

CHAPTER 15. VESTED RIGHTS

SECTION 15.1. PURPOSE AND INTENT

This section is intended to implement NCGS Section 160D-108 with respect to the establishment of zoning vested rights for landowners or applicants who have received a development approval from the County.

SECTION 15.2. VESTED RIGHTS DEFINED

As used in this Ordinance, a zoning vested right is defined as the right to undertake and complete the development and use of land under the terms and conditions of a development approval issued by the County.

SECTION 15.3. EFFECT OF A VESTED RIGHT

- A.** Development approvals that have an established vested right in accordance with NCGS Section 160D-108 and this section shall preclude any action by the County that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property authorized by the development approval, except where a change in State or federal law occurs and has a retroactive effect on the development or use.
- B.** Except when subject to sub-section (C) below, amendments to this Ordinance shall not be applicable to any of the following development approvals after they are vested:
1. Building or uses of land for which a development permit application has been submitted and approved in accordance with this Ordinance and NCGS Section 143-755;
 2. Subdivisions of land for which a subdivision application has been submitted and approved in accordance with this Ordinance and NCGS Section 143-755;
 3. A site-specific vesting plan approved in accordance with this Ordinance and NCGS Section 160D-108.1;
 4. A multi-phase development approved in accordance with this Ordinance and NCGS Section 160D-108; and
 5. A vested right established by the terms of an approved development agreement in accordance with this Ordinance and Article 10 of Chapter 160D of the North Carolina General Statutes.
- C.** Amendments to this Ordinance shall apply to vested development approvals if:
1. A change to State or federal law occurs and has a retroactive effect on the development or use;
 2. There is written consent to be subject to the amendment by the landowner;
 3. The development approval expires; or
 4. The development is not undertaken or completed in accordance with the approval.

SECTION 15.4. ESTABLISHMENT OF A VESTED RIGHT

A vested right may only be established following an approval of a development application in accordance with this section and the applicable requirements in the North Carolina General Statutes. The following section details the ways in which a vested right may be established.

A. COMMON LAW VESTED RIGHTS

1. DEFINED

A common law vested right establishes the right to undertake and complete the development and use of property on substantial expenditures in good faith reliance on a valid governmental approval. Such approvals include, but are not limited to:

- i. Zoning permits;
- ii. Sign permits;
- iii. Building permits;
- iv. Special use permits;
- v. Certificates of zoning compliance; and
- vi. Preliminary plats.

2. ESTABLISHMENT

A request for a determination of a common law vested right will be reviewed and acted upon by the Administrator in accordance with the requirements and procedures set forth in this Chapter and Section 4.3, Determination.

3. APPLICATION

The applicant shall provide satisfactory proof that each of the following standards are met in order to establish a common law vested right:

- i. The applicant has, prior to the adoption or amendment of an ordinance, made expenditures or incurred contractual obligations amounting to 25 percent or more of the total project cost not including any land costs.
- ii. The obligations and/or expenditures were incurred in good faith.
- iii. The obligations and/or expenditures were made in reasonable reliance on and after the issuance of a valid governmental permit, if such permit is required; provided however, a mistakenly-issued governmental permit shall not give rise to a common law vested right.
- iv. The amended or newly adopted ordinance is a substantial detriment to the applicant.

B. ISSUANCE OF A BUILDING PERMIT

Issuance of a building permit by the County in accordance with the applicable standards in this Ordinance, the County Code of Ordinances, and applicable State law shall entitle the building permit holder to vested rights to develop the proposal as identified in the approved building permit, subject to the following standards:

1. The applicant shall not be required to file for a determination to establish common law vested rights to establish or maintain vested status during the time period for which the building permit remains valid.
2. The owner has a vested right only as long as the building permit remains valid and only for the work approved by the building permit.
3. The building permit shall expire six months after issuance if work has not commenced.
4. The building permit shall expire after work commences if there is a 12-month period of no work.
5. The building permit may be revoked for any substantial departure from the approved plans, failure to comply with any applicable local or State law (not just the building code and UDO), and any misrepresentations made in securing the permit.
6. Building permits mistakenly issued may also be revoked.
7. If the building permit expires or is revoked, the vested right based on it is also lost.

C. STATUTORY VESTED RIGHTS

Development permits for a building, use of a building, use of land, or subdivision of land establishes statutory vested rights, which shall entitle the permit holder to vested rights to develop the proposal as identified in the approved permit, subject to the following standards:

1. Issuance of a building permit is not considered a development permit, and the vesting term shall only continue in accordance with Section 15.4.B, Issuance of a Building Permit.
2. A development permit is valid for one year after issuance, unless otherwise specified by statute, and the applicant is vested in that permit for the term of validity.
3. If the applicant fails to substantially commence authorized work within one year, then the development permit and vesting expire.
4. With the substantial commencement of authorized work under a valid permit, vesting continues.
5. The development permit and vesting also expire after substantial work commences if there is a two-year period of intentional and voluntary discontinuance of work after commencement unless otherwise specified by statute.

