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4-18-09

April 17, 2009

Attached is the corrected ordinance from docket item #10 from April 14 legislative session, as discussed with Council that evening, which is on for public hearing and final passage on April 18 as docket item #14.

EXHIBIT NO. 1 14 ~~10~~  
4-18-09 ~~4-14-09~~

Introduction and first reading: 4/14/09  
Public hearing: 4/18/09  
Second reading and enactment: 4/18/09

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Section 10-106 (ISSUANCE AND EXPIRATION OF CERTIFICATES OF APPROPRIATENESS OR PERMITS), under Section 10-100 (OLD AND HISTORIC ALEXANDRIA DISTRICT), and Section 10-206 (ISSUANCE AND EXPIRATION OF CERTIFICATES OF APPROPRIATENESS OR PERMITS), under Section 10-200 (PARKER-GRAY DISTRICT), of Article X (HISTORIC DISTRICTS AND BUILDINGS), and Section 11-418 (TIME OF VALIDITY), under Section 11-400 (SITE PLAN), and Section 11-506 (DURATION OF VALID PERMIT), under Section 11-500 (SPECIAL USE PERMITS), of Article XI (DEVELOPMENT APPROVALS AND PROCEDURES) of the City of Alexandria Zoning Ordinance, in accordance with the text amendment heretofore approved by city council as Text Amendment No. 2009-0001.

Summary

The proposed ordinance accomplishes the final adoption of Text Amendment No. 2009-0001 to extend the validity period of approved site plans and development special use permits, along with associated permits or plans.

Sponsor

Department of Planning and Zoning

Staff

Faroll Hamer, Director of Planning and Zoning  
Jill A. Schaub, Senior Assistant City Attorney

Authority

§§ 9.09, 9.33, Alexandria City Charter  
§ 11-800, City of Alexandria Zoning Ordinance

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to amend and reordain Section 10-106 (ISSUANCE AND EXPIRATION OF CERTIFICATES OF APPROPRIATENESS OR PERMITS), under Section 10-100 (OLD AND HISTORIC ALEXANDRIA DISTRICT), and Section 10-206 (ISSUANCE AND EXPIRATION OF CERTIFICATES OF APPROPRIATENESS OR PERMITS), under Section 10-200 (PARKER-GRAY DISTRICT), of Article X (HISTORIC DISTRICTS AND BUILDINGS), and Section 11-418 (TIME OF VALIDITY), under Section 11-400 (SITE PLAN), and Section 11-506 (DURATION OF VALID PERMIT), under Section 11-500 (SPECIAL USE PERMITS), of Article XI (DEVELOPMENT APPROVALS AND PROCEDURES) of the City of Alexandria Zoning Ordinance, in accordance with the text amendment heretofore approved by city council as Text Amendment No. 2009-0001.

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2009-0001, the planning commission, having found that the public necessity, convenience, general welfare and good zoning practice so require, approved an application to extend the validity period of approved site plans and development special use permits, along with associated permits or plans;

2. The City Council in adopting this ordinance expressly adopts, ratifies, affirms and concurs in the finding and action of the Planning Commission above stated;

3. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 10-106 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows:

10-106 *Issuance and expiration of certificates of appropriateness or permits.*

(A) *Issuance.*

(1) Upon approval by the Old and Historic Alexandria District Board of architectural review of any erection, reconstruction, alteration or restoration, a certificate of appropriateness, signed by the secretary of the board and bearing the date of issuance, but subject, however, to the provisions of section 10-107, shall be made available to the applicant.

