



TOWN OF FAIRFAX

STAFF REPORT

June 20, 2019

TO: Planning Commission

FROM: Ben Berto, Director of Planning and Building Services
Kara Spencer, Assistant Planner

SUBJECT: Zoning ordinance amendments to place time limits on planning application submittals and discretionary permit entitlements

BACKGROUND

At its January 20, 2018 goal setting workshop/retreat, the Planning Commission discussed its preliminary overall work program for 2018. The Commission finalized their work program at their February and March 2018 meetings, including prioritized recommendations for zoning amendments. The Commission supported amending the Zoning Ordinance to limit the time a development application can remain incomplete. Staff took the recommended work program priorities and Zoning Ordinance amendments to the Town Council in May – August 2018, where the work program and Zoning Ordinance amendments were considered at the August 1, 2018 meeting. The Council reached consensus on allowing incomplete applications to expire after 90 days.

DISCUSSION

There are several planning permit applications on file with Planning which have been incomplete, or have been approved by Planning, without substantive efforts by the applicant to complete or vest them via construction permits, for several years. The projects by all visible signs have been abandoned.

Many factors can result prevent a particular project from going forward - properties sell, the applicant didn't fully understand the regulatory context, the applicant's circumstances shift dramatically, any number of other factors. It may seem obvious that such an application would be considered expired after being inactive for lengthy periods of time (the longest has been on file for 8 years and counting).

It is actually very difficult for an application to expire, absent an applicant formally withdrawing it, without code provisions that explicitly set forth the Town's ability to deem an application expired.

Staff is now proposing zoning amendments that will provide the Town the ability to:

- 1) Deem an incomplete project application/applications to be expired if a given period of time has elapsed without the applicant responding in full to incompleteness items that were noted by planning staff in a project status letter.

- 2) Deem a project's planning approval(s) to have expired if a given period of time has elapsed without the applicant obtaining construction permits, and proceeding with construction to completion in a timely manner.

Amending the Zoning Ordinance the set forth that an incomplete application/applications expire after 90 days, or that an approved project expires after one year, is relatively straightforward. The proposed ordinance would codify those requirements.

Adopting expiration dates will enable more streamlined, efficient, and effective processing of planning applications. Fairfax currently enjoys the legendary tenure of the Principal Planner and her wealth of institutional knowledge (stretching back decades on some projects). For example, she knew that the oldest application currently found in the 'active' planning files was submitted in 2011. On that project, the owner has never completed the application submittal despite numerous communications between staff and the applicant.

'Stale' applications result in inefficient processing, misunderstanding and uncertainty regarding project status, and potential for inconsistency with regulations. If a 'stale' project application springs to life, it can result in a planner who is not the original staff person and has no knowledge of the application having to get up to speed about all salient facts very quickly, determine if it even can still be processed (vis-à-vis changes in laws). Inevitably there is 'the last planner said I could or didn't have to do this or that' litany. Even an original planner who has to process a several-year-old application has to overcome inertia and lack of recent acquaintance with the project and its circumstances. The process and end result can suffer.

The proposed regulations that designate 'stale' applications as expired, on the other hand, will free up staff time for additional, current work program priorities.

On the applicant's side, a resuscitated 'stale' application will have to comply with any applicable regulations that have gone into effect since the original submittal. The typical trend is for regulations to become more stringent over time, sometimes rendering a project infeasible. The applicant can end up feeling jerked around and wondering why the last incompleteness letter didn't list the (new) requirements. Other circumstances beyond regulations could also have shifted appreciably in the interim since an original submittal.

Procedurally, project expiration information will be specifically pointed out in the project status letter that is sent to an applicant if an application is determined to be incomplete. Staff will also write a follow-up letter to an applicant if the expiration date for an approved application draws near, to provide an applicant with notice and allow him/ her an opportunity to advance the project or request an extension.

