

ARTICLE 23. VESTED RIGHT PROVISIONS

Section 23-1: Purpose

The purpose of this section is to provide for the establishment of a zoning vested right, as created by NCGS 160A-385.1, upon the approval of a site specific development plan.

Section 23-2: Establishment of a Zoning Vested Right

- (A) A zoning vested right is established upon the valid approval, or conditional approval, by the Board of Aldermen of a site specific development plan, following notice and 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 subsections (A) and (B), approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right until the necessary variance is obtained.
- (D) A site specific development plan is approved upon the effective date of the approval authority's action or Ordinance relating thereto.
- (E) 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 city, 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 specific development plan upon the 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. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

Section 23-3: 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 subsection (A), if the authority to issue a particular zoning or land use permit or approval has been delegated to a board, committee or administrative official other than the Board of Aldermen or Board of Adjustment, or other planning agency designated to perform 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 Aldermen or Board of Adjustment, following public notice and hearing in accordance with 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 Administrator, that a zoning vested right is 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 established a zoning vested right under NCGS 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."
- (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 or the Zoning Ordinance.

Section 23-4: Duration

- (A) A vested zoning right shall remain vested for a period of two years unless the period is extended in accordance with the subsection (B) below. This vesting shall not be extended by amendments or modifications to a site specific development plan unless the approval authority extends it upon approval of the amendment or modification.

- (B) Notwithstanding subsection (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 by relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be at 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 the running of time while a zoning vested right under this section is outstanding.

Section 23-5: 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 findings by the Board of Aldermen, 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 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 and architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, 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 findings by the Board of Aldermen, 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 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 the affected provisions, upon a finding that the change has a fundamental effect on the plan, by Ordinance after notice and a hearing.

Section 23-6: Voluntary Annexation

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

Section 23-7: Limitations

Nothing in this section shall create any vested right other than those established pursuant to NCGS 160A-385.1.

Section 23-8: Repealer

In the event that NCGS 160A-385.1 is repealed, Article 23 of this Ordinance shall be deemed repealed.