



TOWN OF FAIRFAX

STAFF REPORT

July 18, 2019

TO: Planning Commission

FROM: Ben Berto, Director of Planning and Building Services

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

BACKGROUND

There has been consensus with both the Planning Commission and Town Council that limiting the amount of time that both an application can remain incomplete, and approved project entitlements can remain valid is a priority. The Commission reviewed the proposed zoning ordinance changes recommended by staff to achieve this at their June 20, 2019 meeting, and continued the item for further discussion. Staff has researched the concerns the Planning Commission raised and responded in this report and in the proposed amendments to the applicable code sections.

DISCUSSION

The Planning Commission conceptually supported time limits for how long either an incomplete application or an approved project can remain 'on the books'. However, several of the Commission raised concerns with the following:

Incomplete application time limits

It was noted that proposed §17.040.100 (A)(1), which previously limited applicants to 90 days to respond to incompleteness items, might be too restrictive, given the challenges in responding to certain incomplete items. Staff has therefore increased the proposed length of time an applicant has to respond to incomplete items to 180 days.

A further amendment to these code provisions could be considered that allows an applicant to re-apply even if the applications have expired, by paying a modest (re)application fee, if the applicant reapplies with the same project and respond in full to the prior incompleteness items within 180 additional days. That way, non-responsive applications are removed from the books, but the financial burden of a future resubmittal is lessened if done in a timely and complete manner. If the Commission so directs, staff can add this to the ordinance recommended to the Town Council.

Extensions of time

Planning Commissioners had questions and comments about some of the proposed code language. Staff researched and is responding to the following comments:

1. In §17.040.100 (A) a majority consensus of the Commission agreed that there should be a shorter deadline for entitlement applications resulting from code enforcement actions, but 30 days is too short. Staff is changing the timeline to 2 months (60 days). The 60 days, along with the already proposed 90 days for a possible extension, gives an applicant almost half a year to submit the necessary application materials. Insofar as the responsible party in question has shirked compliance with codes to date, it is appropriate to require a more stringent timeline than with people who are following the regular application process.
2. The term 'deemed vested' in the second sentence of §17.40.110 (A) should be rephrased to "considered vested". This language change has been incorporated into the current draft. In addition, the Town Attorney's office has added some language regarding consistency with State and Federal laws.
3. What does the term 'substantial progress' in §17.40.110 (A) mean and should it be replaced or supplemented with additional language? Staff has confirmed that, as reported at the June meeting, the term allows some flexibility in interpretation, but generally, for Planning-reviewed projects that are subsequently under construction with a California Building Code permit, to avoid expiration, per the CBC the project has to be consistent with the CBC inspection schedule - inspections every 6 months. Insofar as another code is involved in determining 'substantial compliance', staff recommends leaving the zoning language as proposed.
4. Are submittal deadlines considered reset when an applicant resubmits information? As reported at the last meeting, an applicant showing substantial progress in resubmitting would reset the deadlines. Conversely, there are situations where an applicant resubmits virtually the same material as previously (it happens). This would not reset the submittal deadlines. The challenge with determining whether to reset timelines when an applicant dribbles a few changes at a time over an extended period of time (witness a recent project where piecemeal submittals occurred for 11 years). The onus should be on an applicant to make a timely submittal of complete information per the completion punch-list that is always provided, or justify why despite good faith efforts a complete submittal cannot yet be made.

The more typical submittal deadline situation is where nothing is heard from an applicant following an incompleteness letter and the project appears to have been abandoned. Staff does not recommend additional new code language concerning application deadline resets.

5. In §17.040.110 (B)(2), consider how a permit holder attempts to comply with conditions of the permit. Staff has added suggested language adding "...a permit holder attempts in good faith to comply with conditions of the permit."
6. In §17.040.110 (B)(3), staff doesn't recommend further explanatory language to the provision allowing minor changes to a project if granting an extension if "circumstances surrounding the project so warrant and do not substantially change the project." It is

unlikely that staff would direct changes, but this allows an expedited administrative approval of the minor changes noted if the 'circumstances so warrant'. The proposed language also affords flexibility that is helpful in negotiating improvements that would accompany an approval extension, short of an applicant having to undergo the entire process again.

