

ARTICLE 14

VESTED RIGHTS PROVISIONS

14.1 Purpose

The purpose of this section is to implement the provisions of G.S. 160A-385.1 (Vested Rights Statute) under which a vested right is established upon the approval of a site specific development or phased development plan as those terms are defined in Article 3 of this Ordinance.

14.2 Establishment Of A Vested Right

1. A zoning vested right shall be established upon the valid or conditional approval by the applicable approval authority, following notice and public hearing, of a site specific development or phased development plan.
2. The authority may approve a site specific development or phased development plan upon such terms and conditions as may be reasonably necessary to protect the public health, safety, and welfare.
3. Notwithstanding sections 1 and 2 above, approval of a site specific development or phased development plan on the condition that a variance be obtained shall not confer a vested right unless and until such a variance is in fact obtained.
4. A site specific development or phased development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.
5. The establishment of a zoning vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity or use, or ordinances and regulations which 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 subject to an approved site specific development or phased development plan only upon the expiration or termination of the vested right in accordance with the provisions of this Article and/or the Vested Rights Statute.
6. A vested right is not a personal right and shall attach to and run with the applicable property such that all successors in interest to the original landowner shall be entitled to exercise all such rights.

14.3 Approval Procedures And Approval Authority

1. Except as otherwise provided in this section, an application for site specific development or phased development plan approval shall be processed in accordance with the procedures established by this Ordinance and shall be considered by the applicable approval authority for the specific type of approval for which application is made.
2. Following approval or conditional approval of a site specific development or phased 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.

14.4 Duration And Termination

1. A vested zoning right shall remain vested for two (2) years and shall not be extended by any amendments or modifications to the approved plan unless expressly provided for by the approval authority at the time any such amendment or modification to the plan is approved.
2. Notwithstanding section 1 above, the applicable approval authority may provide that rights shall be vested for a period exceeding two (2) but not more than three (3) years upon written findings that all relevant circumstances including, but not limited to, the size and phasing of the development, the level of investment, the need for the development, economic cycles and market conditions warrant a vesting period of greater than two (2) years.
3. Upon the issuance of a building permit, the provisions of G.S. 160A-418 and G.S. 160A-422 shall apply except that a permit shall not expire or be revoked because of the running of time while a vested right remains outstanding.
4. A vested right shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.
5. Nothing in this Article shall prohibit the revocation of the original approval or other remedies for failure to comply with the applicable terms and conditions of the approval or of the applicable provisions of this Ordinance.

14.5 Subsequent Changes Prohibited

An established vesting right precludes any zoning action by the Town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the approved plan except:

1. With the written consent of the affected landowner;

2. Upon findings by the applicable approval authority, by ordinance following 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 development were to proceed as set forth in the approved plan;
3. To the extent that the affected landowner is compensated 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, 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 any such action by the Town;
4. Upon findings, by ordinance following notice and a hearing, that the landowner or his representative intentionally provided inaccurate information or made material misrepresentations which made a difference in the approval of the site specific development or phased development plan; or
5. Upon the enactment or promulgation of a state or federal law or regulation precluding the development contemplated by the approved plan. In that event, the Town may modify the affected provisions of the plan upon a finding, by ordinance following notice and a hearing, that the change in state/federal law or regulation had a fundamental effect on the plan.

14.6 Annexation By Petition

A petition for annexation to the Town made under the provisions of G.S. 160A-31 or -58.1 shall contain a signed statement declaring whether any zoning vested right with respect to the properties subject to such a petition has been established in accordance with the Vested Right Statute or the county equivalent, G.S. 153A-344.1. A statement to the effect that no such vesting right has been established, or the failure to sign a statement declaring whether a vesting right has been established, shall be binding on the landowner.

14.7 Limitations

Nothing in this Article is intended to or shall be deemed to preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in any particular case or that a compensable taking has occurred.

Amended 8/27/12