

**TOWN OF BEAUX ARTS VILLAGE
ORDINANCE NO. 267**

AN ORDINANCE OF THE TOWN OF BEAUX ARTS VILLAGE
ESTABLISHING AN OPTIONAL CONSOLIDATED PROJECT-PERMIT PROCESS,
COMBINING THE ENVIRONMENTAL REVIEW AND PERMIT PROCESS,
AND PROVIDING FOR ONE OPEN-RECORD HEARING AND ONE
CLOSED-RECORD APPEAL PURSUANT TO THE REQUIREMENTS OF
THE WASHINGTON STATE REGULATORY REFORM ACT OF 1995.

WHEREAS, the Washington State Regulatory Reform Act (Chapter 347, Laws of 1995) requires that the Town establish a process for the review of project-permit applications that combines any environmental review process with the procedure for the review of project permits and that provides for no more than one open-record hearing and one closed-record appeal on such permits, except for the appeal of a determination of significance; and

WHEREAS, the Act also requires that the Town establish an integrated and consolidated project-permit process that includes certain notifications to the applicant and the public and that requires completion of the project review within time limits; and

WHEREAS, the Town has established administrative and procedural ordinances governing the requirements for project-permit applications; **NOW THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON, AS FOLLOWS:

Section 1. Definitions.

Board: the Board of Adjustment of the Town of Beaux Arts Village, Washington.

Closed-record appeal: an administrative appeal on the record to the Town Council following an open-record hearing on a project-permit application. The appeal must be on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

Council: the Town Council of the Town of Beaux Arts Village, Washington.

Open-record hearing: a hearing conducted by the Town Board of Adjustment or the Town Council, as appropriate, that creates the Town hearing record through testimony and submission of evidence and information.

Project-permit application: any application for a land use or development permit as required by the Town for a project action, including, but not limited to, (a) variances, (b) short plats, subdivisions, boundary-line revisions, (c) shoreline substantial-development permits, and (d) conditional-use permits, but excluding those matters listed in Section 13 of this ordinance.

Public meeting: a meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the Town's decision. A public meeting may include, but is not limited to, a regular or special meeting of the Board of Adjustment or the Town Council at which the project is discussed but no testimony is received nor action taken. A public meeting does not include an open-record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the Town's project-permit-application file.

Town: the Town of Beaux Arts Village, Washington.

Section 2. Project-Permit Applications Requiring Review by the Board. The Board reviews requests for variances at a public hearing.

Section 3. Project-Permit Applications Requiring Review by the Council. The Council reviews applications for boundary-line revisions, short subdivisions, substantial-development permits, and conditional-use permits at a public hearing.

Section 4. Consolidation of Project-Permit Application Reviews. Upon written request by the applicant, any two or more project-permit applications that require review by the Board or Council may be consolidated for review before the appropriate body.

Section 5. Determination of Completeness of Application.

- a. Within twenty-eight (28) days after receiving a project-permit application, the Town shall mail or provide in person a written determination stating either:
 1. That the application is complete; OR
 2. That the application is incomplete and outlining what is necessary to make the application complete.
- b. The determination shall, to the extent known to the Town, identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application.
- c. The project-permit application shall be considered complete for the purposes of this section when it meets the procedural submission requirements of the Town ordinance governing the type of permit for which the application is made and shall be considered sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently.
- d. A determination of completeness shall not preclude the Town from requesting additional information or studies if new information is required or if there are substantial changes in the proposed action.
- e. The determination of completeness may include other information that the Town has reason to include.

f. After a determination that the initial application is incomplete, the Town shall issue a new determination of completeness within fourteen (14) days after an applicant has submitted the additional information requested.

g. An application shall be deemed complete under this section if the Town does not provide a written determination to the applicant that the application is incomplete.

Section 6. Designation of Representative. The Town may require the applicant for a project permit to designate a single person or entity to receive the determinations and notices required by this ordinance.