7. In §17.040.110 (B)(4), language has been added noting that the deadline period is stayed while the application(s) or approval(s) have been referred to the Planning Commission.

Other code cleanups

Following up on her Commission meeting comments, the Chair has submitted several Zoning Ordinance amendments pertaining to time limits, to the chapters affected by the currently proposed amendments, and certain applications processes. Staff responds to the comments as follows:

- 1) Applications. Several of the chapters involved with the time limit revisions also contain a section on applications that are inconsistent, for example language in different chapters refers to a "complete and officially filed application" or a "verified application".

Staff agrees that those provisions could be improved, reworded, or even relocated elsewhere in the zoning ordinance for better consistency and clarity. As a practical matter, the application provisions (and their differences) have very little bearing on how staff receives and processes applications. Generally speaking, application submittal requirements are appropriately detailed outside of the zoning ordinance, for example, in a submittal handout (which the Town currently has).

Also, zoning application language cleanups have not been previously noted as a work program priority. Although as noted above they should be improved at some point, staff recommends these be considered a somewhat lower priority at this time, to be added to the list of zoning changes to be considered the next time overall work program priorities are established, or when the Town undertakes a comprehensive overhaul of the zoning ordinance. If the Commission wishes to add this as a near term work program priority, staff suggests discussing what previously agreed-upon priorities should be moved back in the queue.

- 2) Chapter 17.056 Traffic Impact Permits and Chapter 17.064 Sign Permits. Neither of these chapters contain (or are proposed to contain) expiration provisions, therefore arguably these don't expire, raising the same issues as other permits for which expirations are currently proposed.

Staff agrees that these permits lack expiration dates in both the current and proposed code. Functionally speaking, Sign Permits and TIP's are typically secondary to other permit applications, for example, design review or a business license for a commercial business. If the business is approved with a Conditional Use Permit or Design Review,

or even if it simply receives a business license, any Sign Permit and TIP approvals would attach to that particular business, and would therefore lapse if/when that business does. Any new business in that location would have to go through a new Sign Permit process. If the Commission wishes to add expiration provisions for these two chapters, staff will continue the review to allow for public notice of these additional changes. Otherwise, staff will add it to the list of zoning changes to be considered in the future.

- 3) Existing variance time limits for action. §17.28.050 designates a 45-day time period within which the Planning Commission is supposed to decide on a Variance, otherwise the Variance is deemed denied.

The Zoning Ordinance has a number of seemingly superfluous timelines for PC action on various applications items (for example, Design Review §17.020.090 directs a PC decision within 6 months of an application being deemed complete. General Provisions (Chapter 17.004) has a 40-day time limit for action on zoning amendments (§ 17.004.040), after which various decisions are deemed to have occurred.

Staff agrees that these provisions are good candidates for future zoning amendment. State requirements for permit processing timelines should (and do) govern, period. A challenge is where to start and end when unraveling provisions such as these. While staff does not recommend expanding the scope of the current application and approval time limit considerations to include these at this time, these decision timelines should be considered in a future round of zoning amendments.

- 4) Hill Area Residential Zone Overlay §17.072.060 (A). The sentence language doesn't make sense and should be reworded.

The sentence in question is "Projects requiring a hill area residential development permit shall be reviewed by the Planning Commission prior to being referred." A straight reading of this provision could interpret it as meaning that the Commission should review any HRD permit application before it is referred to the Town Council. This (of course) doesn't tie into the language in the rest of the section. Insofar as it doesn't appear to adversely impact processing of HRD applications, staff recommends that it be considered another one of many items for future consideration and cleanup.

