Information:

Please supply Name, Address, Phone Number and E-mail Address

Applicant 1900 Chapman Project Owner LLC c/o Hines, Two CityCenter | 800 Tenth Street NW | Suite 600
Washington, DC 20001, Matthew Hurson, Managing Director - Development, D 202-434-0253;
matthew.hurson@hines.com

Property Owner same

Architect _____

Engineer _____

Attorney Nancy Regelin, Esquire, Shulman Rogers, 12505 Park Potomac Avenue, Suite 600, Potomac, Md 20854,
301-230-5224, nregelin@shulmanrogers.com

STAFF USE ONLY

Application Acceptance:

Application # _____
Date Accepted _____
Staff Contact _____

OR

Application Intake:

Date Received _____
Reviewed by _____
Date of Checklist Review _____
Deemed Complete: Yes No

Application is hereby made with the Rockville Mayor and Council for Approval of a change in the text of the Zoning and Planning Ordinance of Rockville, Maryland.

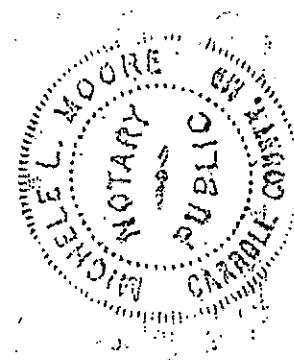
Page _____ Article 25 - 05 and 25-07 Section 25.05.08, 25.07.06, 25.07.07

FROM: Which reads as follows see attached amendments redlined into existing ordinance

TO: Reads as follows see attached amendments redline into existing ordinance

1900 Chapman Project Owner, LLC

By: Nancy Kegan, Esquire
(Signature of Applicant) Counsel to Applicant



Subscribed and sworn before this 6th day of February, 2015

My Commission Expires 4/1/2015

MICHELE L. MOORE Notary Public
NOTARY PUBLIC
CARROLL COUNTY
MARYLAND
MY COMMISSION EXPIRES JULY 20, 2015

The following documents are furnished as part of the application:

- A Complete Application
- Filing Fee

Comments on Submittal: (For Staff Use Only)

Sec. 25.05.08. - Extension of implementation period.

- a. In order to avoid expiration of the development approval, the implementation period may be extended only when all of the following conditions exist:
 - 1. The provisions of this chapter expressly allow the extension;
 - 2. An extension request is filed prior to the expiration of the approval; and
 - 3. The extension request is in writing and includes justification.
- b. Unless otherwise provided, authority to grant extensions of time shall rest with the Approving Authority that granted the original approval being extended.
- c. Extensions may be granted only upon good cause. In determining whether good cause has been shown, the Approving Authority must consider:
 - 1. The actions taken by the applicant to diligently pursue implementation of the approval, including but not limited to execution of required documents and pursuing other required approvals;
 - 2. Whether the approved development complies with all the current provisions of this chapter and other applicable laws and with the current plan recommendations; and
 - 3. Such other factors deemed to be relevant.
- d. An extension of the implementation period of an approval does not allow any change from the conditions of the approval for which the extension is requested.

(Ord. No. 29-09, § 5, 10-26-09)

e. The implementation period, including all extensions, of any development approval and/or related permit approval in effect on and after [adoption date], 2015 shall be tolled throughout the pendency of all appeals that are instituted at anytime during its implementation period. The tolling period shall end on the date of finality of the decision or final action of the appellate body with final jurisdiction. For all approvals automatically extended pursuant to this provision, the remaining implementation period and any extensions granted pursuant to Section 25.07.06 or otherwise provided by this Chapter, shall resume running after the end of the tolling period. The development approval shall remain in full force and effect throughout the implementation period inclusive of all extensions and the tolling period. During this period, the applicant may implement the development approval and the City shall continue to process all other applications necessary to implement the development approval. The Chief of Planning shall issue a confirmation letter to an applicant of any extension of the implementation period under this section.

Sec. 25.05.09. - Appeals.

Any party of record aggrieved by a decision of any Approving Authority may appeal that decision in accordance with the applicable provisions for that Approving Authority as set forth in this chapter.

Sec. 25.07.06. - Site plan implementation period.

