

**CITY OF ROCKVILLE
COMMUNITY PLANNING & DEVELOPMENT SERVICES DEPARTMENT
STAFF REPORT**

TO: Planning Commission

FROM: Jim Wasilak, AICP, Chief of Planning

PLANNER: Deane Mellander, Zoning Administrator

DATE: April 28, 2010

SUBJECT: Zoning Text Amendment TXT2010-00227

RECOMMENDATION: Approve proposed text amendment with modification.

REQUEST: The proposed text amendment would toll the implementation period of any site plan, use permit, project plan or special exception that was valid as of June 30, 2010. The tolling period would run to June 30, 2012.

RELEVANT ISSUES:

- The current tolling legislation adopted by the State legislature will expire on June 30, 2010. Any approved projects that have exhausted their possible extensions will expire at that time.
- There needs to be a discussion of possible alternatives that have a more limited affect.

PREVIOUS RELATED ACTIONS: The Mayor and Council authorized the filing of this text amendment at their meeting on March 15, 2010.

ANAYLSIS: There are a number of development projects that have been approved in the past few years that have not proceeded to the building permit stage (see Attachment A). Mostly, this has been a consequence of the national economic downturn that began in 2007 and continues to this date. Some use permits obtained approval under the prior zoning ordinance. These projects were valid for two years, and were also eligible for two one-year extensions if approved by the Planning Commission. Other projects have received approval under the revised zoning ordinance that went into effect in March of 2009.

In May, 2009 the Governor signed Senate Bill 958, which gave any approved projects in the state (including the subdivisions and municipalities) an automatic extension. The term used for this action is "tolling". In this context, to toll means to stop or suspend temporarily. As applied, any development project that had a valid approval as of January 1, 2008 had their validity time suspended in place until the end of the tolling period, or 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 file for building permits and commence construction by June 30. At that point, however, unless these projects had additional extensions available their validity ends and they would have to begin the approval process from the beginning.

The proposed text amendment would essentially continue the tolling process for an additional 2 years within the City. The language, proposed as a new Section 25.07.16, will toll any project that was deemed valid as of June 30, 2010 until July 1, 2012. This would include any project that would have otherwise expired during the State tolling period. Projects that have been approved since the start of the State tolling period (January 1, 2008) would have whatever implementation period is left as of June 30, 2010 tolled to July 1, 2012, where their implementation period would recommence. Note: The proposed text should be corrected to revise the end of the tolling period to June 30, 2012, rather than July 1.

Technical Aspects of the Text Amendment

The first section of the text amendment modifies the Table of Contents to list the proposed new section in Article 7. The second section modifies the definitions to add the term "Toll", so as to make clear the meaning in this context. For clarification, to toll in this instance means that the implementation period is suspended from the point in its approval process to the end of the tolling period. In a similar example of tolling, a minor is injured in an accident when he is 14 years old, and the state law (statute of limitations) allows a person hurt by negligence two years to file suit for damages. For a minor the statute is "tolled" until he/she becomes 18 and decides whether or not to sue. Thus the minor has two years after turning 18 to file suit.

It is important to clarify the meaning of the term "toll". As defined above, the project is tolled from whatever point it was in the implementation process at the start of the tolling period. At the end of the tolling period the implementation

period resumes from the point at which it was tolled. As an example, if an approved use permit had six months left on its final allowed extension at the start of the tolling period, they will have that six months left to complete implementation once the tolling period ends.

In Article 7, Sections 25.07.07.b, 25.07.08.18.(b), and 25.07.09.n are modified to add a cross-reference to the new language. The new language is added as new Section 25.07.16. Note also that Section 25.07.08.15 is modified to correct a typo to make the proper reference to Section 25.07.01.b.2. In Article 8, Section 25.08.02.b(d) is also modified to provide a cross-reference to the new language for use permits approved under the prior ordinance.

Note that under Section 25.20.03, the code makes it clear that a project approval includes the approval of the adequate public facilities needed for the project. Any tolling or extensions will include the APFO approval. The language reads, in part, as follows:

“Except as otherwise provided in this Section 25.20.03, a determination of adequate public facilities made in connection with the approval of any development approval or any amendment thereto, that is subject to the provisions of the this Chapter, is timely and remains valid so long as the underlying approval remains valid.”