- 5) Chapter 17.024 Required Permits

This is a somewhat incongruous chapter, as its provisions generally belong in General Provisions chapter 17.04. As it has been interpreted by staff, the "zoning permit" referred has meant any of the zoning permit types required. These are covered with more specificity in the chapters on the specific permit types (e.g., Conditional Use Permit, Design Review, Variance, etc.). Staff suggests that this be added to the future zoning rewrite list.

CONCLUSION

Staff hopes the proposed Fairfax Code as amended satisfy the Commission's direction and concerns and can be recommended to the Town Council at this meeting. An affirmative vote of five of the Commission's members is required to do so.

If your Commission directs further revisions requiring a continuance to do so, given the major work priorities bearing down in the near future, your consideration of additional zoning language changes may have to await future schedule availability.

RECOMMENDATION

Staff recommends that the Planning Commission Adopt Resolution 2019-15 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; Extensions") for Design Review, 17.032.100 ("Time Limits; 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. 2019-15

Attachment B – Time Limits and Extensions Ordinance

Attachment C – Redlined Time Limits and Extensions Ordinance changes

Attachment D – June 20, 2019 Staff Report and Attachments

RESOLUTION NO. 2019-15

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; EXTENSIONS”) FOR DESIGN REVIEW, 17.032.100 (“TIME LIMITS; 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 duly-noticed public hearings to consider the draft ordinance on June 20, 2019 and July 18, 2019, hear the presentation of staff reports, 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 A** 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

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADDING SECTIONS 17.020.130, (“TIME LIMITS;EXTENSIONS”) FOR DESIGN REVIEW, 17.032.100 (“TIME LIMITS; 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

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

WHEREAS, limiting the time applications can remain incomplete and having permit approvals lapse will 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; and,

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1: The following section shall be inserted into Chapter 17.040 of the Town Code of the Town of Fairfax immediately following Section 17.040.090:

“§ 17.040.100 Incomplete Discretionary Permit applications

(A) Review for Completeness. Within 30 days of receiving a discretionary permit application, the Town shall review the application for completeness and accuracy of required information before it is accepted and acknowledged as being complete and officially filed. When the Town informs the applicant in writing within 30 days following the submission of the application(s) that an application is incomplete and specifies additional information required for completeness review but applicant fails to submit such information within the time limits listed in §17.040.100(A)(1) or (A)(2) below, as applicable, the discretionary permit application shall expire unless the applicant obtains from the Planning Director an approved request for extension.

(1) **General time limit.** An incomplete discretionary permit application shall expire 180 days following the date the Town provides written notice that the application is incomplete, unless the Director grants an extension not to exceed one year. This time limit shall not apply to Section 17.040.100(B) (Initial Application Review for Discretionary Permits – Enforcement cases) below.

(2) **Enforcement cases.** An incomplete discretionary permit application, submitted to resolve a code enforcement matter, shall expire 60 days following the date the agency provides written notice that the application is incomplete, unless the Director grants extensions not to exceed a total of 90 days.

(B) Resubmittal. In the event that a discretionary permit application expires the applicant may submit a new application, subject to all payment of all applicable fees, in accordance with this Code, and the application review process will commence again.

(C) After a discretionary permit application has been determined to be complete, the Town may require the applicant to submit additional information necessary to conduct environmental review or otherwise evaluate the application consistent with applicable requirements.”

Section 2: A new Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) is hereby added to Chapter 17.040 (“General Zone Regulations”) to read as follows:

“§ 17.040.110. PERMIT TIME LIMITS AND EXTENSIONS

(A) Time limits, vesting. Unless conditions of approval or other applicable law establish a different time limit, any permit or entitlement not vested within one year of the date of approval shall expire and become void. Vesting of the permit shall be as provided under State and Federal law, which currently provides that the permit shall not be considered vested until, at a minimum, the permit holder has actually obtained a Building Permit or other similar construction permit and has made substantial progress in reliance thereupon towards completing the improvements in accordance with the approved permits, or has actually commenced the allowed use on the subject property, in compliance with the conditions of approval, or has recorded a Parcel or Final Map.

