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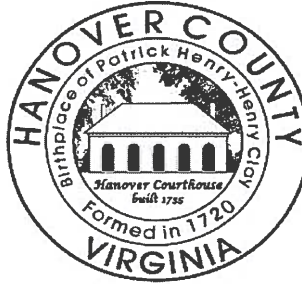
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ERIN M. BABER
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P. O. BOX 470
HANOVER, VIRGINIA 23069
PHONE 804-365-6171

TO: Hanover County Board of Supervisors

FROM: Andrew J. Pompei, AICP, CZA
Deputy Director of Planning 

DATE: October 25, 2023

RE: Ordinance 23-16: CUP and SE Extensions

Background

Ordinance 23-16 would modify language related to the extension of Conditional Use Permits and Special Exception Permits. Extensions are often requested in situations where substantial construction or use has not been initiated within one year of approval. The Zoning Ordinance provides that an extension of time may be approved under certain conditions if the request for an extension is filed in a timely manner and the request indicates the reason for the delay.

This proposed ordinance limits the number of extensions that may be granted by the Board for Conditional Use Permits and by the zoning administrator for Special Exception Permits to no more than two extensions, each a maximum of two years (with a maximum of 4 years total). If the use or substantial construction has not been initiated by the expiration date of the final extension, the applicant must apply for a new Conditional Use Permit or Special Exception Permit. This allows staff and the Board of Supervisors to determine if the use is still appropriate.

Example: Implementation of Proposed Ordinance Amendment

Action	Expiration Date (if use not initiated)
Initial Approval of CUP or SE by the Board of Supervisors	1 year from Board of Supervisors approval (unless longer period specified in conditions)
Extension #1	Up to 2 years from date of approval of Extension #1
Extension #2	Up to 2 years from date of approval of Extension #2
Final Expiration	<p>CUP or SE expires if two extensions have been approved and the use has not been initiated (or substantial construction has not occurred).</p> <p>If the property owner wishes to continue pursuing the use, a new CUP or SE must be approved, with the proposal following the standard review/public hearing process for CUP or SE requests.</p>

The proposed ordinance amendment has been discussed by the Community Development Committee and reviewed by the Planning Commission.

Review Timeline	
Community Development Committee	May 23, 2023 + August 22, 2023
Board of Supervisors Authorization	September 27, 2023
Planning Commission Review	<p>October 19, 2023 (Public Hearing)</p> <ul style="list-style-type: none"> • During the public hearing, only one citizen spoke to ask a question. • Following the public hearing, the Commission voted to recommend approval of the ordinance as drafted (Vote:7-0).

Recommendations

The Planning Commission and staff recommend **APPROVAL** of the ordinance as drafted.

CLEAN

DATE: 11/8/2023

ORDINANCE 23-16

AN ORDINANCE TO AMEND THE HANOVER COUNTY CODE, CHAPTER 26, ZONING ORDINANCE, SECTIONS 26-327 AND 26-339, TO ESTABLISH LIMITATIONS ON THE NUMBER AND DURATION OF EXTENSIONS OF CONDITIONAL USE PERMITS AND SPECIAL EXCEPTIONS IN SITUATIONS WHERE SUBSTANTIAL CONSTRUCTION OR USE HAS NOT BEEN INITIATED WITHIN ONE YEAR OF APPROVAL

WHEREAS the Hanover County Zoning Ordinance provides that, once approved by the Board of Supervisors, conditional use permits and special exceptions shall not expire if substantial construction or use has been initiated within one year of the date of approval; and

WHEREAS the Zoning Ordinance provides that an extension of time may be approved under certain conditions, including that a request for extension is filed in a timely manner and the request indicate the reason for the delay; and

WHEREAS the Zoning Ordinance does not limit the number and duration of extensions of conditional use permits and special exceptions that can be granted; and

WHEREAS the Board of Supervisors has determined that changes to the Zoning Ordinance which establish a limit on the number and duration of extensions of conditional use permits and special exceptions are in the public interest; and

WHEREAS the Board of Supervisors has determined that these changes are consistent with the intent of the Zoning Ordinance related to Conditional Use Permits and Special Exceptions; and

WHEREAS the Board of Supervisors finds that the public necessity, convenience, general welfare and good zoning practice require that the Zoning Ordinance be amended in accordance with these findings;

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County:

1. That the Hanover County Code, Chapter 26, Zoning Ordinance, Article 6, Administration and Enforcement, Division 3, Conditional Use Permits, Section 26-327, Duration of Conditional Use Permits, shall be amended to read as follows:

Section 26-327. Duration of conditional use permits.

