



DOCKET ITEM #10

Text Amendment #2009-0001

Extension of the Validity Period for Approved Site Plans

Project Name: Extension of the Validity Period for Approved Site Plans and Development Special Use Permits	Planning Commission Hearing:	March 5, 2009
	City Council Hearing:	March 14, 2009
Proposal: Request for text amendments to sections 10-106, 10-206, 11-418, and 11-506 of the City of Alexandria Zoning Ordinance to extend the validity period of approved site plans and development special use permits, along with associated permits or plans.		
Staff: City of Alexandria, Planning and Zoning		
<u>PLANNING COMMISSION ACTION:</u>		

I. STAFF RECOMMENDATION

Staff recommends that the Planning Commission initiate and recommend approval of the proposed amendments to Sections 10-106, 10-206, 11-418, and 11-506 of the City of Alexandria Zoning Ordinance so as to extend the validity period of approved site plans and development special use permits, along with associated permits or plans, and send these amendments forward to the City Council for action.

II. BACKGROUND

The validity period for site plans and development special use permits is currently 18 months. Because of the current economic situation and its impact on obtaining financing for projects and because of the length of time it takes to go through the detailed final site plan process, there have been suggestions from the building community to extend this validity period.

Staff has researched the validity periods used in other jurisdictions around the region. The City of Alexandria's current validity period seems to be one of the shortest – see chart that follows on the next page.

In addition to local discussions about extension of validity periods, the Commonwealth of Virginia is working on legislation – House Bill #2077 – to extend the validity periods for a wide range of regulatory approvals to July 1, 2014. It is staff's understanding that this Bill has passed the House and the Senate.

**Washington Metro Area Jurisdictions
 Comparison of Validity Periods for Site Plans, Historic Preservation Certificates, and SUPs/Special Exceptions**

Jurisdiction	Validity Period			SUPs/Special Exceptions
	Site Plans	Historic Preservation Certificate of Appropriateness	HIPs/Preservation Certificate of Appropriateness	
Arlington County	3 yrs from date of approval	1 yr from date of approval	3 yrs from date of approval, but at the discretion of the County Board	
Fairfax County	5 yrs from date of approval or longer, as determined by the Director; extensions may be approved administratively	2 yrs or for such longer period as may be deemed appropriate by the approving body from the date of approval or from 12/6/1994, whichever occurs later, and shall continue for the life of the Building Permit or sign permit; Architectural Review Board may grant up to 1 yr extension if no Building Permit or sign permit has been issued within the initial approval period	Board of Supervisors established expiration date or 30 months from approval date, unless additional time is approved by the Board	
Loudoun County	5 yrs from date of approval; site plan amendments - 1 yr from date of approval	Indefinite	5 yrs from date of approval, but validity period may be extended by Board of Supervisors	
Montgomery County	Site plan takes effect when the final record plat is recorded for all of the property covered by the approved preliminary plan; site plan expiration depends on the expiration date of the underlying approved preliminary plan	Indefinite	24 months from date of approval by Board of Appeals, Hearing Examiner, or County Council; extensions may not exceed 12 months	
Prince Georges County	Valid for 3 years, unless otherwise specified in the Z.O. or by the authority granting approval	2 yrs from date of approval	none, unless associated with a site plan	
Washington, D.C.	As determined by Planning Commission	2 yrs from date of approval by Historic Preservation Review Board; may be extended additional 2 yrs	2 yrs from date of approval by Board of Zoning Adjustment	

III. PROPOSED TEXT AMENDMENTS

Staff, in consultation with the City Attorney's Office, is recommending that the Planning Commission initiate and recommend approval of the proposed text amendments to achieve the following goals:

1. Amending section 11-418 to extend the validity period for site plans and development special use permits (DSUPs) approved on or after April 1, 2009 from 18 months to 36 months.
2. Amending section 11-418 to extend the validity period for site plans and DSUPs that have received final approval prior to April 1, 2009 for an additional three years.
3. Amending section 11-418 to assure that any other permit or plan associated with all extended site plans and DSUPs is also extended to run and expire concurrently.
4. Amending section 11-418 to assure that properties subject to these extensions shall be maintained in good order and repair.
5. Amending section 10-106 and 10-206 to assure that historic certificates of appropriateness that are associated with extended site plans or DSUPs shall be coincident with the extended validity of the site plans or DSUPs.
6. Amending section 11-506 to assure that special use permits used with new construction that are associated with extended site plans or DSUPs shall be coincident with the extended validity of the site plans or DSUPs.