(B) Extensions of time. Upon request by the applicant, the Planning Director may extend the time for an approved permit to be vested.

(1) Filing. The applicant shall file a written request for an extension of time with the Planning Department, at least 10 days prior to the expiration of the permit, together with the filing fee in accordance with the schedule of fees fixed and adopted by the Town Council. The burden of proof is on the permittee to establish, with substantial evidence, that the permit should not expire

(2) Review of extension request. The Planning Director shall determine whether the permit holder has attempted in good faith to comply with the conditions of the permit. The Director may instead refer the extension request to the Planning Commission for review.

(3) Action on extension. If the Planning Director determines that the permittee has proceeded in good faith and has exercised due diligence in complying with

the conditions in a timely manner, the Planning Director may extend the permit for a maximum period of one year following the original expiration date. When granting an extension, the Planning Director may make minor modifications to the approved project based upon a finding a change in the circumstances surrounding the original approval so warrant.

(4) Hearing on extension. If the Planning Director finds that significant policy questions are at issue, the Planning Director may refer the application to the Planning Commission for a public hearing. The expiration period for the application(s) and/or approval(s) shall be stayed until such time the Planning Commission rendered a decision on the policy questions and extension.

(5) Coordination of expiration date among multiple permits. If a Building Permit, or other permit, is issued during the effective life of the entitlement or development application approval, the expiration date of the entitlement or development application approval shall be automatically extended to coincide with the expiration date of the Building Permit or permit.”

Section 3: Sections 17.020.130, 17.032.100, (“TIME LIMITS; EXTENSIONS”) of the Fairfax Municipal Code, Chapters 17.020 and 17.032 (“DESIGN REVIEW REGULATIONS” and “USE PERMIT REGULATIONS”) are hereby added to read as follows:

“§ 17.020.130. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any design review permit shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

“§ 17.032.100. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any conditional use permit shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

Section 4: Section 17.060.090 (“PERMIT TIME LIMITS; EXTENSIONS”) of the Fairfax Municipal Code, Chapter 17.060 (“Ridgeline Development”) and is hereby is hereby repealed and replaced in its entirety as follows:

“§ 17.060.090. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any permit granted for building in the ridgeline scenic corridor shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

Section 5: Section 17.072.140 (“EXPIRATION”) and Section 17.072.150 (“EXTENSION”) of the Fairfax Municipal Code, Chapter 17.072 (“Hill Area Residential Development Overlay Zone”) are consolidated and revised to read as follows:

“§ 17.072.140. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any hill area residential development permit shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

Section 6: Section 17.028.090 (“LAPSE; RENEWAL; TERM”) of the Fairfax Municipal Code, Chapter 17.028 (“Variances”) is repealed in its entirety and is replaced as follows:

“§ 17.028.090. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any permit granted for a variance shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

Section 7. CEQA. 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 it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for housing development at densities that exceed what was previously allowed in the PDD 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; and

Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The Town Council of the Town of Fairfax hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or word might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation; and

Section 9. Effective Date and Posting. This Ordinance shall become effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within

fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax on the ___ day of _____ 2019, and duly adopted at the next regular meeting of the Town Council on the _ day of _____, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

BARBARA COLER, Mayor

ATTEST:

Michele Gardner, Town Clerk

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADDING SECTIONS 17.020.130, (~~“DESIGN REVIEW TIME LIMITS; AND EXTENSIONS”~~) ~~FOR DESIGN REVIEW~~, 17.032.100 (~~“USE PERMITS, 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~~) ~~FOR VARIANCES~~ and 17.060.090 (~~“TIME LIMITS; EXTENSIONS” FOR RIDGELINE DEVELOPMENT~~), ~~FOR RIDGELINE DEVELOPMENT, AND CONSOLIDATING AND REVISING SECTIONS 17.072.140 AND 17.072.150 (“EXPIRATION” AND “EXTENSION” HILL AREA RESIDENTIAL DEVELOPMENT OVERLAY ZONE) FOR THE HILL AREA RESIDENTIAL DEVELOPMENT OVERLAY ZONE~~

