

ARTICLE 19. VESTED RIGHTS PROVISIONS

Section 19-1: Purpose

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

Section 19-2: Establishment of Zoning Vested Right

- (A) A zoning vested right shall be deemed established upon the valid approval or conditional approval, by the Board of Commissioners, of a site specific development plan, following notice and public hearing.
- (B) The approving 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 sections (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 or ordinance relating thereto.
- (E) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes 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 regulation by the Town, including but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site development plan upon expiration or termination of the vested right in accordance with this section.
- (F) A zoning vested right is not a personal right, but shall attach to and run with the applicable property.

Section 19-3: Approval Procedures and Approval Authority

- (A) Except as otherwise provided in this Section, an application for site specific development plan approval shall be processed in accordance with the procedures established by Ordinance and shall be considered by the designated approval authority for the specific type of zoning or land use permit or approval for which application is made.
- (B) Notwithstanding the provisions of Section (A) above, if the authority to issue a particular zoning or land use permit or approval has been delegated by Ordinance to a board, committee, or administrative official other than the Board of Commissioners, Board of Adjustment, or other planning agency designated to perform any and all of the duties of the Board of Adjustment, 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, following notice and a public hearing as provided in NCGS 160A-364.
- (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 NCGS 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until _____."
- (E) Following approval or conditional approval of a site specific development plan, nothing in this Section 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 Section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval of the Zoning Ordinance.

Section 19-4: Duration

- (A) A zoning right that has been vested as provided in this Section shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to Section (B) below. 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) Notwithstanding the provisions of Section (A) above, the approval authority may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including but not limited to, the size of the development, the level of investment, the need for or the desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific development plan is approved.
- (C) Upon issuance of a building permit, the expiration provisions of NCGS 160A-418 and the revocation provisions of NCGS 160A-422 shall apply, except that a building permit shall not expire or be revoked because of a running of time while a zoning vested right under this Section is outstanding.

Section 19-5: Termination

A zoning right that has been vested as provided in this Section 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 finding by the Board of Commissioners, by Ordinance after notice and 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 plan;

- (D) Upon payment to 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, 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. Compensation shall not include any diminution in the value of the property which is caused by such action;
- (E) Upon finding by the Board of Commissioners, by Ordinance 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
- (F) Upon 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 the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the plan, by Ordinance after notice and a hearing.

Section 19-6: Voluntary Annexation

A petition for annexation filed with the Town under NCGS 160A-31 or NCGS 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested rights with respect to the properties subject to the petition has been established under NCGS 160A-385.1 or NCGS 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 19-7: Limitations

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

Section 19-8: Repealer

In the event that NCGS 160A-385.1 is amended, this Section shall be deemed amended and subject to the amended provisions.

