

Docket Item #22
TEXT AMENDMENT #2004-0005

Planning Commission Meeting
May 4, 2004

CASE: TEXT AMENDMENT #2004-0005
BAR PROCEDURES FOR DEVELOPMENT CASES

ISSUE: Consideration of an amendment to Sections 10-104 (F), 10-106(B), 10-204(F), and 10-206(B) of the Zoning Ordinance to amend the Board of Architectural Review procedures for development cases.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission recommend approval of the following text amendment:

ARTICLE X: HISTORIC DISTRICTS AND BUILDINGS

Sec. 10-100 Old and Historic Alexandria District

Sec. 10-104(F) Procedure for meetings.

- (1) The chairman of the board of architectural review shall conduct its meetings and the secretary shall keep the minutes of the meetings and a permanent record of all resolutions, motions, transactions and determinations. All members of the board shall be entitled to vote, and the decisions of the board shall be determined by a majority vote. A quorum of four members present is required before the board may take any official action. The board shall meet within 40 days after a complete application for a certificate of appropriateness or permit requiring action by the board has been received by the director. The meetings of the board shall be open to the public, and a full and impartial hearing shall be granted. No proxy shall be allowed at any time. The board shall vote and announce its decision on any matter properly before it no later than at its next regularly scheduled meeting, not to exceed 60 days, after the conclusion of the public hearing on the matter unless the time is extended by mutual agreement between the board and the applicant; the failure of the board to vote and announce its decision within the required time, or within such longer period of time extended by mutual agreement between the board and the applicant, shall constitute approval of the application. Notwithstanding the above procedures, an application for a project which requires a site plan under Section 11-400 of this ordinance shall be heard by the board within a reasonable time.

10-106(B) *Expiration.* Any certificate of appropriateness issued pursuant to section 10-106(A) and any permit to move, remove, capsulate or demolish in whole or in part in the Old and Historic Alexandria District issued pursuant to section 10-106(B) shall expire of its own limitation 12 months from the date of issuance if the work authorized thereby is not commenced and diligently and substantially pursued by the end of such 12 month period; and further, any such certificate and permit shall also expire and become null and void if such authorized work is suspended or abandoned for a period of 12 months after being commenced and diligently and substantially pursued. Any period or periods of time during which the right to use any such certificate or permit is stayed pursuant to this Article X shall be excluded from the computation of the 12 months. In the case of a certificate or permit for a project that requires a site plan under Section 11-400 of this ordinance, the 12 month period of time shall be stayed until final approval by the Planning Commission or City Council, as appropriate.

Sec. 10-200 Parker Gray District

Sec. 10-204(F) Procedure for meetings.

- (1) The chairman of the board of architectural review shall conduct its meetings and the secretary shall keep the minutes of the meetings and a permanent record of all resolutions, motions, transactions and determinations. All members of the board shall be entitled to vote, and the decisions of the board shall be determined by a majority vote. A quorum of four members present is required before the board may take any official action. The board shall meet within 40 days after a complete application for a certificate of appropriateness or permit requiring action by the board has been received by the director. The meetings of the board shall be open to the public, and a full and impartial hearing shall be granted. No proxy shall be allowed at any time. The board shall vote and announce its decision on any matter properly before it no later than at its next regularly scheduled meeting, not to exceed 60 days, after the conclusion of the public hearing on the matter unless the time is extended by mutual agreement between the board and the applicant; the failure of the board to vote and announce its decision within the required time, or within such longer period of time extended by mutual agreement between the board and the applicant, shall constitute approval of the application. Notwithstanding the above procedures, an application for a project which requires a site plan under Section 11-400 of this ordinance shall be heard by the board within a reasonable time.