(2) Upon approval by the Old and Historic Alexandria District board of architectural review of any application to move, remove, capsculate or demolish in whole or in part, a permit

1 for same, signed by the secretary of the board of  
2 architectural review and bearing the date of issuance, but  
3 subject, however, to the provisions of section 10-107 shall  
4 be made available to the applicant.  
5

6 (3) In instances where the city council on appeal approves any  
7 erection, reconstruction, alteration or restoration, or where  
8 the city council on appeal approves the moving, removing,  
9 capsulating or demolition in whole or in part of, a  
10 certificate of appropriateness or a permit to move, remove,  
11 capsulate, or demolish in whole or in part, bearing the date  
12 of issuance but subject, however, to the provisions of  
13 section 10-107(B), shall forthwith be signed by the mayor  
14 and made available to the applicant.  
15

16 (B) *Expiration.* Any certificate of appropriateness issued pursuant to  
17 section 10-106(A) and any permit to move, remove, capsulate or  
18 demolish in whole or in part in the Old and Historic Alexandria  
19 District issued pursuant to section 10-106(B) shall expire of its  
20 own limitation 12 months from the date of issuance if the work  
21 authorized thereby is not commenced and diligently and  
22 substantially pursued by the end of such 12 month period; and  
23 further, any such certificate and permit shall also expire and  
24 become null and void if such authorized work is suspended or  
25 abandoned for a period of 12 months after being commenced and  
26 diligently and substantially pursued. Any period or periods of time  
27 during which the right to use any such certificate or permit is  
28 stayed pursuant to this article X shall be excluded from the  
29 computation of the 12 months. In the case of a certificate or permit  
30 for a project that requires a development special use permit or site  
31 plan under section 11-400 of this ordinance, the 12-month period  
32 of time shall be stayed until final approval thereof by the planning  
33 commission or city council, as the case may be. the period of  
34 validity shall be coincident with the validity of the development  
35 special use permit or site plan as determined pursuant to section  
36 11-418 of this ordinance.  
37

38 Section 2. That Section 10-206 of the City of Alexandria Zoning Ordinance be, and  
39 the same hereby is, amended to read as follows:  
40

41 10-206 *Issuance and expiration of certificates of appropriateness or permits.*  
42

43 (A) *Issuance.*  
44

- 1 (1) Upon approval by the Parker-Gray District board of  
2 architectural review of any erection, reconstruction,  
3 alteration or restoration, a certificate of appropriateness,  
4 signed by the secretary of the board and bearing the date of  
5 issuance, but subject, however, to the provisions of section  
6 10-207, shall be made available to the applicant.  
7  
8 (2) Upon approval by the Parker-Gray District board of  
9 architectural review of any application to move, remove,  
10 capulate or demolish in whole or in part, a permit for  
11 same, signed by the secretary of the board of architectural  
12 review and bearing the date of issuance, but subject,  
13 however, to the provisions of section 10-207, shall be made  
14 available to the applicant.  
15  
16 (3) In instances where the city council on appeal approves any  
17 erection, reconstruction, alteration or restoration, or where  
18 the city council on appeal approves the moving, removing,  
19 capsulating or demolition in whole or in part, a certificate  
20 of appropriateness or a permit to move, remove, capulate  
21 or demolish in whole or in part bearing the date of issuance  
22 but subject, however, to the provisions of section 10-  
23 207(B), shall forthwith be signed by the mayor and made  
24 available to the applicant.  
25

26 (B) *Expiration.* Any certificate of appropriateness issued pursuant to  
27 section 10-206(A) and any permit to move, remove, capulate or  
28 demolish in whole or in part issued pursuant to section 10-206(A)  
29 shall expire of its own limitation 12 months from the date of  
30 issuance if the work authorized thereby is not commenced and  
31 diligently and substantially pursued by the end of such 12-month  
32 period; and further, any such certificate and permit shall also  
33 expire and become null and void if such authorized work is  
34 suspended or abandoned for a period of 12 months after being  
35 commenced and diligently and substantially pursued. Any period  
36 or periods of time during which the right to use any such certificate  
37 or permit is stayed pursuant to this article X shall be excluded from  
38 the computation of the 12 months. In the case of a certificate or  
39 permit for a project that requires a development special use permit  
40 or site plan under section 11-400 of this ordinance, the 12-month  
41 period of time shall be stayed until final approval thereof by the  
42 planning commission or city council, as the case may be. the  
43 period of validity shall be coincident with the validity of the  
44 development special use permit or site plan as determined pursuant  
45 to section 11-418 of this ordinance.

