

ARTICLE IX: STATUTORY ZONING VESTED RIGHTS

DIVISION 80 PURPOSE & DEFINITIONS

SECTION 80-01 PURPOSE.

The purpose of this article is to implement the provisions of General Statutes 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site-specific development plan.

A. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.

B. These provisions recognize the concept of vested right, which provide the right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan or an approved phased development plan.

SECTION 80-02 DEFINITIONS

Unless otherwise specifically provided or unless clearly required by the context, the following terms shall have the meaning indicated, when used in this article:

A. Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan.

B. Property. Any real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.

C. Approval Authority. Board of Commissioners, Zoning Administrator, or the Board of Adjustment designated as being authorized to grant the specific land use permit that constitutes a site-specific development plan.

D. Site-Specific Development Plan. A plan of land development submitted to the Town for purposes of obtaining a zoning permit, special use permit, or a subdivision approval permit. Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site - specific development plan.

E. Zoning Vested Right. A right pursuant to G.S. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.

SECTION 80-03 ESTABLISHMENT OF A ZONING VESTED RIGHT

(a) A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the permit issuing authority (Board of Commissioners, Zoning Administrator, or Board of Adjustment) of a site specific development plan, following notice and public hearing.

(b) The permit issuing authority may approve a site-specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.

(c) Notwithstanding paragraphs (a) and (b) above, approval of a site-specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

(d) A site-specific development plan shall be deemed approved upon the effective date of the approval authority's action relating thereto.

(e) The establishment of a zoning vested right shall not preclude the application of overlay zoning that impose additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulations by the Town. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site-specific development plan upon the expiration of termination of the vested right in accordance with this article.

(f) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

SECTION 80-04 APPROVAL PROCEDURES AND APPROVAL AUTHORITY

(a) Except as otherwise provided in this section, an application (special use permit, major subdivision plat, rezoning) for site-specific development plan approval shall be processed in accordance with the procedures established by the Zoning Ordinance and Subdivision Regulations and shall be considered by the designated approval authority for the specific type of land use permit for which application is made.

(b) Notwithstanding the provisions of subsection 130-4.1, if the authority to issue a particular land use permit has been delegated to the Zoning Administrator, in order to

obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the Board of Commissioners, Board of Adjustment, or Zoning Administrator following notice and a public hearing as provided in the applicable section of this ordinance.

(c) In order for a zoning vested right to be established upon approval of a site-specific development plan, the applicant must indicate at the time of application, on a form to be provided by the Town, that a zoning vested right is being sought.

(d) Each map, plat, site plan, or other document evidencing a site-specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under NC G.S. 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

(e) Following approval or condition approval of a site-specific development plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

(f) Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the land use ordinance.

SECTION 80-05 DURATION

(a) A zoning right that has been vested as provided in this article shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.

(b) Upon issuance of a building permit, the expiration provisions of G.S. 160A-418 and the revocation provision of G.S. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running out of the time while a zoning vested right under this section is outstanding.

SECTION 80-06 TERMINATION

A zoning right that has been vested as provided in this article shall terminate:

A. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;

B. With the written consent of the affected landowner;

- C. Upon findings by the appropriate approval authority, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plans;
- D. Upon payment of the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid.
- E. Compensation shall not include any diminution in the value of the property, which is caused by such action;
- F. Upon findings by the approval authority, after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or
- G. Upon the enactment or promulgation of a State or Federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority may modify, after notice and a hearing, the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the plan.

SECTION 80-07 VOLUNTARY ANNEXATION

A petition for annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. 160A-385.1 or G.S. 153A-344.1. A statement that declares that no zoning vested right has been established under G.S. 160A-385.1 or G.S. 153A-344.1, or the failure to sign a statement declaring whether or not zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

SECTION 80-08 LIMITATIONS

Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 160A-385.1.