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

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

WHEREAS, limiting the time applications can remain incomplete and having permit approvals lapse will 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; and,

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1: The following section shall be inserted into Chapter 17.040 of the Town Code of the Town of Fairfax immediately following Section 17.040.090:

“§ 17.040.100 Incomplete Discretionary Permit applications

(A) Review for Completeness. Within 30 days of receiving a discretionary permit application, the Town shall review the application for completeness and accuracy of required information before it is accepted and acknowledged as being complete and officially filed. When the Town informs the applicant in writing within 30 days following the submission of the application(s) that an application is incomplete and specifies additional information required for completeness review but applicant fails to submit such information within the time limits listed in §17.040.100(A)(1) or (A)(2) below, as applicable, the discretionary permit application shall expire unless the applicant obtains from the Planning Director an approved request for extension.

(1) **General time limit.** An incomplete discretionary permit application shall expire ~~90-180~~ days following the date the Town provides written notice that the application is incomplete, unless the Director grants an extension not to exceed one year. This time

limit shall not apply to Section 17.040.100(B) (Initial Application Review for Discretionary Permits – Enforcement cases) below.

(2) **Enforcement cases.** An incomplete discretionary permit application, submitted to resolve a code enforcement matter, shall expire ~~30-60~~ days following the date the agency provides written notice that the application is incomplete, unless the Director grants extensions not to exceed a total of 90 days.

(B) Resubmittal. In the event that a discretionary permit application expires the applicant may submit a new application, subject to all payment of all applicable fees, in accordance with this Code, and the application review process will commence again.

(C) After a discretionary permit application has been determined to be complete, the Town may require the applicant to submit additional information necessary to conduct environmental review or otherwise evaluate the application consistent with applicable requirements.”

Section 2: A new Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) is hereby added to Chapter 17.040 (“General Zone Regulations”) to read as follows:

“§ 17.040.110. PERMIT TIME LIMITS AND EXTENSIONS

(A) Time limits, vesting. Unless conditions of approval or other applicable law establish a different time limit, any permit or entitlement not vested within one year of the date of approval shall expire and become void. Vesting of the permit shall be as provided under State and Federal law, which currently provides that ~~The permit shall not be deemed considered vested until,~~ at a minimum-, the permit holder has actually obtained a Building Permit or other similar construction permit and has made substantial progress in reliance thereupon towards completing the improvements in accordance with the approved permits, or has actually commenced the allowed use on the subject property, in compliance with the conditions of approval, or has recorded a Parcel or Final Map.

(B) Extensions of time. Upon request by the applicant, the Planning Director may extend the time for an approved permit to be vested.

(1) Filing. The applicant shall file a written request for an extension of time with the Planning Department, at least 10 days prior to the expiration of the permit, together with the filing fee in accordance with the schedule of fees fixed and adopted by the Town Council. The burden of proof is on the permittee to establish, with substantial evidence, that the permit should not expire

(2) Review of extension request. The Planning Director shall determine whether the permit holder has attempted in good faith to comply with the conditions of the permit. The Director may instead refer the extension request to the Planning Commission for review.

(3) Action on extension. If the Planning Director determines that the permittee has proceeded in good faith and has exercised due diligence in complying with the conditions in a timely manner, the Planning Director may extend the permit for a maximum period of one year following the original expiration date. When granting an extension, the Planning Director may make minor modifications to the approved project based upon a finding a change in the circumstances surrounding the original approval so warrant.

(4) Hearing on extension. If the Planning Director finds that significant policy questions are at issue, the Planning Director may refer the application to the Planning Commission for a public hearing. The expiration deadline period for the application(s) and/or approval(s) shall be stayed until such time the Planning Commission rendered a decision on the policy questions and extension.

