

ARTICLE 14 VESTED RIGHTS PROVISIONS

14.1 Purpose

The purpose of this section is to implement the provisions of G.S. 160D-108 (“Vested Rights Statute”) under which a vested right is established upon an approval secured as specified in NCGS 160D-108.

14.2 Establishment Of A Vested Right

1. A zoning vested right shall be established upon the valid or conditional approval of development as specified in NCGS 160D-108 by the applicable approval authority, following notice and public hearing.
2. The authority may approve development as specified in NCGS 160D-108 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, per NCGS 160D-108(3)(c), a variance shall not constitute a Site-Specific Vesting Plan and approval of a Site-Specific Vesting Plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained.
4. An approval secured as specified in NCGS 160D-108 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 approval as specified in NCGS 160D-108 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 development as specified in 160D-108 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 development as specified in 160D-108, 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. Per NCGS 160D-108(d)(3)(a), a vested right for a site-specific vesting plan shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the Town.
2. Notwithstanding section 1 above, per NCGS 160D-108(d)(3)(a), the applicable approval authority may provide that rights regarding a site-specific vesting plan shall be vested for a period exceeding two years, but not exceeding three years, if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions, or other considerations. This determination shall be in the discretion of the local government and shall be made following the process specified for the particular form of a site-specific vesting plan involved in accordance with NCGS 160D-108(d)(3)(c).
3. Development Approvals: Unless otherwise specified in this Ordinance, the duration of Development Approvals shall be one year per NCGS 160D-108(d)(2) and 160D-403(c).
4. Multiphase Developments: Per NCGS 160D-108(d)(4), a Multiphase Development shall be vested for 7 years.
5. Relation to building permits. A right vested as provided in NCGS 160D-108(d)(3) 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. Upon issuance of a building permit, the provisions of G.S. 160D-1111 and G.S. 160D-1115 shall apply, except that the permit shall not expire or be revoked because of the running of time while a vested right under exists as described in NCGS 160D-108(d)(3)(b).
6. Development Agreements: Per NCGS 160D-108(d)(5), a vested right for a Development Agreement is indefinite; a reasonable duration may be specified in a Development Agreement approved under NCGS 160D Article 10 '*Development Agreements*'.

7. 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 development as specified in 160D-108; 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 G.S. 160D-108. 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.