- a. *Site plan approval.* A site plan approval by the Planning Commission or the Chief of Planning expires if construction does not commence pursuant to a validly issued building permit within two (2) years of the effective date of the Planning Commission approval, unless another time frame is provided by this chapter or by the terms of the approval.
- b. *Extensions.* Except as set forth in section 25.07.15, the Planning Commission or the Chief of Planning may, for good cause shown, grant no more than two (2) extensions of not more than one (1) year ~~six (6) months~~ each for any prior approval subject to the provisions of section 25.05.08, "Extension of implementation period". The Planning Commission may require as a condition of approval of an extension that the applicant submit periodic progress reports to the Chief of Planning detailing efforts undertaken to implement the site plan approval.
- c. *Multi-phase or multi-building site plan approval.* All phases of a multi-building or multi-phase project which has received site plan approval must be commenced within eight (8) years from the effective date of site plan approval unless another time frame is provided by this chapter or by the terms of approval. A site plan approval will become void for those buildings or phases within a multiple building or phased development for which construction has not commenced within eight (8) years from the date of the site plan approval or within such other time frame provided by this chapter or by the terms of approval. Unless otherwise specifically provided by the terms of approval, no extension may be granted from the implementation period set forth in this subsection c.

(Ord. No. 15-10, § 3, 6-21-10; Ord. No. 7-11, § 8, 6-6-11; Ord. No. 8-14, § 1, 4-21-14)

d.. For any site plan that was valid as of [adoption date] , 2015 and previously granted extension of its implementation period under Section 25.07.06.b above for no more than one (1) year in the aggregate, the Planning Commission or the Chief of Planning may grant additional extensions for the remainder of the maximum allowable extension period under Section 25.07.06.b.

e. For any site plan that is the subject of a timely noted administrative appeal that continues for a period of more than six (months) in the aggregate anytime during its implementation period, the applicant shall be granted by the Chief of Planning an additional extension of the implementation period equal to the period running from the noting of the appeal through the date of finality of the decision or final action of the appellate body having final jurisdiction.

Editor's note—

Ord. No. 7-11, § 8, adopted June 6, 2011, repealed the former section 25.07.06, which pertained to level 3 site plan review and derived from Ord. No. 19-08, § 1, adopted December 15, 2008, and Ord. No. 29-09, § 7, adopted October 26, 2009. Subsequently, Ord. No. 7-11 redesignated the former sections 25.07.07—25.07.16 as sections 25.07.06—25.07.15. The historical notation of these sections has been preserved for reference purposes.

Sec. 25.07.07. - Project plan review.

An application for a site plan review with sixteen (16) or more points, as determined in subsection 25.07.02.b above, is processed as a project plan review and is subject to the following provisions:

1. *Pre-application area meeting.* The applicant must hold an area meeting prior to submitting an application, to outline and receive comments on the scope of the project. The applicant must provide notice of the meeting in accordance with the provisions of section 25.07.03
2. *Pre-application staff meeting.* The applicant must hold a meeting with staff of the City's Development Review Committee (the public is invited to observe, however these are not public hearings and no testimony will be received) prior to submitting an application, in order to outline the scope of the project and the scope of the comprehensive transportation review. At that meeting, the Chief of Planning will provide the applicant with a non-binding point evaluation for the project, which will be re-evaluated after the application is submitted.
3. *Project plan application.* The applicant must file an initial project plan site plan application prior to Planning Commission review in accordance with the provisions of section 25.07.03 and article 5 and provide a date for a post-application area meeting.
4. *Notice.* The applicant must provide notice of the application filing and the post-application area meeting in accordance with the provisions of section 25.07.03
5. *Post-application area meeting.* The applicant must hold an area meeting following submittal of an application to outline the scope of the project and receive comments. The applicant must provide notice of the meeting in accordance with the provisions of section 25.07.03 above.
6. *Briefing session for Mayor and Council and Planning Commission.* The Mayor and Council and the Planning Commission must each hold a public meeting to receive a briefing of the project plan.
7. *Revised project plan application.* The applicant is encouraged to revise the application pursuant to comments received at the briefing sessions and area meetings.
8. *Planning Commission public meeting.* The Planning Commission must review the project plan application, as revised, at a public meeting and provide an opportunity for public comment thereon.
9. *Planning Commission comments and recommendation.* Following its review, the Planning Commission shall prepare and transmit its comments and recommendations on the project plan application to the Mayor and Council.
10. *Revision to project plan application.* The applicant may file a revised application, if needed, based on the comments and recommendations of the Planning Commission, for consideration by the Mayor and Council.
11. *Notice.* The applicant must provide notice of the Mayor and Council public hearing and any revisions to the application, if applicable, in accordance with the provisions of section 25.07.03
12. *Mayor and Council public hearing.* The Mayor and Council must hold a public hearing on the revised application for a project plan.
13. *Area meeting.* If directed by the Mayor and Council, the applicant must then hold an area meeting to explain and receive comments on the proposed plan and provide notice in accordance with the provisions of section 25.07.03
14. *Final project plan application.* The applicant is encouraged to file a revised project plan based on comments received during the public hearing and from the area meeting.
15. *Findings.* The Mayor and Council must make the findings required in subsection 25.07.01.b.2.
16. *Decision; project plan implementation period.* Upon the close of the public hearing record, the Mayor and Council will render a final decision on the proposed project plan by resolution. If the