(5) Coordination of expiration date among multiple permits. If a Building Permit, or other permit, is issued during the effective life of the entitlement or development application approval, the expiration date of the entitlement or development application approval shall be automatically extended to coincide with the expiration date of the Building Permit or permit.”

Section 3: Sections 17.020.130, 17.032.100, (“TIME LIMITS; EXTENSIONS”) of the Fairfax Municipal Code, Chapters 17.020 and 17.032 (“DESIGN REVIEW REGULATIONS” and “USE PERMIT REGULATIONS”) are hereby added to read as follows:

“§ 17.020.130. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any design review permit shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

“§ 17.032.100. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any conditional use permit shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

Section 4: Section 17.060.090 (“PERMIT TIME LIMITS; EXTENSIONS”) of the Fairfax Municipal Code, Chapter 17.060 (“Ridgeline Development”) and is hereby repealed and replaced in its entirety as follows:

“§ 17.060.090. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any permit granted for building in the ridgeline scenic corridor shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).

Section 5: Section 17.072.140 (“EXPIRATION”) and Section 17.072.150 (“EXTENSION”) of the Fairfax Municipal Code, Chapter 17.072 (“Hill Area Residential Development Overlay Zone”) are consolidated and revised to read as follows:

“§ 17.072.140. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any hill area residential development permit shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).

Section 6: Section 17.028.090 (“LAPSE; RENEWAL; TERM”) of the Fairfax Municipal Code, Chapter 17.028 (“Variances”) is repealed in its entirety and is replaced as follows:

“§ 17.028.090. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any permit granted for a variance shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).

Section 7. CEQA. 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 it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for housing development at densities that exceed what was previously allowed in the PDD 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; and

Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The Town Council of the Town of Fairfax hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or word might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation; and

Section 9. Effective Date and Posting. This Ordinance shall become effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax on the ~~XX~~__ day of ~~XX~~_____ 2019, and duly adopted at the next regular meeting of the Town Council on the __ day of _____, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

BARBARA COLER, Mayor

ATTEST:

Michele Gardner, Town Clerk



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.

ATTACHMENT

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- 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

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADDING SECTIONS 17.020.130, (“DESIGN REVIEW TIME LIMITS AND
EXTENSIONS”), 17.032.100 (“USE PERMITS, TIME LIMITS AND EXTENSIONS”),
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),
CONSOLIDATING AND REVISING SECTIONS 17.072.140 AND 17.072.150
 (“EXPIRATION” AND “EXTENSION” HILL AREA RESIDENTIAL DEVELOPMENT
OVERLAY ZONE)**

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

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

WHEREAS, limiting the time applications can remain incomplete and having permit approvals lapse will 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; and,

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1: The following section shall be inserted into Chapter 17.040 of the Town Code of the Town of Fairfax immediately following Section 17.040.090:

“§ 17.040.100 Incomplete Discretionary Permit applications

(A) Review for Completeness. Within 30 days of receiving a discretionary permit application, the Town shall review the application for completeness and accuracy of required information before it is accepted and acknowledged as being complete and officially filed. When the Town informs the applicant in writing within 30 days following the submission of the application(s) that an application is incomplete and specifies additional information required for completeness review but applicant fails to submit such information within the time limits listed in §17.040.100(A)(1) or (A)(2) below, as applicable, the discretionary permit application shall expire unless the applicant obtains from the Planning Director an approved request for extension.

(1) **General time limit.** An incomplete discretionary permit application shall expire 90 days following the date the Town provides written notice that the application is incomplete, unless the Director grants an extension not to exceed one year. This time limit shall not apply to Section 17.040.100(B) (Initial Application Review for Discretionary Permits – Enforcement cases) below.

extension, the Planning Director may make minor modifications to the approved project based upon a finding a change in the circumstances surrounding the original approval so warrant.