(a) Validity.

- (1) Approval of a conditional use permit shall be valid for a period of one (1) year after the date of approval and, thereafter, shall be void unless substantial construction or use has been initiated during the one-year period, unless:
 - a. Another period of validity is established by the Board at the time of approval, or
 - b. Another period of validity is established by the Board upon application filed before the expiration of the prescribed time period, upon a finding that commencement within the prescribed period is not practical because of circumstances applicable to the proposed development.
- (2) An extension after one year is not necessary for:
 - a. A nonconforming use already established on the property that is required to obtain a conditional use permit to expand their use, or
 - b. An amendment of an approved conditional use permit for an existing use.

(b) Extensions.

- (1) The Board may approve a request for an extension of time for the validity of a conditional use permit in accordance with the following:
 - a. A request for an extension of time shall be filed in writing, on forms prescribed by the zoning administrator, prior to the expiration date of the permit.
 - b. The request shall specify the basis for and the amount of additional time requested and shall include an explanation of the reason that substantial construction or use has not been commenced in accordance with the time specified by the Board in the approval action.
 - c. A request for an extension of time may be approved only if it is determined by the Board that the use is in accordance with all applicable provisions of the Zoning Ordinance and Subdivision Ordinance, and that approval of additional time is consistent with the public interest.
 - d. A request for an extension shall not be required when substantial construction or the use has been initiated and a condition of approval requires that the conditional use permit be renewed at defined intervals. In those instances, the renewal of the conditional use permit is controlled by the requirements of the conditions of approval.

- (2) If a request for an extension is timely filed, the conditional use permit shall remain valid until a request for additional time is acted upon by the Board, subject to the following:
 - a. No more than two extensions may be granted by the Board. Should neither substantial construction nor use be initiated during the extension period, the conditional use permit shall expire and a new conditional use permit is required prior to initiation of the use.
 - b. Each extension may not exceed two years.
 - c. The extension period begins on the date that the Board grants the extension.
 - (c) Expiration.
 - (1) A conditional use permit shall expire:
 - a. Upon the expiration of any time period imposed by the Board at the time of approval of the conditional use permit;
 - b. If the use or construction has not commenced in accordance with these provisions;
 - c. If the use or activity for which a conditional use permit was approved should cease for any reason for a period of two years or more.
 - (2) Should any of the situations described in this subsection occur, the conditional use permit shall automatically expire without notice or further proceedings and the approval of a new conditional use permit shall be required prior to any subsequent reinstatement of the use.
2. That the Hanover County Code, Chapter 26, Zoning Ordinance, Article 6, Administration and Enforcement, Division 4, Special Exception Permits, Section 26-339, Duration of Special Exception Permits, shall be amended to read as follows:

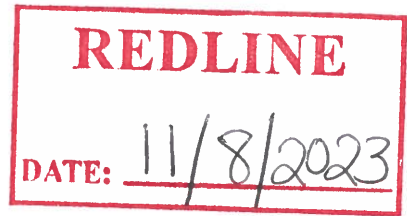
Section 26-339. Duration of special exception permits.

- (a) Validity.
 - (1) Approval of a special exception shall be valid for a period of one (1) year after the date of approval and, thereafter, shall be void unless substantial construction or use has been initiated during the one-year period, unless:
 - a. Another period of validity is established by the Board at the time of approval, or
 - b. Another period of validity is established by the Board upon application filed before the expiration of the prescribed time period, upon a finding that commencement within the prescribed period is not practical because of circumstances applicable to the proposed development.