Potential Alternatives

In discussion with the Mayor and Council at the time of authorization to file, several members of the Council expressed concern that the proposed language was too broad in that any approved project would be tolled, even if they had not yet reached the end of their initial implementation period or exhausted their extensions. There was some support for giving extensions only to those projects that would have expired, except for the State tolling legislation. Only 5 of the projects in the pipeline would be affected in this case. Ten other approved projects would expire before June 30, 2012 due to having exhausted their available extensions.

If the Planning Commission decides to recommend this narrower approach, then the language in the new section 25.07.16 could be replaced with the following:

Any site plan, use permit, or special exception that was deemed valid as of June 30, 2010 and would otherwise expire as of that date may apply to extend the

implementation period in accordance with the provisions of Sec. 25.05.08. In these cases, the Approving Authority may grant no more than two (2) extensions of one year each. The application for an extension must be filed prior to June 30, 2010 for any projects that would expire as of that date. This provision does not apply to any site plan, use permit, or special exception that is still eligible for extensions under the relevant section of this code.

This alternative language excludes project plans since there is only one project plan that has been approved under the revised ordinance, and it has been validated with the filing of a site plan. The site plan is expected to be acted on by the Planning Commission this April, and if approved would be valid for two years. Two six-month extensions would also be available.

It needs to be noted that a bill that was considered during the recent legislative session in Annapolis, HB1344, would have tolled any projects approved by a local approving authority from January 1, 2008 until December 31, 2013. However, this bill died in a Senate committee and therefore when the current tolling legislation expires, there will no further state involvement in project extensions.

In drafting the proposed text amendment, the staff took a cue from the current State legislation which effectively tolled all approved projects but didn't give them the remainder of their time since the statute was abrogated. From a purely economic standpoint, extending all of the approvals would essentially level the playing field. Any approved project will move forward only when the market allows it and the financing is available.

Further, by extending only those projects for two years that would otherwise expire on June 30, those projects whose approval extends beyond that date may be at some disadvantage because they may have to request extensions, which under the new ordinance are only six months long and are discretionary with the Approving Authority.

While not specifically included in the proposed text amendment, the Planning Commission may wish to consider making a recommendation to the Mayor and Council to revise the length of the project extensions from six months back to one year. Obtaining development approval is one of the early steps in a project. It can take considerable time, even in better economic times, to get to the building permit stage, especially with a major project.

PUBLIC OUTREACH: Notice of the proposed text amendment and the review schedule has been sent to all commercial property owners as well as all civic associations and homeowner's associations.

CONCLUSION: The staff recommends approval of the proposed text amendment as filed with a minor technical change to the last sentence to change the date of the end of the tolling period from July 1, 2012 to June 30, 2012.

Attachments:

- A. List of Projects Affected by the Text Amendment
- B. Proposed Text Amendment