1  
2 Section 3. That Section 11-418 of the City of Alexandria Zoning Ordinance be, and  
3 the same hereby is, amended to read as follows:  
4

5 11-418 *Time of validity.*  
6

7 (A) A site plan or development special use permit approved pursuant to  
8 the provisions of this section 11-400 shall expire and become null  
9 and void as to any uncommenced construction and any  
10 uncompleted construction, unless substantial construction of the  
11 project approved in such plan is commenced within ~~18~~36 months  
12 after initial planning commission approval of the plan, or council  
13 approval in case of appeal, and such construction is thereafter  
14 pursued with due diligence; provided, that upon petition by the ~~site~~  
15 plan applicant, property owner or any successor in interest, filed  
16 with the director of ~~transportation and environmental services~~  
17 planning and zoning prior to the expiration of the period herein  
18 limited, including expiration occasioned by any interruption in  
19 substantial construction activity on a building of more than 12  
20 consecutive months and, in case of a multi-building project, any  
21 interruption in substantial construction activity of more than 24  
22 consecutive months between the substantial completion of one  
23 building and the commencement of substantial construction of  
24 another building, and after notice and public hearing, the planning  
25 commission may, for good cause shown, enlarge the period in  
26 which construction must be commenced or amend the requirement  
27 for due diligence in the pursuit of construction. As used in this  
28 ordinance, due diligence means action characterized by the steady,  
29 earnest, attentive, energetic and successful or productive  
30 marshalling and application of all necessary resources and efforts  
31 in order to construct and complete an approved project.  
32

33 (B) Notwithstanding any contrary provision of this ordinance, the  
34 period of validity of any other permit or plan associated with such  
35 site plan or development special use permit and approved pursuant  
36 to this ordinance shall be extended to run and expire concurrently  
37 with the site plan or development special use permit.  
38

39 (C) The amendment extending site plan or development special use  
40 permit validity to 36 months in subsection (A) and the provisions  
41 of subsection (B), above, shall apply to all site plans and  
42 development special use permits approved on and after April 1,  
43 2009.  
44

1 (D) In addition and notwithstanding the provisions of subsections (A),  
2 (B) and (C) above, any site plan or development special use permit  
3 that has received approval prior to April 1, 2009, and remains in  
4 valid force and effect on such date shall expire and become null  
5 and void as to uncommenced or uncompleted construction unless  
6 substantial construction is commenced on or before March 31,  
7 2012, and thereafter pursued with due diligence. Any other permit  
8 or plan approved pursuant to this ordinance and associated with a  
9 site plan or development special use permit extended by this  
10 subsection shall likewise be extended to run and expire  
11 concurrently with such site plan or development special use permit.

12  
13 (E) During the period of validity established by this section, the  
14 property subject to the site plan or development special use permit,  
15 including all buildings existing or under construction, on which  
16 substantial construction work is not actually proceeding, shall be  
17 maintained in good order and repair, in compliance with all  
18 applicable provisions of this ordinance and the city code, and in  
19 addition shall be maintained so as to prevent blight or other  
20 substantial detrimental impacts on surrounding property.

21  
22 ~~(B)~~-(F) Evidence that substantial construction activity is proceeding on a  
23 building without any interruption of 12 or more consecutive  
24 months and, in the case of a multi-building project, is proceeding  
25 without interruption of 24 or more consecutive months between the  
26 substantial completion of one building and the commencement of  
27 substantial construction of another building shall constitute prima  
28 facie evidence of due diligence. Such evidence of due diligence  
29 may be rebutted by evidence that the work is not in fact steady,  
30 earnest, attentive, energetic and successful or productive.  
31 Evidence that substantial construction activity on a building has  
32 been interrupted for more than 12 consecutive months or, in the  
33 case of a multi-building project, has been interrupted for more than  
34 24 consecutive months between the substantial completion of one  
35 building and the commencement of substantial construction of  
36 another building shall constitute prima facie evidence of a failure  
37 to maintain due diligence. Evidence of such failure may be  
38 rebutted by evidence that the interruption in substantial  
39 construction activity is proximately caused by a change in  
40 circumstances or mistake. Such change in circumstances shall be  
41 limited to a change which substantially affects the ability of the  
42 applicant, owner or any successor in interest to maintain due  
43 diligence and which could not reasonably have been anticipated at  
44 the time of site plan approval, and shall without limitation  
45 encompass change in the economic factors which affect the