Number 4 above is the result of discussions with civic groups (including the Federation of Civic Associations and the Del Ray Land Use Committee) who wish to assure that extended validity periods do not result in vacant sites that will become eyesores in the neighborhood.

The detailed amendments that are recommended by staff are attached to this report.

IV. CONCLUSION

Extension of validity periods as proposed in the attached recommendations will 1) bring Alexandria's practices into closer alignment with regional trends; 2) assist the development community during these difficult economic times; and 3) allow for sufficient time to get through the final site plan process. For all of these reasons, staff recommend that the Planning Commission initiate and recommend approval of the proposed amendments to sections 10-106, 10-206, 11-418, and 11-506 of the City of Alexandria Zoning Ordinance and send these amendments forward to the City Council for action.

V. DETAILED TEXT AMENDMENTS RECOMMENDED BY STAFF

Underlining indicates proposed new language; strikethrough indicates proposed deleted language.

Article XI. DEVELOPMENT APPROVALS AND PROCEDURES

Division B. Development Approvals.

Site Plan

Sec. 11-418 Time of validity.

- (A) A site plan or development special use permit approved pursuant to the provisions of this section 11-400 shall expire and become null and void as to any uncommenced construction and any uncompleted construction, unless substantial construction of the project approved in such plan is commenced within ~~18~~ 36 months after initial planning commission approval of the plan, or council approval in case of appeal, and such construction is thereafter pursued with due diligence; provided, that upon petition by the site plan applicant, property owner or any successor in interest, filed with the director of ~~transportation and environmental services~~ planning and zoning prior to the expiration of the period herein limited, including expiration occasioned by any interruption in substantial construction activity on a building of more than 12 consecutive months and, in case of a multi-building project, any interruption in substantial construction activity of more than 24 consecutive months between the substantial completion of one building and the commencement of substantial construction of another building, and after notice and public hearing, the planning commission may, for good cause shown, enlarge the period in which construction must be commenced or amend the requirement for due diligence in the pursuit of construction. As used in this ordinance, due diligence means action characterized by the steady, earnest, attentive, energetic and successful or productive marshalling and application of all necessary resources and efforts in order to construct and complete an approved project.
- (B) Notwithstanding any contrary provision of this ordinance, the period of validity of any other permit or plan associated with such site plan or development special use permit and approved pursuant to this ordinance shall be extended to run and expire concurrently with the site plan or development special use permit.
- (C) The amendment extending site plan or development special use permit validity to 36 months in subsection (A) and the provisions of subsection (B), above, shall apply to all site plans and development special use permits approved on and after April 1, 2009.
- (D) In addition and notwithstanding the provisions of subsections (A), (B) and (C) above, any site plan or development special use permit that has received final approval prior to April 1, 2009 and remains in valid force and effect on such date shall expire and become null and void as to uncommenced or uncompleted construction unless substantial construction is commenced on or before March 31, 2012, and thereafter pursued with due diligence. Any other permit or plan approved pursuant to this ordinance and associated with a site plan or development special use permit extended by this subsection shall likewise be extended to run and expire concurrently with such site plan or development special use permit.