Pipeline Projects

Project Name	Application	Status	Add	Approval Date	Expiration Date	Extension Potential	Notes
Approved Projects							
ATF site (Building 3)	USE2001-00630	Approved	1405 Research Blvd	12/20/2000	12/20/2008	N/A	Bldg 3 expired per ZO; Tolled
Sandy Spring Bank (Building 2)	USE2003-00688	Approved	611 Rockville Pike	4/12/2004	4/12/2012	N/A	Multiphase Project, Implemented
1711 Research Blvd	USE2005-00688	Approved	1711 Research Blvd	10/10/2005	10/10/2009	N/A	Expired per ZO; Tolled
Rockville Housing Enterprises office building	USE2005-00689	Approved	1200 First St	4/19/2006	4/19/2010	N/A	Expired per ZO; Tolled
Chevron Gas Station	USE2006-00700	Approved	801 Hungerford Dr	7/11/2007	7/11/2010	1 1-year	
Rockville Volunteer Fire Station	USE2005-00694	Approved	380 Hungerford Dr	7/19/2007	7/19/2010	1 1-year	
COPT (Buildings 3 & 4)	USA1983-0279F	Approved	25 & 35 W. Gude Dr	6/13/2008	6/13/2010	2 1-year	Multiphase Project, Not implemented
Beall's Grant II	USE2007-00707	Approved	254 North Washington St	8/29/2008	8/29/2010	2 1-year	On Appeal at Court of Appeals
Chabad Orthodox Synagogue	USE2009-00712	Approved	216 Rollins Ave	12/12/2008	12/12/2010	2 1-year	Building permit on file
Korean Methodist Church	USE2007-00704	Approved	2181 Baltimore Rd	12/29/2008	12/29/2010	2 1-year	
St Raphael's School	USE2009-00711	Approved	1592 Kimblewick Road	1/22/2009	1/22/2011	2 1-year	
Wootton Crossing	STP2009-00002	Approved	799 Rockville Pike	8/13/2009	8/13/2011	2 6-month	
5 Research Place	STP2010-00013	Approved	5 Research Pl	12/18/2009	12/18/2011	2 6-month	Building permit on file
Gude Drive Maintenance Facility	STP2010-00020	Approved	14625 Rothgeb Drive	3/2/2010	3/2/2012	2 6-month	
Rockville Senior Center addition	STP2010-00028	Approved	1150 Camation Drive	4/6/2010	4/6/2012	2 6-month	
Rockville Police Station and Annex	STP2010-00027	Approved	2 West Montgomery Ave	3/24/2010*		2 6-month	Approval letter not issued
Kol Shalom Synagogue	STP2010-00022	Approved	9110 Darnestown Road	4/14/2010*		2 6-month	Approval letter not issued
Approved Planned Developments							
King Farm	CPD95-0002						
King Farm-Irvington Center (F5)	CPD2005-002AK	Approved	901 King Farm Blvd	7/5/2005	7/5/2009	N/A	Expired per ZO; Tolled
King Farm - Ingleside (Phases 2 & 3)	CPD2005-002AL	Approved	King Farm Blvd	9/12/2005	9/12/2013	N/A	Multiphase Project, Implemented
King Farm-Irvington Center (F7/F8)	CPD2003-002AC	Approved	801 King Farm Blvd/1503 Piccard	5/14/2007	5/14/2015	N/A	Multiphase Project, Implemented
King Farm-Irvington Center (F6)	CPD2007-002AM	Approved	900 King Farm Blvd	12/3/2007	12/3/2010	1 1-year	
Fallsgrove	CPD99-0004						
Fallsgrove (ASHLA Site) Phase 2	CPD2005-0004W	Approved	2300 Research Blvd	2/23/2006	2/23/2014	N/A	Multiphase Project, Implemented
Fallsgrove Executive Center	CPD2006-004AB	Approved	Shady Grove Road	4/24/2007	4/25/2010	1 1-year	Time Extension submitted
Fallsgrove Office North	CPD2007-004AC	Approved	Key West/Fallsgrove Dr	12/15/2008	12/15/2010	2 1-year	Multiphase Project, Not Implemented
Twinbrook Station	PDP2004-00009						
Twinbrook Station (West)	USE2005-00685	Approved	Chapman Ave	12/19/2005	12/19/2009	N/A	Multiphase, Expired per ZO; Tolled
Twinbrook Station (East)	USE2005-00684	Approved	Fishers La	12/19/2005	12/19/2013	**	Multiphase Project, Implemented
Upper Rock	PDP2004-00007						
Upper Rock District (Blocks E, F, G & H)	USE2006-00696	Approved	1,2,3 Choke Cherry Road	8/4/2006	8/4/2014	N/A	Multiphase Project, Implemented
Rockville Metro Plaza	PDP2004-00008						
Foulger Pratt (Buildings 2 & 3)	USE97-0577	Approved	111 Rockville Pike	1/5/1999	1/5/2011	**	Multiphase Project, Implemented
Tower Oaks	CPD85-0001						
Tower Oaks - West of Lake (Hotel/Fitness/Condo)	CPD2005-0001M	Approved	2250/2300 Tower Oaks Blvd	12/29/2005	12/29/2013	N/A	Multiphase Project, Implemented
Rockville Center	PDP94-0001						
Duball (Lots 2J & 2K)	USE2006-00699	Approved	196/198 E. Montgomery Ave.	5/23/2007	5/23/2010	1 1-year	Multiphase, Not Implemented; Time extension submitted
Chestnut Lodge	PRU2006-00022						
Chestnut Lodge	PRU2006-0022B	Approved	Bullard Circle	11/14/2006	11/14/2014	N/A	Multiphase Project, Implemented
Champion Billiards	PDP2006-00011						
Champion Billiards	USE2006-00702	Approved	900 Rockville Pike	7/25/2008	7/25/2010	2 1-year	On appeal at Court of Appeals