1 development of land (e.g., availability of financing, interest rates,  
2 market absorption). Such mistake shall be limited to an error or  
3 omission in the material facts or assumptions regarding the land or  
4 its physical conditions relied upon by the applicant at the time of  
5 site plan approval, which mistake substantially affects the ability of  
6 the applicant, owner or any successor in interest to maintain due  
7 diligence. Mistake shall not encompass errors in judgment, and the  
8 applicant and any successor in interest are charged with all  
9 knowledge reasonably attainable at the time of site plan approval.

10  
11 ~~(C)~~(G) When the director of ~~transportation and environmental services~~  
12 planning and zoning makes a finding that a site plan has become  
13 null and void by operation of the provisions of sections 11-418 (A)  
14 ~~and (B) through (E)~~, he shall notify the applicant by mail at his last  
15 known address, and likewise notify any known successor in  
16 interest and the owner of the property as determined from the real  
17 estate assessment records of the city. The applicant, owner or any  
18 successor in interest who is aggrieved by, and desires to contest,  
19 such finding shall file a petition with the director of ~~transportation~~  
20 ~~and environmental services~~ planning and zoning specifying the  
21 grounds of such contest within 30 days after the mailing of such  
22 notice. Thereafter, the planning commission shall proceed to  
23 decide, after notice and public hearing, whether the site plan has  
24 become null and void under the provisions of sections 11-418(A)  
25 ~~and (B) through (E)~~. In any such proceeding, the petitioner shall  
26 have the burden of proving the continuing validity of the site plan  
27 approval. In the event no such petition is timely filed, the director  
28 of ~~transportation and environmental services~~'s planning and  
29 zoning's finding shall become final and shall not be subject to  
30 further review.

31  
32 ~~(D)~~(H) Any person aggrieved by a decision of the planning commission  
33 made under section 11-418 (A) or section 11-418 ~~(C)~~(G) may  
34 appeal the decision to the city council, provided that the appeal is  
35 filed in writing, stating the reasons therefor, with the city clerk,  
36 within 15 days after the planning commission decision is  
37 announced. The appeal shall be accompanied by the fee  
38 established pursuant to section 11-104. In the event an appeal is  
39 filed, the city council shall schedule at least one public hearing on  
40 the matter. The council may affirm, reverse or modify the decision  
41 of the commission, or return the matter to the commission for  
42 further consideration.

43  
44 ~~(E)~~(I) Fees and contributions paid by the applicant to the city in  
45 connection with a project, except application and on site inspection



1 fees, shall be proportionately refunded if a site plan or  
2 development special use permit expires under the provisions of this  
3 section.  
4

5 Section 4. That Section 11-506 of the City of Alexandria Zoning Ordinance be, and  
6 the same hereby is, amended to read as follows:  
7

8 11-506 *Duration of valid permit.*  
9

- 10 (A) *Revocation and suspension.* After notice and a public hearing, the  
11 city council may revoke or suspend any special use permit  
12 approved by it upon proof that the holder of the permit has failed  
13 to comply with any law, including, without limitation, the  
14 conditions subject to which the special use permit was granted.  
15
- 16 (B) *Termination of use.* A special use permit shall cease to be valid if  
17 the use for which such permit is granted is not operated for a  
18 continuous period of two years or more.  
19
- 20 (C) *Commencement of use required.*  
21
- 22 (1) *Use without new construction.* A special use permit  
23 granted under this section 11-500 that does not involve new  
24 construction shall become void unless operation of the use  
25 is commenced within a period of 18 months from the date  
26 that the permit was approved and is thereafter diligently  
27 pursued. If an application to extend a special use permit is  
28 filed with the director prior to the expiration of its term, and  
29 after compliance with the notice and hearing requirements  
30 for an original special use permit application, the city  
31 council may grant an 18 month extension of the permit.  
32
- 33 (2) *Use with new construction.*  
34
- 35 (a) *Construction to begin ~~with 18~~ within 36 months.* A  
36 special use permit approved pursuant to the  
37 provisions of this section 11-500 that involves new  
38 construction shall expire and become null and void  
39 as to any uncommenced construction and any  
40 uncompleted construction, unless substantial  
41 construction of the project approved in such permit  
42 is commenced ~~within the period herein provided~~  
43 ~~after initial city council approval of the permit and~~  
44 ~~such construction is thereafter pursued with due~~  
45 ~~diligence. Such commencement as is required by~~