- (2) An extension after one year is not necessary for:
 - a. A nonconforming use already established on the property that is required to obtain a special exception permit to expand their use, or
 - b. An amendment of an approved special exception permit for an existing use.
- (b) Extensions.
 - (1) The zoning administrator may approve a request for an extension of time for the validity of a special exception in accordance with the following:
 - a. A request for an extension of time shall be filed in writing, on forms prescribed by the zoning administrator, prior to the expiration date of the special exception.
 - b. The request shall specify the basis for and the amount of additional time requested and shall include an explanation of the reason that substantial construction or use has not been commenced in accordance with the time specified by the Board in the approval action.
 - c. A request for an extension of time may be approved only if it is determined by the zoning administrator that the use is in accordance with all applicable provisions of the Zoning Ordinance and Subdivision Ordinance, and that approval of additional time is consistent with the public interest.
 - d. A request for an extension shall not be required when substantial construction or the use has been initiated and a condition of approval requires that the special exception be renewed at defined intervals. In those instances, the renewal of the special exception is controlled by the requirements of the conditions of approval.
 - (2) If a request for an extension is timely filed, the special exception permit shall remain valid until a request for additional time is acted upon by the zoning administrator, subject to the following:
 - a. No more than two extensions may be granted. Should neither substantial construction nor use be initiated during the extension period, the special exception shall expire and a new special exception is required prior to initiation of the use.
 - b. Each extension may not exceed two years.
 - c. The extension period begins the date the zoning administrator grants the extension.
 - (3) A decision made by the zoning administrator regarding the extension of a special exception may be appealed to the Board.
- (c) Expiration.
 - (1) A special exception permit shall expire:

- a. If the period of time approved by the Board for the duration of the special exception expires;
 - b. If the use or construction has not commenced in accordance with these provisions, and no extension has been granted in accordance with subsection (b);
 - c. If the use or activity for which a special exception was approved should cease for any reason for a period of two years or more.
- (2) Should any of the situations described in this subsection occur, the special exception shall automatically expire without notice or further proceedings and the approval of a new special exception shall be required prior to any subsequent reinstatement of the use.

3. That this ordinance shall be effective upon the date of adoption.



ORDINANCE 23-16

AN ORDINANCE TO AMEND THE HANOVER COUNTY CODE, CHAPTER 26, ZONING ORDINANCE, SECTIONS 26-327 AND 26-339, TO ESTABLISH LIMITATIONS ON THE NUMBER AND DURATION OF EXTENSIONS OF CONDITIONAL USE PERMITS AND SPECIAL EXCEPTIONS IN SITUATIONS WHERE SUBSTANTIAL CONSTRUCTION OR USE HAS NOT BEEN INITIATED WITHIN ONE YEAR OF APPROVAL

WHEREAS the Hanover County Zoning Ordinance provides that, once approved by the Board of Supervisors, conditional use permits and special exceptions shall not expire if substantial construction or use has been initiated within one year of the date of approval; and

WHEREAS the Zoning Ordinance provides that an extension of time may be approved under certain conditions, including that a request for extension is filed in a timely manner and the request indicate the reason for the delay; and

WHEREAS the Zoning Ordinance does not limit the number and duration of extensions of conditional use permits and special exceptions that can be granted; and

WHEREAS the Board of Supervisors has determined that changes to the Zoning Ordinance which establish a limit on the number and duration of extensions of conditional use permits and special exceptions are in the public interest; and

WHEREAS the Board of Supervisors has determined that these changes are consistent with the intent of the Zoning Ordinance related to Conditional Use Permits and Special Exceptions; and

WHEREAS the Board of Supervisors finds that the public necessity, convenience, general welfare and good zoning practice require that the Zoning Ordinance be amended in accordance with these findings;

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Hanover County:

1. That the Hanover County Code, Chapter 26, Zoning Ordinance, Article 6, Administration and Enforcement, Division 3, Conditional Use Permits, Section 26-327, Duration of Conditional Use Permits, shall be amended to read as follows:

Section 26-327. Duration of conditional use permits.

(a) Validity.

(1) Approval of a conditional use permit shall be valid for a period of one (1) year after the date of approval and, thereafter, shall be void unless substantial construction or use has been initiated during the one-year period, unless:

- a. Another period of validity is established by the Board at the time of approval, or
- b. Another period of validity is established by the Board upon application filed before the expiration of the prescribed time period, upon a finding that commencement within the prescribed period is not practical because of circumstances applicable to the proposed development.

(2) An extension after one year is not necessary for:

- a. A nonconforming use already established on the property that is required to obtain a conditional use permit to expand their use, or
- b. An amendment of an approved conditional use permit for an existing use.

(b) Extensions.