application is approved, the Mayor and Council will establish a time period in which construction on all phases of the approved project plan must commence.

17. *Conditions of approval.* Project plan approvals may be subject to any condition that the Mayor and Council finds necessary to protect the public health, safety, and welfare of the community and to ensure that the proposed use or development will be consistent with the purpose and intent of this chapter.
18. *Project plan implementation period.* A project plan approval expires if:
 - (a) A site plan application implementing all or a portion of a project plan is not filed within six (6) months of the date of the Mayor and Council's approval or within such other period of time as may be provided in the approval; or
 - (b) Except as set forth in section 25.07.15, construction on all phases of the approved project plan has not commenced within the time period set forth in the project plan approval, except that the approval does not terminate with respect to those phases of the project plan for which construction has commenced.
 - (c) Any project plan approval that is the subject of a timely noted administrative appeal, the applicant shall be granted by the Chief of Planning an extension of the time for filing the site plan application under subsection (a) above and the implementation period under subsection (b) above equal to the period running from the noting of the appeal through the date of finality of the decision or final action of the appellate body having final jurisdiction.
19. *Notice of decision.* The Chief of Planning must send notice of the Mayor and Council's decision on the final project plan in accordance with the provisions of section 25.05.06
20. *Preliminary plan of subdivision approval.* Approval of a project plan also constitutes approval of a preliminary plan of subdivision.
21. *Subsequent site plan review.* All development approved under a project plan is subject to subsequent site plan approval in accordance with the level 2 site plan review procedures under section 25.07.05 above. However, the pre-application provisions of subsections 25.07.05.1. and 2. are not required.
22. *Appeals.* Any person aggrieved by any decision of the Mayor and Council made on a project plan application may appeal the same to the Circuit Court for the County. Such appeal must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

(Ord. No. 29-09, § 7, 10-26-09; Ord. No. 15-10, § 3, 6-21-10; Ord. No. 7-11, § 8, 6-6-11; Ord. No. 8-14, § 1, 4-21-14)

Note—See editor's note at section 25.07.06

March 4, 2015

ATTACHMENT TO APPLICATION
TO THE CITY OF ROCKVILLE FOR A
TEXT AMENDMENT TO THE ZONING ORDINANCE

Applicant: Nancy Regelin for 1900 Chapman Project Owner LLC

The applicant proposes to amend the zoning ordinance adopted on December 15, 2008, and with an effective date of March 16, 2009, by inserting and replacing the following text (underlining indicates text to be added; [brackets] indicate text to be deleted; * * * indicates text not affected by the proposed amendment). Further amendments may be made following citizen input, Planning Commission review and Mayor and Council review.

Amend Article 5, "Application and Notification Generally", as follows:

* * *

25.05.08 – Extension of Implementation Period

* * *

e. The implementation period, including all extensions, of any development approval and/or related permit approval in effect on and after [date of adoption] shall be tolled throughout the pendency of all appeals that are instituted at any time during its implementation period. The tolling period shall end on the date of finality of the decision or final action of the appellate body with final jurisdiction.