Section 7. Public Notice of Application.

a. The Town shall provide a public notice of application within fourteen (14) days after the determination of completeness for any project-permit application that requires review at a public hearing by the Board or Council. This notice of application shall include:

1. The date of application, the date of the notice of determination of completeness for the application, and the date of the public notice of application.
2. A description of the proposed project action, a list of the project permits included in the application, and, if applicable, a list of any studies requested by the Town.
3. The identification of other permits known to the Town to be needed, but not included in the application.
4. The identification of existing environmental documents that evaluate the proposed project and where the application and any studies can be reviewed.
5. A statement of the public comment period, which shall be not less than fourteen (14) days nor more than thirty (30) days following the date of public notice of application, and a statement of the right of any person to comment on the application, to receive notice of and to participate in any hearings, to request a copy of the decision once made, and to appeal the decision. The Town shall accept public comments at any time prior to the closing of any open-record public hearing, if any, or prior to the decision on the project permit.
6. The date, time, place, and type of hearing, if applicable and scheduled at the time the public notice of application is prepared..
7. A statement of the preliminary determination, if one has been made at the time of public notice, of consistency with the Town's development regulations and Comprehensive Plan.
8. Any other information determined appropriate by the Town.

b. The Town shall post and publish the public notice of application as required by Town ordinance.

c. Copies of the public notice of application shall be forwarded to all local, state, or federal departments or agencies that have jurisdiction over any actions relating to a project-permit application.

Section 8. Environmental Review.

a. Any necessary environmental review related to a project-permit application shall be consolidated with the review of the project-permit application. Actions that are categorically exempt under the rules adopted by the Washington State Department of Ecology do not require environmental review and may not be conditioned or denied under the State Environmental Policies Act.

b. In its decision whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with both the jurisdiction and the environmental expertise with regard to a specific environmental impact, the Town may consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the Town shall base or condition its project approval on compliance with the existing rules or laws of that agency.

c. Nothing in this section limits the ability of the Town in its review or mitigation of a project to adopt or rely otherwise on environmental analysis and requirements.

Section 9. Open-Record Public Hearings.

a. Before acting on one of the project-permit applications set forth in Section 2 and 3 of this ordinance, the appropriate hearing body, whether Board or Council, shall conduct an open-record public hearing. The burden of proof shall be on the applicant. The application must be supported by proof that it conforms to the applicable elements of the Town's development regulations, Comprehensive Plan and Zoning Code.

b. Prior to the open-record public hearing, the hearing body shall cause to be prepared and submitted a single report describing all prior decisions or recommendations made that affect the project permit under consideration. The report shall state any mitigation measures required or proposed and shall include or append any threshold environmental determination other than a determination of significance.

c. In addition to any rules adopted by the hearing body, the following rules of procedure shall apply:

1. A member of the hearing body who is disqualified shall be counted for purposes of forming a quorum. Any member who is disqualified shall make full disclosure to the

audience, abstain from expressing any opinion or voting on the proposal, and physically leave the hearing room.

2. A member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed the evidence received.

3. Any member of the hearing body may view the site to which the application pertains, with or without notice to the parties.

4. Prior to hearing evidence on the application, each member of the Board shall state the time, manner, and circumstances of any view of the site to which the application pertains and of all *ex parte* communications pertaining to the application.

5. The presiding officer shall describe, or cause to be described, for the record all written materials relating to the application that have been received by the hearing body.

6. When the presiding officer has closed the public portion of the hearing, the hearing body shall openly discuss the issue and may further question staff or a person submitting information, provided an opportunity for rebuttal is provided.

7. Following the hearing, the hearing body shall approve, approve with conditions, or deny the application. On appeal, the hearing body shall affirm, reverse, or remand the decision that is on appeal.

8. The presiding officer may vote on any issue before the hearing body.

9. The decision of the hearing body shall be deemed to have been entered into the public record at the time a motion is passed that sets forth the decision.

10. The decision of the hearing body shall be substantiated in written findings and conclusions based on the testimony and written exhibits submitted at the public hearing. The date that such findings are approved shall be the date of action on the application. The time for appeal from the decision shall commence at such time.

11. The Town shall provide a notice of decision, including the written findings and conclusions and a statement of any threshold determination made under SEPA. The notice of decision shall be provided to the applicant and to any person who requests notice of the decision. If the notice is delivered by mail, notification will be deemed complete three days after mailing by regular mail.