1 ~~this paragraph shall occur within 18 months within~~  
2 ~~the period established pursuant to section 11-418 of~~  
3 ~~the ordinance unless the permit is one that involves~~  
4 more than seven acres and the applicant requests  
5 and council approves a different time period.  
6

7 (b) *Extension of time allowed under certain conditions.*  
8 An extension of time may be permitted by city  
9 council under the same conditions and procedures  
10 as those provided for in section 11-418(A).  
11

12 (c) *Evidentiary standards for "substantial*  
13 *construction" and "due diligence."* As used in this  
14 section 11-506, the terms "substantial construction"  
15 and "due diligence" shall have that meaning  
16 provided in section 11-418(~~B~~)-(E).  
17

18 (d) *Finding that permit has expired.* The procedures by  
19 which the director may make a finding that a special  
20 use permit has expired and by which that finding  
21 may be challenged shall be those provided in  
22 section 11-418(~~E~~)-(G).  
23

24 (e) *Application to site plans approved as part of special*  
25 *use permit.* The provisions of this subsection shall  
26 control the validity of all site plans, preliminary,  
27 final or combined, approved as part of a special use  
28 permit, and no such site plan shall continue in force  
29 and effect beyond the expiration of the special use  
30 permit by which such site plan was approved.  
31

32 (f) *Refund of fees.* Fees and contributions paid by the  
33 applicant to the city in connection with a project,  
34 except application and on-site inspection fees, shall  
35 be proportionately refunded if a special use permit  
36 expires under the provisions of this section.  
37

38 (3) *"New construction" defined.* For purposes of this section  
39 11-506(C), the term "new construction" shall mean that  
40 construction, development or improvement which requires  
41 the approval of a site plan pursuant to section 11-403.  
42

43 (4) *Application to previously issued permits.* The provisions of  
44 this section 11-506(C) shall apply to all special use permits  
45 approved after (~~October 16, 1993~~) April 1, 2009, and to any

1 application for an extension of a special use permit,  
2 regardless of when approved, properly filed after (~~October~~  
3 ~~16, 1993~~) April 1, 2009.  
4

5 Section 5. That the director of planning and zoning be, and hereby is, directed to  
6 record the foregoing text amendment.  
7

8 Section 6. That Sections of the City of Alexandria Zoning Ordinance, as amended  
9 by this ordinance, be, and the same hereby are, reordained as part of the City of Alexandria  
10 Zoning Ordinance.  
11

12 Section 7. That staff, within 18 months after final passage of this ordinance, provide  
13 City Council with a report summarizing the status of each plan that has not yet proceeded to  
14 substantial construction.  
15

16 Section 8. That this ordinance, adopted on \_\_\_\_\_, shall become  
17 effective on April 1, 2009, *nunc pro tunc*, and shall (1) apply to all applications for land use, land  
18 development or subdivision approval provided for under the City of Alexandria Zoning  
19 Ordinance which are subject to the provisions of this ordinance and are pending on April 1, 2009  
20 before any city department, agency or board, or before city council, (2) shall apply to all such  
21 applications which may be filed after April 1, 2009, and (3) shall in addition apply to all such  
22 applications approved prior to April 1, 2009, to the extent expressly provided in this ordinance.  
23  
24  
25

26 WILLIAM D. EUILLE  
27 Mayor  
28

29 Introduction: 04/14/2009  
30 First Reading: 04/14/2009  
31 Publication:  
32 Public Hearing:  
33 Second Reading:  
34 Final Passage:  
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