For all approvals automatically extended pursuant to this provision the remaining implementation period and any extensions granted pursuant to Section 25.07.06 or otherwise provided by this Chapter shall resume running after the end of the tolling period. The development approval shall remain in full force and effect throughout the implementation period inclusive of all extensions and the tolling period. During this period, the applicant may implement the development approval and the City shall continue to process all other applications necessary to implement the development approval. The Chief of Planning shall issue a confirmation letter to an applicant of any extension of the implementation period under this section.

Amend Article 7, "Procedures for Site Plans and Project Plans, Special Exceptions and Other Permits" as follows:

25.07.06 – Site Plan Implementation Period

- a. *Site Plan Approval* - A site plan approval by the Planning Commission or the Chief of Planning expires if construction does not commence pursuant to a validly issued building permit within two (2) years of the effective date of the Planning Commission approval, unless another time frame is provided by this Chapter or by the terms of the approval.
- b. *Extensions* – Except as set forth in Section 25.07.15, the Planning Commission or the Chief of Planning may, for good cause shown, grant no more than two (2) extensions of not more than [six (6) months] one (1) year each for any prior approval subject to the provisions of Section 25.05.08, "Extension of Implementation_Period". The Planning Commission may require as a condition of approval of an extension that the applicant submit periodic progress reports to the Chief of Planning detailing efforts undertaken to implement the site plan approval.
- c. *Multi-Phase or Multi-Building Site Plan Approval* All phases of a multi-building or multi-phase project which has received site plan approval must be commenced within eight (8) years from the effective date of site plan approval unless another time frame is provided by this Chapter or by the terms of approval. A site plan approval will become void for those buildings or phases within a multiple building or phased development for which construction has not commenced within eight (8) years from the date of the site plan approval or within such other time frame provided by this Chapter or by the terms of approval. Unless otherwise specifically provided by the terms of approval, no extension may be granted from the implementation period set forth in this subsection c.
- d. For any site plan that was valid as of [date of adoption] and previously granted extension of its implementation period under Section 25.07.06.b above for no more than one (1) year in the aggregate, the Planning Commission or the Chief of Planning may grant additional extensions for the remainder of the maximum allowable extension period under Section 25.07.06.b.
- e. For any site plan that is the subject of a timely noted administrative appeal that continues for a period of more than six (6) months in the aggregate any time during its implementation period, the applicant shall be granted by the Chief of Planning an additional extension of the implementation period equal to the period running from the noting of the appeal through the date of finality of the decision or final action of the appellate body having final jurisdiction.

25.07.07. – Project Plan Review

An application for a site plan review with 16 or more points, as determined in Section 25.07.02.b above, is processed as a Project Plan review and is subject to the following provisions:

* * *

18. *Project Plan Implementation Period*– A Project Plan approval expires if:

- (a) A site plan application implementing all or a portion of a Project Plan is not filed within six (6) months of the date of the Mayor and Council's approval or within such other period of time as may be provided in the approval; or
- (b) Except as set forth in Section 25.07.15, construction on all phases of the approved Project Plan has not commenced within the time period set forth in the Project Plan approval, except that the approval does not terminate with respect to those phases of the Project Plan for which construction has commenced.
- (c) for any project plan approval that is the subject of a timely noted administrative appeal, the applicant shall be granted by the Chief of Planning an extension of the time for filing the site plan application under subsection (a) above and the implementation period under subsection (b) above equal to the period running from the noting of the appeal through the date of finality of the decision or final action of the appellate body having final jurisdiction.

March 4, 2015

REVISIONS PROPOSED BY STAFF
TO TXT2015-00242

Applicant: Nancy Regelin for 1900 Chapman Project Owner LLC

The applicant proposes to amend the zoning ordinance adopted on December 15, 2008, and with an effective date of March 16, 2009, by inserting and replacing the following text (underlining indicates text to be added; [brackets] indicate text to be deleted; * * * indicates text not affected by the proposed amendment; ~~striketroughs~~ indicate text proposed to be deleted by staff; double underlining indicates new text proposed by staff). Further amendments may be made following citizen input, Planning Commission review and Mayor and Council review.

