



TOWN OF FAIRFAX

STAFF REPORT

October 2, 2019

TO: Mayor and Town Council

FROM: Ben Berto, Planning Director *GT*

SUBJECT: Second reading and adoption of 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

Read by title only and adopt 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"

DISCUSSION

At its September 4, 2019 meeting, the Council introduced the ordinance. Tonight is the second reading and adoption of the ordinance. If adopted, the ordinance would be become effective 30 days after the date of its adoption.

This ordinance would provide consistent limits on the amount of time an application can remain incomplete, and the amount of time an approved project can remain valid. The language of the proposed new ordinance would allow incomplete discretionary permit applications to expire 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 ordinance would establish a single Zoning Ordinance provision that sets forth consistent expiration periods for all inactive planning approvals.

The proposed code amendments also set forth a discretionary planning project approval period of one year from the date of approval. Upon request, the Planning Director may grant an extension for up to an additional year.

FISCAL IMPACT

None at this time.

ATTACHMENT: Ordinance

AGENDA ITEM # 16

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 Planning 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,

WHEREAS, the time limits established shall commence from the effective date of this Ordinance for any application submitted or project approval granted prior to the effective date of this Ordinance; 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 additional 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 an additional 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 performed the following:

- (1) Obtained a Building Permit or other similar construction permit, and
- (2) 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
- (3) 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 become 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 additional year following the original expiration date. When granting an extension, the Planning Director may approve or make minor modifications to the approved project based upon a finding or a change in the laws, codes, or other 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 permits, are 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 other 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 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 4th day of September 2019, and duly adopted at the next regular meeting of the Town Council on the 2nd day of October, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

BARBARA COLER, Mayor

ATTEST:

Hannah Politzer, Deputy Town Clerk