(4) Hearing on extension. If the Planning Director finds that significant policy questions are at issue, the Planning Director may refer the application to the Planning Commission for a public hearing.

(5) Coordination of expiration date among multiple permits. If a Building Permit, or other permit, is issued during the effective life of the entitlement or development application approval, the expiration date of the entitlement or development application approval shall be automatically extended to coincide with the expiration date of the Building Permit or permit.”

Section 3: Sections 17.020.130, 17.032.100, (“TIME LIMITS; EXTENSIONS”) of the Fairfax Municipal Code, Chapters 17.020 and 17.032 (“DESIGN REVIEW REGULATIONS” and “USE PERMIT REGULATIONS”) are hereby added to read as follows:

“§ 17.020.130. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any design review permit shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

“§ 17.032.100. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any conditional use permit shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

Section 4: Section 17.060.090 (“PERMIT TIME LIMITS; EXTENSIONS”) of the Fairfax Municipal Code, Chapter 17.060 (“Ridgeline Development”) and is hereby repealed and replaced in its entirety as follows:

“§ 17.060.090. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any permit granted for building in the ridgeline scenic corridor shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).”

Section 5: Section 17.072.140 (“EXPIRATION”) and Section 17.072.150 (“EXTENSION”) of the Fairfax Municipal Code, Chapter 17.072 (“Hill Area Residential Development Overlay Zone”) are consolidated and revised to read as follows:

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax on the XX day of XX 2019, and duly adopted at the next regular meeting of the Town Council on the _ day of _____, 2019, by the following vote, to wit:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

BARBARA COLER, Mayor

ATTEST:

Michele Gardner, Town Clerk

§ 17.040.100 INCOMPLETE DISCRETIONARY PERMIT APPLICATIONS

(A) Review for Completeness. Within 30 days of receiving a discretionary permit application, the Town shall review the application for completeness and accuracy of required information before it is accepted and acknowledged as being complete and officially filed. When the Town informs the applicant in writing within 30 days following the submission of the application(s) that an application is incomplete and specifies additional information required for completeness review but applicant fails to submit such information within the time limits listed in §17.040.100(A)(1) or (A)(2) below, as applicable, the discretionary permit application shall expire unless the applicant obtains from the Planning Director an approved request for extension.

(1) General time limit. An incomplete discretionary permit application shall expire 90 days following the date the Town provides written notice that the application is incomplete, unless the Director grants an extension not to exceed one year. This time limit shall not apply to Section 17.040.100(B) (Initial Application Review for Discretionary Permits – Enforcement cases) below.

(2) Enforcement cases. An incomplete discretionary permit application, submitted to resolve a code enforcement matter, shall expire 30 days following the date the agency provides written notice that the application is incomplete, unless the Director grants extensions not to exceed a total of 90 days.

(B) Resubmittal. In the event that a discretionary permit application expires the applicant may submit a new application, subject to all payment of all applicable fees, in accordance with this Code, and the application review process will commence again.

(C) After a discretionary permit application has been determined to be complete, the Town may require the applicant to submit additional information necessary to conduct environmental review or otherwise evaluate the application consistent with applicable requirements.

§ 17.040.110. PERMIT TIME LIMITS AND EXTENSIONS

(A) Time limits, vesting. Unless conditions of approval or other applicable law establish a different time limit, any permit or entitlement not vested within one year of the date of approval shall expire and become void. The permit shall not be deemed vested until, at a minimum, the permit holder has actually obtained a Building Permit or other construction permit and has made substantial progress towards completing the improvements in accordance with the approved permits, or has actually commenced the allowed use on the subject property, in compliance with the conditions of approval, or has recorded a Parcel or Final Map.

(B) Extensions of time. Upon request by the applicant, the Planning Director may extend the time for an approved permit to be vested.

