

ORDINANCE NO. 4588

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, capulate or demolish in whole or in part, a permit for same, signed by the secretary of the board of architectural review and bearing the date of issuance, but subject, however, to the provisions of section 10-107 shall be made available to the applicant.

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

- (B) *Expiration.* Any certificate of appropriateness issued pursuant to section 10-106(A) and any permit to move, remove, capulate 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 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.

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

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

- (A) *Issuance.*

- (1) Upon approval by the Parker-Gray 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 10-207, shall be made available to the applicant.

(2) Upon approval by the Parker-Gray District board of architectural review of any application to move, remove, capsulate or demolish in whole or in part, a permit for same, signed by the secretary of the board of architectural review and bearing the date of issuance, but subject, however, to the provisions of section 10-207, shall be made available to the applicant.

(3) In instances where the city council on appeal approves any erection, reconstruction, alteration or restoration, or where the city council on appeal approves the moving, removing, capsulating or demolition in whole or in part, a certificate of appropriateness or a permit to move, remove, capsulate or demolish in whole or in part bearing the date of issuance but subject, however, to the provisions of section 10-207(B), shall forthwith be signed by the mayor and made available to the applicant.

(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 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.

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

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 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 plan applicant, property owner or any successor in interest, filed with the director of 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 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.

- (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.
- (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.

- (G) When the director of 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) 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 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) 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 planning and zoning's finding shall become final and shall not be subject to further review.
- (H) Any person aggrieved by a decision of the planning commission made under section 11-418 (A) or section 11-418 (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.
- (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.

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

11-506 *Duration of valid permit.*

- (A) *Revocation and suspension.* After notice and a public hearing, the city council may revoke or suspend any special use permit approved by it upon proof that the holder of the permit has failed to comply with any law, including, without limitation, the conditions subject to which the special use permit was granted.
- (B) *Termination of use.* A special use permit shall cease to be valid if the use for which such permit is granted is not operated for a continuous period of two years or more.
- (C) *Commencement of use required.*
  - (1) *Use without new construction.* A special use permit granted under this section 11-500 that does not involve new construction shall become void unless operation of the use is commenced within a period of 18 months from the date that the permit was approved and is thereafter diligently pursued. If an application to extend a special use permit is filed with the director prior to the expiration of its term, and after compliance with the notice and hearing requirements for an original special use permit application, the city council may grant an 18 month extension of the permit.
  - (2) *Use with new construction.*
    - (a) *Construction to begin 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 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(E).
  - (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(G).
  - (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.
- (3) *"New construction" defined.* For purposes of this section 11-506(C), the term "new construction" shall mean that construction, development or improvement which requires the approval of a site plan pursuant to section 11-403.
  - (4) *Application to previously issued permits.* The provisions of this section 11-506(C) shall apply to all special use permits approved after April 1, 2009, and to any application for an extension of a special use permit, regardless of when approved, properly filed after April 1, 2009.

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

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

Section 7. That for each site plan and/or development special use permit approved after April 1, 2009, the City Council shall receive a written report on the project status no later than eighteen (18) months after initial Planning Commission and/or Council approval. For projects covered under 11-418 (D) as modified herein, a report shall be submitted on October 1, 2010 regarding each project that has not proceeded to substantial construction. Reports shall be prepared by applicants and forwarded to Council by staff.

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

WILLIAM D. EUILLE  
Mayor

Final Passage: April 28, 2009