(1) The Board may approve a request for an extension of time for the validity of a conditional use permit in accordance with the following:

- a. A request for an extension of time shall be filed in writing, on forms prescribed by the zoning administrator, prior to the expiration date of the permit.
- b. The request shall specify the basis for and the amount of additional time requested and shall include an explanation of the reason that substantial construction or use has not been commenced in accordance with the time specified by the Board in the approval action.
- c. A request for an extension of time may be approved only if it is determined by the Board that the use is in accordance with all applicable provisions of the Zoning Ordinance and Subdivision Ordinance, and that approval of additional time is consistent with the public interest.
- d. A request for an extension shall not be required when substantial construction or the use has been initiated and a condition of approval requires that the conditional use permit be renewed at defined intervals. In those instances, the renewal of the conditional use permit is controlled by the requirements of the conditions of approval.

(2) If a request for an extension is timely filed, the conditional use permit shall remain valid until a request for additional time is acted upon by the Board, subject to the following:

a. No more than two extensions may be granted by the Board. Should neither substantial construction nor use be initiated during the extension period, the conditional use permit shall expire and a new conditional use permit is required prior to initiation of the use.

b. Each extension may not exceed two years.

c. The extension period begins on the date that the Board grants the extension.

(c) Expiration.

(1) A conditional use permit shall expire:

a. Upon the expiration of any time period imposed by the Board at the time of approval of the conditional use permit;

b. If the use or construction has not commenced in accordance with these provisions;

c. If the use or activity for which a conditional use permit was approved should cease for any reason for a period of two years or more.

(2) Should any of the situations described in this subsection occur, the conditional use permit shall automatically expire without notice or further proceedings and the approval of a new conditional use permit shall be required prior to any subsequent reinstatement of the use.

2. That the Hanover County Code, Chapter 26, Zoning Ordinance, Article 6, Administration and Enforcement, Division 4, Special Exception Permits, Section 26-339, Duration of Special Exception Permits, shall be amended to read as follows:

Section 26-339. Duration of special exception permits.

(a) Validity.

(1) Approval of a special exception shall be valid for a period of one (1) year after the date of approval and, thereafter, shall be void unless substantial construction or use has been initiated during the one-year period, unless:

a. Another period of validity is established by the Board at the time of approval, or

b. Another period of validity is established by the Board upon application filed before the expiration of the prescribed time period, upon a finding that commencement within the prescribed period is not practical because of circumstances applicable to the proposed development.

- (2) An extension after one year is not necessary for:
 - a. A nonconforming use already established on the property that is required to obtain a special exception permit to expand their use, or
 - b. An amendment of an approved special exception permit for an existing use.
- (b) Extensions.
 - (1) The zoning administrator may approve a request for an extension of time for the validity of a special exception in accordance with the following:
 - a. A request for an extension of time shall be filed in writing, on forms prescribed by the zoning administrator, prior to the expiration date of the special exception.
 - b. The request shall specify the basis for and the amount of additional time requested and shall include an explanation of the reason that substantial construction or use has not been commenced in accordance with the time specified by the Board in the approval action.
 - c. A request for an extension of time may be approved only if it is determined by the zoning administrator that the use is in accordance with all applicable provisions of the Zoning Ordinance and Subdivision Ordinance, and that approval of additional time is consistent with the public interest.
 - d. A request for an extension shall not be required when substantial construction or the use has been initiated and a condition of approval requires that the special exception be renewed at defined intervals. In those instances, the renewal of the special exception is controlled by the requirements of the conditions of approval.
 - (2) If a request for an extension is timely filed, the special exception permit shall remain valid until a request for additional time is acted upon by the zoning administrator, subject to the following-:
 - a. No more than two extensions may be granted. Should neither substantial construction nor use be initiated during the extension period, the special exception shall expire and a new special exception is required prior to initiation of the use.
 - b. Each extension may not exceed two years.
 - c. The extension period begins the date the zoning administrator grants the extension.
 - (3) A decision made by the zoning administrator regarding the extension of a special exception may be appealed to the Board.
- (c) Expiration.
 - (1) A special exception permit shall expire:

- a. If the period of time approved by the Board for the duration of the special exception expires;
 - b. If the use or construction has not commenced in accordance with these provisions, and no extension has been granted in accordance with subsection (b);
 - c. If the use or activity for which a special exception was approved should cease for any reason for a period of two years or more.
- (2) Should any of the situations described in this subsection occur, the special exception shall automatically expire without notice or further proceedings and the approval of a new special exception shall be required prior to any subsequent reinstatement of the use.

3. That this ordinance shall be effective upon the date of adoption.