

## ZONING ADMINISTRATOR INTERPRETATION

DATE: Revised June 17, 2010; revised by the Board of Zoning Appeals October 20, 2010

CODE SECTION: 17.64.040.A – Time Limits and Extensions and 17.64.080.A - Discontinuance

**QUESTION NEEDING INTERPRETATION:** When a project involves the construction of multiple structures and is phased over an extended period, when is the entitlement deemed “exercised” and when does it expire? When does the remainder of the entitlement expire if only a single phase is completed?

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### INTERPRETATION:

The above question has arisen because an applicant had requested a building permit for a portion of a project that was approved through a Conditional Use Permit eight years ago. All but the final phase of the project was completed; the final phase consisted of the construction of a new building. The Certificates of Occupancy were issued for the previous phases with the most recent one having been issued more than five years previous. The applicant had raised the question as to whether or not the Conditional Use Permit was still valid for the final phase of the project.

Subsection 17.64.040.A states:

#### A. Time limits.

1. Unless conditions of approval or other provisions of this Zoning Code establish a different time limit, any permit or approval granted in compliance with Chapter 17.61 (Permit Approval or Disapproval) that is not exercised within 24 months from its effective date shall expire and become void, except where an extension of time is approved in compliance with Subsection B. below.
2. The permit shall not be deemed "exercised" until a Building Permit for the subject project has been issued, and construction diligently pursued to completion; or
3. A Certificate of Occupancy has been issued by the City.

The intent of Subsection 17.64.040.A is to provide certainty regarding the period of validity for a permit or approval granted in compliance with the Zoning Code. It allows for the phasing of construction for projects such that the conditions of approval may establish a different time limit for the expiration of the right to construct within the entitlements..

In addition to providing certainty regarding the validity of a permit, the intent of the Zoning Code was to provide certainty in terms of the impacts of a construction project. If the approvals of a multiple-phased project related to the construction period never expired even though not all buildings were completed, the potential impact on neighboring property owners could be extended over a much longer time period. Additionally, if the construction phase of a permit continued to be entitled even though there was no active building permit, it would not be possible to apply updated changes in the development standards and land use regulations. It was not the intent of the Zoning Code to allow entitlements (or phases of an entitlement) to have an indefinite life.

Section 17.64.080.A addresses when an active entitlement becomes void. It states:

17.64.080 - Discontinuance

- A. Permit shall become void. Any land-use permit granted in compliance with this Zoning Code shall lapse and become void if the exercise of the rights granted by it is discontinued for a continuous period of at least 12 months.

This section of the Zoning Code is more specific and would govern a phased project in which initial building permits have been issued and there are phases that have not yet received a building permit. The applicable section governing the expiration of a permit in a situation when a phased project has been partially "exercised" through partial construction is Subsection 17.64.080.A. Section 17.64.040.A governs an entitlement prior to it receiving a building permit and establishes time frames for when the initial building permit shall be issued.

Therefore, when a project involves the construction of multiple structures over an extended period of time, and the project conditions do not specify a time limit different from the Zoning Code, only the portion of the entitlement applicable to a particular structure is deemed "exercised" with the issuance of the Building Permit for that structure. The remainder of the entitlement related to further construction expires 12 months after all building permits have expired or structures have had final inspections, or a final Certificate of Occupancy has been issued.

Additionally, with a phased project, a building permit can be issued for a subsequent phase, even if the entitlement was approved more than two, or in the case of an approved extension three, years past, if no more than 12 months have elapsed since the Certificate of Occupancy has been issued for the previous phase because the applicant is diligently pursuing the project to completion. However, if more than 12 months have elapsed since the Certificate of Occupancy has been issued or a final inspection has occurred for the previous phase and the entitlement was not extended, then the permit for the next phase cannot be issued a building permit. Once a Certificate of Occupancy has been issued or a final inspection has occurred for all phases of a project, all phases of an entitlement are vested.

EXAMPLE:

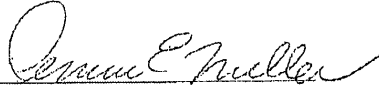
As an example, if a project involved the construction of three buildings and the permit was approved with an effective date of April 1, 2000 and an expiration date of April 1, 2002 and had Building Permits issued as follows:

	Permit issue date	C of O issue date
Building #1	June 15, 2001	September 30, 2003
Building #2	June 30, 2003	October 15, 2004
Building #3	November 12, 2005	January 12, 2007

In this case:

1. The Building Permit for Building #1 was issued prior to the expiration of the original land use approval, and was therefore "exercised."
2. The Building Permit for Building #2, although issued after the expiration of the original land use approval, was issued prior to the issuance of the Certificate of Occupancy for Building #1. Therefore, it too was "exercised."

3. The Building Permit for Building #3, was issued after both the expiration of the original land use approval and also more than 12 months after the issuance of the Certificate of Occupancy for Building #2. Therefore, the land use approval was not properly "exercised" and should not be issued without a valid extension or the grant of a new approval. Note that had this Building Permit been issued prior to 12 months after the issuance of the Certificate of Occupancy for Building #2, it too would have been "exercised."



Denver E. Miller  
Zoning Administrator



January 13, 2011

Honorable Bill Bogaard, Mayor  
Pasadena City Council Members and Planning Commission  
City of Pasadena  
100 North Garfield Avenue  
Pasadena, CA 91109

**Re: City Ventures Application for Major Change to Approved Ambassador West Project**

Dear Mayor, City Council and Planning Commissioners:

Maranatha High School is one of the adjoining property owners to the Ambassador West Campus. Our relationship to the Ambassador West project extends back to 2004 when the campus was acquired by us and Harvest Rock Church with later acquisitions by Sunrise Senior Living and successor in interest to the Orange Grove parcels, City Ventures.

We understand the complexity of the numerous development issues involved with the Ambassador West project having interests in many of the easements, joint use arrangements, utilities and gardens. We are also fully aware of the extensive community participation in the approval process that has occurred since 2004. In an effort to preserve current project approvals we support an extension of entitlements jointly for City Ventures and Sunrise Senior Living with reasonable conditions attached by the City. This will allow the project to move forward in a concerted and consistent manner for the benefit of all as opposed to each developer moving ahead independently.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Chet Crane", is written over a horizontal line.

Chet Crane  
Head of School

Cc: Mr. Steve Mermell  
Mr. John Poindexter

MARANATHA HIGH SCHOOL  
A COLLEGE PREPARATORY CHRISTIAN SCHOOL