Pipeline Projects

KSI	PDP2003-00006						
KSI	USE2006-00697	Approved	255 N Washington St	12/7/2006	12/7/2010	N/A	
Pending Projects							
Washington Properties office building	STP2009-00007	Pending	4 Research Pl				
Avalon at Twinbrook Station	STP2009-00008	Pending	12750 Twinbrook Pkwy				
Brightview of Rockville	SPX2010-00381	Pending	9200 Damestown Rd				
Bealls Grant II (revised plan)	STP2010-00025	Pending	254 North Washington St				
Victory Court Independent Living	STP2010-00034	Pending	209 Monroe Street				SPX on appeal to Circuit Court
National Lutheran Home	STP2010-00039	Pending	9701 Viers Drive				
Rockville Baptist Church addition	STP2010-00037	Pending	55 Adclare Road				

Notes

* Approval date shown is date of action

** Subject to provisions for multiphase projects in the Town Center and Twinbrook Metro performance districts

March 25, 2010

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

Applicant: Mayor and Council of the City of Rockville

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 the Table of Contents to add the following:

* * *

Article 7 - Procedures for Site Plans and Project Plans, Special Exceptions, and Other Permits

* * *

25.07.15 – Additional Permits and Approvals

25.07.16 - Extension of Implementation Period for Approved Projects

* * *

Amend Article 3 – Definitions; Terms of Measurement and Calculations, as follows:

25.03.02 – Words and Terms Defined

* * *

Toll – To suspend or stop temporarily.

* * *

Amend Article 7 – Procedures for Site Plans and Project Plans, Special Exceptions, and Other Permits, by revising Sections 25.07.07, 25.07.08, and 25.07.09, and adding a new section as follows:

25.07.07 – Site Plan Implementation Period

* * *

- b. *Extensions* – Except as set forth in Section 25.07.16, t[T]he 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 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.

* * *

25.07.08. – Project Plan Review

* * *

15. Findings - The Mayor and Council must make the findings required in Section 25.07.01.[a.3]b.2.

* * *

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 25.07.16, c[C]onstruction 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.

* * *

25.07.09 –Special Exceptions

* * *

- n. *Implementation Period* - A special exception approval expires under the following circumstances:

* * *

4. *Extension* - The Board may, for good cause shown, grant no more than two (2) extensions of the implementation period of not more than six (6) months each, subject to the provisions of Section 25.05.08, except for those projects subject to the provisions of Section 25.07.16.

25.07.16 - Extension of Implementation Period for Approved Projects

Any site plan, project plan, use permit, or special exception that was valid as of June 30, 2010 shall have the remainder of their implementation period tolled until June 30, 2012. For all projects extended pursuant to this provision, the implementation period remaining as of June 30, 2010 shall resume running as of July 1, 2012. The implementation period of any such projects approved between June 30, 2010 and June 30, 2012 are tolled until July 1, 2012.

* * *

Amend Article 8 – Transitional Provisions, Nonconformities, Nonconforming Alteration Approval, as follows:

25.08.02 – Transitional Provisions

* * *

b. *Previously Approved Developments* –

* * *

- (d) Nothing herein shall affect the validity of a use permit for a building constructed in accordance with the requirements of the use permit prior to the expiration for the time frames set forth herein, and as may be extended by the provisions of Sec. 25.07.16.