(1) Filing. The applicant shall file a written request for an extension of time with the Planning Department, at least 10 days prior to the expiration of the permit, together with the filing fee in accordance with the schedule of fees fixed and adopted by the Town Council. The burden of proof is on the permittee to establish, with substantial evidence, that the permit should not expire

(2) Review of extension request. The Planning Director shall determine whether the permit holder has attempted to comply with the conditions of the permit. The Director may instead refer the extension request to the Planning Commission for review.

(3) Action on extension. If the Planning Director determines that the permittee has proceeded in good faith and has exercised due diligence in complying with the conditions in a timely manner, the Planning Director may extend the permit for a maximum period of one year following the original expiration date. When granting an extension, the Planning Director may make minor modifications to the approved project based upon a finding a change in the circumstances surrounding the original approval so warrant.

(4) Hearing on extension. If the Planning Director finds that significant policy questions are at issue, the Planning Director may refer the application to the Planning Commission for a public hearing.

(5) Coordination of expiration date among multiple permits. If a Building Permit, or other permit, is issued during the effective life of the entitlement or development application approval, the expiration date of the entitlement or development application approval shall be automatically extended to coincide with the expiration date of the Building Permit or permit.

§ 17.020.130. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any design review permit shall comply with Section 17.040.110 ("PERMIT TIME LIMITS AND EXTENSIONS") of Chapter 17.040 ("General Zone Regulations")."

§ 17.028.090 LAPSE; RENEWAL; TERM.

~~—(A) (1) A variance shall lapse and become null and void one year following the date on which the variance became effective unless, prior to the expiration of the one year period, a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the variance application, or a certificate of occupancy is issued for the site or structure which was the subject of the variance application.~~

~~—(2) A variance may be renewed for an additional period of one year; provided that, prior to the expiration of one year from the date when the variance originally~~

~~became effective, an application for renewal of the variance is filed with the Planning Department.~~

~~—(3) The Planning Director may grant an application for renewal of the variance where no change in the original application or any condition of approval thereof is requested, but an application for renewal involving any change from the original application or approval conditions shall be treated as a new application for a variance and shall be subject to all applicable provisions of this chapter.~~

~~—(B) Unless specified otherwise at the time the variance is granted, the variance applies to subject property for an indefinite time and is transferable to any future owner of the subject property.~~

§ 17.028.090. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any permit granted for a variance shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).

§ 17.032.100. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any conditional use permit shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).

§ 17.060.090 TIME LIMITS; EXTENSIONS.

~~(A) Design review approval and exceptions granted under §§ 17.060.060 through 17.060.110 expire within one year of the date of approval if a building permit is not issued for the project unless an extension is granted by the Planning Commission.~~

~~—(B) Extensions may be granted for up to six months at the discretion of the Planning Commission if the applicant demonstrates that the delay was caused by factors beyond his or her control. Notwithstanding any other provision of this Chapter, any permit granted for building in the ridgeline scenic corridor shall comply with Section 17.040.110 (“PERMIT TIME LIMITS AND EXTENSIONS”) of Chapter 17.040 (“General Zone Regulations”).~~

§ 17.072.140 EXPIRATION.

~~—A hill area residential development permit shall lapse and become null and void one year following the date on which it became effective unless prior to the expiration of the one year period a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the application.~~

§ 17.072.150 EXTENSION.

~~A hill area residential development permit may be renewed one time for an additional period of one year; provided that, prior to the expiration of one year from the date when the permit originally became effective, an application for renewal is filed with the Planning Department. The Planning Director may grant an application for renewal where no change in the original application for or any condition of approval thereof is requested, but an application for renewal involving any change from the original application or approval conditions shall be treated as a new application and shall be subject to all applicable provisions of this chapter. At the expiration of the renewal period a new application will be required if a building permit is not issued for the project.~~

§ 17.072.140. TIME LIMITS; EXTENSIONS.

Notwithstanding any other provision of this Chapter, any hill area residential development permit shall comply with Section 17.040.110 ("PERMIT TIME LIMITS AND EXTENSIONS") of Chapter 17.040 ("General Zone Regulations").