Additional details of the two components of expired project regulations are as follows:

1) Incomplete Application time limits for completion

The language of the proposed new ordinance permits expiration of incomplete discretionary permit applications 90 days following the date the Town provides written notice that the application is incomplete. Upon request, the Planning Director may grant an extension not to

exceed one year. The new proposed new ordinance also includes language placing a shorter 30-day time limit on an incomplete discretionary permit application submitted to resolve a code enforcement matter, with the provision that the Planning Director may grant an extension not to exceed a total of 90 days. Violations have a presumption that they need to be resolved one way or another in an expedited manner.

2) Discretionary permit time limits and extensions

Staff recommends amending Chapters 17.020 (Design Review), 17.028 (Variances), 17.032 (Use Permits), 17.040 (General Zone Regulations), 17.060 (Ridgeline Development), and 17.072 (Hill Area Residential Development Overlay Zone) to creating one location in the Zoning Ordinance, with one consistent vesting period for all planning applications. Currently, Variances, Ridgeline Development Permits, and Hill Area Residential Development Permits 17.060 have one-year vesting time limits and allow extensions of time, but Design Review and Use Permits do not. This results in an inconsistency among current code provisions, and uncertainty what would occur expiration-wise to a project involving both types of applications.

The code amendments clarify that the vesting period for any approved discretionary planning application(s) is one year from the date of approval. Thereafter, the approval(s) shall expire and become void unless prior to expiration of that time, an applicant requests an extension. In such case the Planning Director may extend the term of approval for up to an additional year. The proposed new ordinance would create a consistent and equitable amount of time discretionary permits are valid.

The regulations also propose that if any Building Permit or other permit approval is issued for the project, the terms of the planning applications run with the other permits. This to avoid a situation where a building permit or subdivision approval may still be valid but the discretionary application approval and conditions arguably have expired.

CONCLUSION

The proposed Fairfax Code changes will, once adopted, place time limits on incomplete application submittals and discretionary permit approvals, thereby minimizing inefficiency and the potential for application submittals and discretionary permit approvals to become out-of-compliance with governing laws. It will enable staff to focus on current applications and other work program priorities.

RECOMMENDATION

Staff recommends that the Planning Commission Adopt Resolution 2019-xx Recommending The Town Council Adopt Ordinance No. ____ Entitled " An Ordinance Of The Town Council Of The Town Of Fairfax Adding Sections 17.020.130, ("Time Limits And Extensions") For Design Review, 17.032.100 ("Time Limits And Extensions") For Conditional Use Permits, 17.040.100 ("Incomplete Discretionary Permit Applications"), And 17.040.110 ("Permit Time Limits And Extensions") And Amending Sections 17.028.090 ("Lapse; Renewal; Term") For Variances, And 17.060.090 ("Time Limits; Extensions") For Ridgeline Development, And Consolidating

And Revising Sections 17.072.140 And 17.072.150 (“Expiration” And “Extension”) For The Hill Area Residential Development Overlay Zone.

ATTACHMENTS

Attachment A - Resolution No. 2019-____

The following are currently being reviewed by the Town Attorney’s office and will be provided to the Planning Commission prior to the meeting:

Attachment B – Time Limits and Extensions Ordinance

Attachment C – Redlined Time Limits and Extensions Ordinance changes

RESOLUTION NO. 2019-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. _____ ENTITLED “ AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADDING SECTIONS 17.020.130, (“TIME LIMITS AND EXTENSIONS”) FOR DESIGN REVIEW, 17.032.100 (“TIME LIMITS AND EXTENSIONS”) FOR CONDITIONAL USE PERMITS, 17.040.100 (“INCOMPLETE DISCRETIONARY PERMIT APPLICATIONS”), AND 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) AND AMENDING SECTIONS 17.028.090 (“LAPSE; RENEWAL; TERM”) FOR VARIANCES, AND 17.060.090 (“TIME LIMITS; EXTENSIONS”) FOR RIDGELINE DEVELOPMENT, AND CONSOLIDATING AND REVISING SECTIONS 17.072.140 AND 17.072.150 (“EXPIRATION” AND “EXTENSION”) FOR THE HILL AREA RESIDENTIAL DEVELOPMENT OVERLAY ZONE