Amend Article 5, “Application and Notification Generally”, as follows:

* * *

25.05.08 – Extension of Implementation Period

* * *

e. The implementation period, including all extensions, of any development approval and/or related permit approval in effect on and after [date of adoption] shall be tolled throughout the pendency of all administrative appeals that are instituted at any time during its implementation period. The tolling shall start on the date the timely administrative appeal is filed. The tolling period shall end on the date of finality of the decision or final action of the appellate body with final jurisdiction.

For all approvals automatically ~~extended~~ tolled pursuant to this provision the remaining implementation period and any extensions granted pursuant to Section 25.07.06 or otherwise provided by this Chapter shall resume running after the end of the tolling period. The development approval shall remain in full force and effect throughout the implementation period inclusive of all extensions and the tolling period. During this period, the applicant may implement the development approval and the City shall continue to process all other applications necessary to implement the development approval. Upon request, the Chief of Planning shall issue a confirmation letter to an applicant of any ~~extension~~ tolling of the implementation period under this section.

Amend Article 7, “Procedures for Site Plans and Project Plans, Special Exceptions and Other Permits” as follows:

25.07.06 – Site Plan Implementation Period

- a. *Site Plan Approval* - A site plan approval by the Planning Commission or the Chief of Planning expires if construction does not commence pursuant to a validly issued building permit within two (2) years of the effective date of the Planning Commission approval, unless another time frame is provided by this Chapter or by the terms of the approval.
- b. *Extensions* – Except as set forth in Section 25.07.15, the Planning Commission or the Chief of Planning may, for good cause shown, grant no more than two (2) extensions of not more than [six (6) months] one (1) year each for any prior approval subject to the provisions of Section 25.05.08, "Extension of Implementation_Period". The Planning Commission may require as a condition of approval of an extension that the applicant submit periodic progress reports to the Chief of Planning detailing efforts undertaken to implement the site plan approval.
- c. *Multi-Phase or Multi-Building Site Plan Approval* All phases of a multi-building or multi-phase project which has received site plan approval must be commenced within eight (8) years from the effective date of site plan approval unless another time frame is provided by this Chapter or by the terms of approval. A site plan approval will become void for those buildings or phases within a multiple building or phased development for which construction has not commenced within eight (8) years from the date of the site plan approval or within such other time frame provided by this Chapter or by the terms of approval. Unless otherwise specifically provided by the terms of approval, no extension may be granted from the implementation period set forth in this subsection c.
- d. For any site plan that was valid as of [date of adoption] and previously granted extension of its implementation period under Section 25.07.06.b above for no more than one (1) year in the aggregate, the Planning Commission or the Chief of Planning the Approving Authority may grant additional extensions for the remainder of the maximum allowable extension period under Section 25.07.06.b.
- e. For any site plan that is the subject of a timely noted filed administrative appeal, that continues for a period of more than six (6) months in the aggregate any time during its implementation period, the applicant shall be granted by the Chief of Planning an additional extension of the implementation period equal to the period running from the noting of the appeal through the date of finality of the decision or final action of the appellate body having final jurisdiction; the implementation period shall be tolled in accordance with Section 25.05.08.e.

25.07.07. – Project Plan Review

An application for a site plan review with 16 or more points, as determined in Section 25.07.02.b above, is processed as a Project Plan review and is subject to the following provisions:

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18. *Project Plan Implementation Period*— *A Project Plan approval expires if:*

- (a) A site plan application implementing all or a portion of a Project Plan is not filed within six (6) months of the date of the Mayor and Council's approval or within such other period of time as may be provided in the approval; or
- (b) Except as set forth in Section 25.07.15, construction on all phases of the approved Project Plan has not commenced within the time period set forth in the Project Plan approval, except that the approval does not terminate with respect to those phases of the Project Plan for which construction has commenced.
- (c) for any project plan approval that is the subject of a timely noted filed administrative appeal, the applicant shall be granted by the Chief of Planning an extension of the time for filing the site plan application under subsection (a) above and the implementation period under subsection (b) above equal to the period running from the noting of the appeal through the date of finality of the decision or final action of the appellate body having final jurisdiction. shall be tolled in accordance with Section 25.05.08.e.