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- (E) During the period of validity established by this section, the property subject to the site plan or development special use permit, including all buildings existing or under construction, on which substantial construction work is not actually proceeding, shall be maintained in good order and repair, in compliance with all applicable provisions of this ordinance and the city code, and in addition shall be maintained so as to prevent blight or other substantial detrimental impacts on surrounding property.
- ~~(B)~~ (F) Evidence that substantial construction activity is proceeding on a building without any interruption of 12 or more consecutive months and, in the case of a multi-building project, is proceeding without interruption of 24 or more consecutive months between the substantial completion of one building and the commencement of substantial construction of another building shall constitute prima facie evidence of due diligence. Such evidence of due diligence may be rebutted by evidence that the work is not in fact steady, earnest, attentive, energetic and successful or productive. Evidence that substantial construction activity on a building has been interrupted for more than 12 consecutive months or, in the case of a multi-building project, has been interrupted for more than 24 consecutive months between the substantial completion of one building and the commencement of substantial construction of another building shall constitute prima facie evidence of a failure to maintain due diligence. Evidence of such failure may be rebutted by evidence that the interruption in substantial construction activity is proximately caused by a change in circumstances or mistake. Such change in circumstances shall be limited to a change which substantially affects the ability of the applicant, owner or any successor in interest to maintain due diligence and which could not reasonably have been anticipated at the time of site plan approval, and shall without limitation encompass change in the economic factors which affect the development of land (e.g., availability of financing, interest rates, market absorption). Such mistake shall be limited to an error or omission in the material facts or assumptions regarding the land or its physical conditions relied upon by the applicant at the time of site plan approval, which mistake substantially affects the ability of the applicant, owner or any successor in interest to maintain due diligence. Mistake shall not encompass errors in judgment, and the applicant and any successor in interest are charged with all knowledge reasonably attainable at the time of site plan approval.
- ~~(C)~~ (G) When the director of ~~transportation and environmental services~~ planning and zoning makes a finding that a site plan has become null and void by operation of the provisions of sections 11-418 (A) ~~and (B) through (E)~~, he shall notify the applicant by mail at his last known address, and likewise notify any known successor in interest and the owner of the property as determined from the real estate assessment records of the city. The applicant, owner or any successor in interest who is aggrieved by, and desires to contest, such finding shall file a petition with the director of ~~transportation and environmental services~~ planning and zoning specifying the grounds of such contest within 30 days after the mailing of such notice. Thereafter, the planning commission shall proceed to decide, after notice and public hearing, whether the site plan has become null and void under the provisions of sections 11-418(A) ~~and (B) through (E)~~. In any such proceeding, the petitioner shall have the burden of proving the continuing validity of the site plan approval. In the event no such petition is timely filed, the director of ~~transportation and environmental services'~~ planning and zoning's finding shall become final and shall not be subject to further review.

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- (D)(H) Any person aggrieved by a decision of the planning commission made under section 11-418 (A) or section 11-418 (C) (G) may appeal the decision to the city council, provided that the appeal is filed in writing, stating the reasons therefor, with the city clerk, within 15 days after the planning commission decision is announced. The appeal shall be accompanied by the fee established pursuant to section 11-104. In the event an appeal is filed, the city council shall schedule at least one public hearing on the matter. The council may affirm, reverse or modify the decision of the commission, or return the matter to the commission for further consideration.
- (E) (I) Fees and contributions paid by the applicant to the city in connection with a project, except application and on site inspection fees, shall be proportionately refunded if a site plan or development special use permit expires under the provisions of this section.

*Special Use Permits**Sec. 11-506 Duration of valid permit.*

(C) (2) (a) *Construction to begin ~~with 18~~ within 36 months.* A special use permit approved pursuant to the provisions of this section 11-500 that involves new construction shall expire and become null and void as to any uncommenced construction and any uncompleted construction, unless substantial construction of the project approved in such permit is commenced ~~within the period herein provided after initial city council approval of the permit and such construction is thereafter pursued with due diligence.~~ Such commencement as is required by this paragraph shall occur within 18 months within the period established pursuant to section 11-418 of the ordinance unless the permit is one that involves more than seven acres and the applicant requests and council approves a different time period.

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

(c) *Evidentiary standards for "substantial construction" and "due diligence."* As used in this section 11-506, the terms "substantial construction" and "due diligence" shall have that meaning provided in section 11-418(BE).

(d) *Finding that permit has expired.* The procedures by which the director may make a finding that a special use permit has expired and by which that finding may be challenged shall be those provided in section 11-418(EG).

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

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

*Article X. HISTORIC DISTRICTS AND BUILDINGS**Old and Historic Alexandria District*

Extension of Validity Period for Approved Site Plans

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

(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 development special use permit or site plan under section 11-400 of this ordinance, ~~the 12-month period of time shall be stayed until final approval thereof by the planning commission or city council, as the case may be.~~ the period of validity shall be coincident with the validity of the development special use permit or site plan as determined pursuant to section 11-418 of this ordinance.

*Parker-Gray District**10-206 Issuance and expiration of certificates of appropriateness or permits.*

(B) Expiration. Any certificate of appropriateness issued pursuant to section 10-206(A) and any permit to move, remove, capsulate 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 development special use permit or site plan under section 11-400 of this ordinance, ~~the 12-month period of time shall be stayed until final approval thereof by the planning commission or city council, as the case may be.~~ the period of validity shall be coincident with the validity of the development special use permit or site plan as determined pursuant to section 11-418 of this ordinance.