WHEREAS, the Town of Fairfax processes various discretionary permit applications and subsequent entitlements; and

WHEREAS, inability to process applications and entitlements in a reasonable time creates potential for inconsistency with regulations, misunderstanding and uncertainty regarding project status, and inefficiency in processing; and

WHEREAS, the Town wishes to limit the time planning applications remain incomplete and place a time limit on the validity of discretionary permit entitlements that have been granted by the Town; and

WHEREAS, limiting the time applications can remain incomplete and having permit approvals lapse will improve the efficiency of the Town’s permit processing, complete and accurate records, and avoid potential code changes that may render application submittals and discretionary permit entitlements out-of-compliance with local, State or Federal laws; and,

WHEREAS, staff has prepared such an ordinance, a true and correct copy of which is attached hereto as **Attachment 1** (the “proposed Ordinance”), which, if adopted, will amend the Town’s zoning ordinance, found at Title 17 of the Town Code; and

WHEREAS, in accordance with the State Planning and Zoning Law, the Planning Commission is tasked with considering whether any proposed amendment to the Town’s zoning ordinance would be in conformance with the terms of the Town’s General Plan, and the Planning Commission has determined that the proposed Ordinance would, in fact, conform to the Town’s General Plan on the basis of the following:

- The proposed Ordinance will place time limits on application submittals and discretionary permit approvals, thereby minimizing the potential for application submittals and discretionary permit approvals to become out-of-compliance with local, State, or Federal laws. This Ordinance is consistent with and will further the following Fairfax General Plan policies: Land Use Element Policy LU-8.1.2: The Town of Fairfax shall permit construction of well-designed

second units consistent with state law, zoning requirements, and building codes, parking requirements and street capacity; Circulation Element Policy C-2.5: Comply with State and Federal Regulations related to universal accessibility and Americans with Disabilities Act (ADA); Conservation Element Policy CON-2.1.2: All planning decisions shall require application of existing air quality guidelines and best practices to minimize air quality impact; Safety Element Policy S-1.1.1: Development and land use decisions will be made using the best available geotechnical information; Safety Element Policy S-2.1.1: Development and land use decisions will be made using the best available hydrological and flood hazard information; and, Safety Element Policy S-3.1.1: Development and land use decisions will be made using the best available fire hazard information.

WHEREAS, Adoption of the proposed Ordinance is exempt from the California Environmental Quality Act (“CEQA”). Adoption of this Ordinance will enact only minor changes in land use regulations, and the proposed Ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) and 15061(b)(3) because there is no potential that the regulations result in a direct or reasonably foreseeable indirect physical change in the environment, and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, the regulations are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations.

WHEREAS, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, hear the presentation of a staff report, and receive public comment on the matter.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the Town of Fairfax as follows:

SECTION 1. The recitals set forth above are adopted as further findings of the Planning Commission.

SECTION 2. The Planning Commission has reviewed the draft ordinance attached hereto as **Attachment 1** and finds that it is consistent with the Town General Plan, as set forth above.

SECTION 3. The Planning Commission hereby recommends that the Town Council amend Title 17 of the Fairfax Town Code as set forth in **Attachment A** hereto to place time limits on application submittals and discretionary permit approvals in order to improve the efficiency of the Town’s permit processing and records retention and avoid potential code changes that may render application submittals and discretionary permits out-of-compliance with local, State or Federal laws.

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the ___ day of ___ 2019 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Cindy Swift, Chair

Attest:

Ben Berto, Secretary

**ATTACHMENTS B AND C ARE UNDER LEGAL REVIEW AT THE
TIME OF THE PUBLICATION OF THIS JUNE 20, 2019 PLANNING
COMMISSION PACKET AND WILL BE AVAILABLE PRIOR TO THE
MEETING NEXT WEEK**