12. Any aggrieved party may file a motion for reconsideration. Such request for reconsideration must be filed within fourteen (14) days of notification of the decision. The hearing body shall consider the request for reconsideration at its next regular meeting and may either grant or deny the request for reconsideration. If the hearing

body grants the request for reconsideration, no action shall be taken upon the permit application until after a new open-record public hearing has been scheduled with notice given as in the case of a new application, together with notice to all persons entitled to notice of the original decision. Requests for reconsideration shall only be granted if at least one of the following elements is established:

- (a) The application has been substantially modified. Modifications that address concerns expressed by the hearing body in denying an application shall be given special consideration.
- (b) An irregularity in the original open-record public hearing prevented the applicant from receiving a fair hearing.
- (c) New material evidence is discovered which the party applying for reconsideration could not have reasonably discovered and produced at the hearing.
- (d) One or more errors in law were objected to at the time of the hearing by the party filing the request for reconsideration and the objection is found to have merit.

Section 10. Joint Public Hearings.

a. At the written request of the applicant, the Town may combine any public hearing on a project-permit application that requires review by either the Board or the Council with any hearing that may be held on the proposed action by another local, state, regional, federal, or other agency, provided:

- 1. The hearing is held within the Town limits.
- 2. The hearing can be held within the time periods for deciding the application or the applicant agrees to a different schedule.
- 3. The other agency is not expressly prohibited by statute from participating in a joint public hearing.
- 4. Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements.
- 5. The other agency has received the necessary information about the proposed project in enough time to hold its hearing at the same time as the hearing body.

Section 11. Deadline for Final Decision by the Town.

a. Except as otherwise provided in this section, the Town shall issue its notice of final decision on a project-permit application within one hundred twenty (120) days after the Town has notified the applicant that the application is complete. In determining the number of days that have elapsed after the Town has notified the applicant that the application is complete, the following periods shall be excluded:

- 1. Any period during which the Town has requested that the applicant correct plans, perform required studies, or provide additional required information. The period shall

be calculated from the date the local government notifies the applicant of the need for additional information until the earlier of the date the Town determines whether the additional information satisfies the request for information or fourteen (14) days after the date the information has been provided to the Town.

2. Any period during which an environmental impact statement is being prepared following a determination of significance.

3. Any extension of time mutually agreed upon by the applicant and the Town.

b. The time limits set forth in this section shall not apply if a project-permit application requires an amendment to the Town's Comprehensive Plan or to Town ordinances or is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete as set forth in Section 2 of this ordinance.

c. If the Town is unable to issue its final decision within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.

Section 12. Appeals.

a. The action of the Board on a project-permit application shall be final and conclusive, unless, within fourteen (14) days from the date of the action, the original applicant or an adverse party makes application to the Council for an appeal.

b. The action of the Council on a project-permit application shall be final and conclusive, unless, within fourteen (14) days from the date of the action, the original applicant or an adverse party files a land-use petition in a court of competent jurisdiction..

Section 13. Exclusions. The following matters are excluded from the requirements of this ordinance:

- a. Building, mechanical, and street-opening permits.
- b. Street vacations.
- c. Approvals relating to the use of public areas or facilities.
- d. Landmark designations.
- e. Amendments to the Comprehensive Plan.
- f. The adoption or amendment of ordinances or regulations relating to land use and development.
- g. Other project permits, whether administrative or subject to review by the Board or Council, that the Council by ordinance or resolution has determined present special circumstances that warrant a review process different from that provided by this ordinance.

Section 14. Validity. If any section, paragraph, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses, or phrases subsequently may be found by competent authority to be unconstitutional or invalid.

Section 15. Effective Date. This ordinance shall take effect five (5) days after its passage and publication.

PASSED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE on the 18th day of March, 1997.

Mayor

ATTEST:

APPROVED AS TO FORM:

Administrative Coordinator

Town Attorney

I certify that copies of the above ordinance were posted as required by law in the Town of Beaux Arts Village, Washington, on the ____th day of _____, 199__.

Sue Ann Spens
Administrative Coordinator