



TOWN OF FAIRFAX

STAFF REPORT

August 7, 2019

TO: Mayor and Town Council

FROM: Ben Berto, Director of Planning and Building Services *GB*

SUBJECT: Introduce and read by title only an ordinance to establish time limits for incomplete applications and project entitlement approvals by 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;" CEQA exempt per CEQA Guidelines Sections 15060(c)(2), 15061(b)(3), and 15305.

RECOMMENDATION

- 1) Conduct Public Hearing
- 2) Introduce and read by title only an ordinance 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

BACKGROUND

Between January and March 2018, the Planning Commission finalized a work program for 2018, including prioritized recommendations for zoning amendments. One of those was to amend the Zoning Ordinance to limit the time a development application can remain incomplete.

The Town Council considered the recommended work program, including Zoning Ordinance amendments, in August 2018.

At their June 20 and July 18, 2019 meetings, the Planning Commission considered a draft ordinance amending the zoning ordinance to limit the amount of time 1) a development application can remain incomplete, and 2) approved project entitlements can remain valid.

On July 18, 2019, the Planning Commission approved a resolution recommending placing time limits on incomplete development applications and approved projects (see attached).

DISCUSSION

Both the Planning Commission and Town Council agreed that limiting the amount of time an application can remain incomplete, and approved project entitlements can remain valid, would have a beneficial impact on application processing and Planning Department operations. Time limits enables more streamlined, efficient, and effective processing of planning applications.

The Planning Department has 14 incomplete applications or approved applications that are currently inactive. The oldest application currently in the 'active' planning files was submitted in 2011.

When approvals linger without substantive efforts by the applicants to complete or vest them via construction permits, or applicants have never completed the submittal despite numerous communications between staff and the applicant, it results in:

- 1) Inefficient processing,
- 2) Misunderstandings or uncertainty regarding project status and applicable laws and regulatory processes, and
- 3) Potential for inconsistency with applicable regulations if/when a "stale" application springs to life.

By designating applications as expired when specific circumstances occur, the proposed regulations will avoid the above situations, in addition to freeing up staff time and file storage for other current work program priorities.

Procedurally, staff will inform applicants about any pending project expiration via the project status letter that is sent out for any incomplete application. If an incompleteness deadline draws near, staff will also follow up in writing to the applicant reminding about the need to either complete the project or request an extension. Staff will also write applicants who have projects that have received discretionary approval(s) about any pending expirations.

The Planning Commission is recommending zoning amendments that:

- 1) Deem an incomplete project application/applications expired after the lapse of a specific period of time (180 days) during which the applicant has failed to fully address incompleteness items that were noted in a project status letter.
- 2) Deem a project's planning approval(s) expired after the lapse of a specific period of time (one year) without the applicant obtaining construction permits and proceeding with construction to completion.
- 3) Give applicants the ability to request an extension if unable to fulfill the above timeline requirements.

The following details the proposed project application or approval expiration process.

1) Incomplete Application Time Limits for Completion

The language of the proposed new ordinance permits expiration of incomplete discretionary permit applications 180 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 additional year. The initially proposed time limit was 90 days unless an extension was requested and granted. However, the Commission believed that certain requested technical documents such as surveys and engineering reports will often take longer than 90 days to prepare and, thus, 180 days was deemed more practical and reasonable.

The proposed new ordinance also includes language placing a shorter 60-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 an additional 90 days. Violations are presumed to need to be resolved in an expedited manner.

2) Discretionary Permit Time Limits and Extensions

The Planning Commission recommended 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 thereby establish a single location in the Zoning Ordinance that identifies consistent expiration periods for all incomplete applications and planning approvals that have been inactive for months/years without substantive efforts by the applicant to complete or vest.

Currently, Variances, Ridgeline Development Permits, and Hill Area Residential Development Permits have one-year vesting time limits and allow extensions of time. However, Design Review and Conditional Use Permits have no such time limit. The current inconsistency among different code chapters results in uncertainty regarding expiration for projects involving different types of applications.

The code amendments clarify that discretionary planning application(s) approval period is one year from the date of approval. Thereafter, the approval(s) expire and become void unless prior to expiration of that year, an applicant requests an extension. In such case the Planning Director may extend the term of approval for up to an additional year.

Moreover, a proposed provision allows minor changes to a project if "circumstances surrounding the project so warrant and do not substantially change the project." This will provide flexibility negotiating improvements to accompany an approval extension, short of an applicant having to undergo the entire process again.

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 expired.

It should be noted that the "substantial progress" demonstrating permit or entitlement validity allows some flexibility in interpretation. An applicant showing substantial progress in a resubmittal would reset the deadlines. Generally, for Planning-approved projects for which

some type of construction permit has been issued, the project has to meet the California Building Code inspection schedule of one inspection every 6 months.

CEQA for Amendments to Chapter 17.110

This Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") (California Public Resources Code §21000 et seq.) because the proposed Ordinance does not constitute a "project" pursuant to State CEQA Guidelines Section 15060(c)(2). Moreover, it is exempt from CEQA review because there is no potential for the regulations to result in a direct or reasonably foreseeable indirect physical change in the environment (State CEQA Guidelines, Section 15061[b][3]. Finally, the regulations are exempt from CEQA pursuant to State CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations.

FISCAL IMPACT

None at this time

ATTACHMENTS

Attachment A – Planning Commission Resolution Recommending Adoption of Time Limits and Extensions Ordinance

Attachment B – Time Limits and Extensions Ordinance