10-206(B) *Expiration.* Any certificate of appropriateness issued pursuant to section 10-206(A) and any permit to move, remove, capsculate or demolish in whole or in part issued pursuant to section 10-206(A) shall expire of its own limitation 12 months from the date of issuance if the work authorized thereby is not commenced and diligently and substantially pursued by the end of such 12-month period; and further, any such certificate and permit shall also expire and become null and void if such authorized work is suspended or abandoned for a period of 12 months after being commenced and diligently and substantially pursued. Any period or periods of time during which the right to use any such certificate or permit is stayed pursuant to this Article X shall be excluded from the computation of the 12 months. In the case of a certificate or permit for a project that requires a site plan under Section 11-400 of this ordinance, the 12 month period of time shall be stayed until final approval by the Planning Commission or City Council, as appropriate.

DISCUSSION

This text amendment is designed to coordinate the approvals required in a multi-approval project within the historic districts, so that the development process is more efficient and fair for applicants, as well as for staff and the public.

Within the historic districts, the Old and Historic Alexandria District or the Parker Gray District, new development will typically require a certificate of appropriateness from the applicable Board of Architectural Review (BAR), and often also requires a demolition permit, for example if an existing structure needs to be removed or partially encapsulated to achieve the new development project. That same project will typically be a development case that also requires approval by either the Planning Commission or City Council, or by both.¹

This text amendment proposes two changes to the procedural rules that apply when a development case comes before the BAR for either a certificate of appropriateness or a demolition permit, or both.

Time for Docketing a BAR case

Under sections 10-104(F) and 10-204(F) of the zoning ordinance, BAR applications are heard very quickly. Specifically, each complete application must be heard by the BAR within forty days of its filing. This short turn around, essentially one month, is not required by the City Charter or other law; rather it is self-imposed in an effort to facilitate small BAR cases. Because of the burden BAR approval creates for small businesses and homeowners within the historic districts, for example by requiring BAR approval for each new business sign or upgrades to historic homes, the City has long required that BAR applications be heard in a very short period of time.

However, in the case of a new development, the same policy considerations are not present, and the burden on staff is great. A development case requires significantly more analysis and coordination within the Department of Planning and Zoning, and with other city agencies, and staff reports and presentations are more complex. In addition to the impact on staff, the public has complained in recent cases, such as with the 800 South Washington Street case, that there was not ample time prior to the BAR hearing to inform themselves regarding a case. The additional time will allow for coordination and community input as part of the development process.

¹In procedural parlance, a “development” case is one that is large enough to require site plan approval under section 11-400 of the zoning ordinance. If only site plan approval is required, then the case is styled a Development Site Plan case and the Planning Commission gives the final approval. If the development case requires both a site plan and a special use permit, it is called a Development SUP, and requires approval by City Council.

Therefore, staff proposes that the requirement that such BAR cases be heard within 40 days be eliminated. Instead, mirroring the procedures for other applications, including development applications, in the zoning ordinance, the proposed text amendment language would allow the BAR case to be heard in a reasonable time.

Period of Validity for BAR approval

Another BAR procedural rule that does not work well with development cases is found in sections 10-106(B) and 10-206(B). Those rules require that the construction of a project approved by the BAR be well underway within one year of the issuance of the BAR certificate or permit. After the one year period has elapsed, the BAR approval is no longer valid and a new BAR application must be filed, processed and approved in order to proceed. In a development case, if BAR approval occurs first, as typically occurs with a demolition permit, and sometimes occurs with a certificate, there is necessarily a time lag between BAR approval and the development approval by the Planning Commission or City Council. The proposed text change under these two sections would stay the effect of the BAR approval until the later Commission or Council approval occurs.

This amendment will avoid the necessity of BAR permit holders being required to return to the BAR for reapproval simply because of the passage of time between BAR and later development approvals. Return procedures and reapprovals have been required in recent history for the following developments: 800 South Washington, Old Presbyterian Meeting House and 124 South West Street.

Recommendation

Staff recommends the approval of these two text amendments in order to streamline the process for BAR and other approvals for development cases.

STAFF: Eileen P. Fogarty, Director, Planning and Zoning;
Barbara Ross, Deputy Director.