D. SITE-SPECIFIC VESTING PLAN**1. DEFINED**

- i. For the purposes of this section, a site-specific vesting plan is defined as a plan of land development submitted to the County for purposes of obtaining approval.
- ii. A site-specific vesting plan must provide, with reasonable certainty, all of the following:
 - 01. The boundaries of the development;
 - 02. Topographic and natural features affecting the site;
 - 03. The approximate location of proposed buildings, structures, and other improvements;
 - 04. The approximate dimensions, including height, of proposed buildings and other structures;
 - 05. The approximate location of all existing and proposed infrastructure on the site, including water, sewer, streets, and pedestrian ways;
 - 06. The type or types of proposed land uses; and
 - 07. The density or intensity of development.
- iii. A variance, sketch plan, concept plan, or any other document that fails to describe with reasonable certainty the type and intensity of use for a specific lot or lots of property shall not constitute a site-specific vesting plan.
- iv. The following development approvals constitute a site-specific vesting plan:
 - 01. A concept plan or site plan associated with a conditional rezoning application (see Chapter 12);
 - 02. A master plan associated with a planned development;
 - 03. Preliminary plats approved in accordance with Chapter 19;
 - 04. Site plans approved in accordance with Chapter 4; and
 - 05. Special use permits approved in accordance with Chapter 13.

2. ESTABLISHMENT

Development approvals identified by this Ordinance as site-specific vesting plans shall be granted a vested right to develop for a maximum period of two years from the date of the approval, provided the development subject to the approval complies with all applicable terms and conditions.

3. EXTENSION

- i. The two-year vesting duration of a site-specific vesting plan may be extended up to five years from the date of the approval only in accordance with Section 15.6, Vested Rights Certificate.
- ii. Site-specific vesting plans meeting the definition of a multi-phase development shall be vested in accordance with Section 15.4.E, Multi-Phase Development Plan.

E. MULTI-PHASE DEVELOPMENT PLAN

- 1. A multi-phase development plan that occupies at least 25 acres of land area, is subject to a master plan that depicts the types and intensities of all uses as part of the approval and includes more than one phase shall be considered as a multi-phase development plan that is granted a vested right to develop for a period of seven years from the date of approval of the first site plan associated with the development.
- 2. Vesting shall commence upon approval of the site plan for the first phase of the development.
- 3. The vested right shall remain in effect provided the development does not expire and provided it complies with all the applicable terms and conditions of the approval.

F. DEVELOPMENT AGREEMENT

A development agreement shall be vested in accordance with the vesting term identified in the development agreement.

SECTION 15.5. TERMINATION

- 1. Vested rights established in accordance with this Ordinance shall run with the land.
- 2. In no instance shall vesting status extend beyond the maximum duration for the type of development application approval.

3. In no instance shall the vesting status of a development approval continue after the development approval expires or if the development approval is revoked for failure to comply with the terms of the approval or of this Ordinance.
4. In no instance shall the vesting status of a development approval continue after it is determined that the development approval was based upon intentional inaccurate information or material misrepresentations.
5. In no instance shall vested rights continue if the Board of Commissioners finds, after a duly noticed public hearing, that natural or man-made hazards resulting from the development would result in a serious threat to public health, safety, or welfare if the development were to be continued or completed.
6. In the event of commenced but uncompleted work associated with a development approval, vested rights shall expire within 24 months of the discontinuance of work. This 24 month period shall not include the time associated with work stoppage resulting from an appeal or litigation.

B. LIMITATIONS

1. The establishment of a vested right does not preclude the County's application of overlay zoning district requirements or other development regulations that do not affect the type of land use, its density, or intensity.
2. A vested right shall not preclude the application of changes to building, fire, plumbing, electrical, or mechanical codes made after the development approval where a vested right was established.

SECTION 15.6. VESTED RIGHTS CERTIFICATE**A. PURPOSE**

The purpose for this section is to establish a clear procedure for an applicant to request vesting or protection from changes in this Ordinance that take place after approval of the application but prior to completion of an approved site-specific vesting plan.

B. APPLICABILITY

1. A vested right may be established, in accordance with Section NCGS 160D-108(d), and this section.
2. A vested rights certificate shall be limited to development included in a site-specific vesting plan. For the purposes of this section, a site-specific vesting plan shall be one of the following development approvals:
 - i. A concept plan or site plan associated with a conditional rezoning;
 - ii. A master plan associated with a planned development;
 - iii. Preliminary plat;
 - iv. Site plan; or
 - v. Special use permit.
3. The public hearing for a vested rights certificate shall be conducted concurrently or following the public hearing associated with a conditional rezoning application, planned development, preliminary plat, or special use permit, at the discretion of the Board of Commissioners.
4. The public hearing for a vested rights certificate associated with a site plan shall be conducted following approval of the site plan in accordance with Section 4.2, Site Plans.

C. DECISION

1. After the conclusion of a public hearing, the Board of Commissioners shall decide the vested rights certificate application in accordance with the standards in Section 12.6.D, Review Criteria.
2. The decision shall be one of the following:
 - i. Approval of the vested rights certificate as proposed;
 - ii. Approval of a revised vested rights certificate; or
 - iii. Denial of the vested rights certificate.
3. The vested rights certificate is deemed established upon the approval by the Board of Commissioners of a qualifying site-specific vesting plan to which the application for a vested rights certificate was attached.

D. REVIEW CRITERIA

An application for a vested rights certificate shall be approved if:

- 1.** The vested rights certificate is for an approved site-specific vesting plan;
- 2.** The development is valid and unexpired;
- 3.** Any required variances have been obtained;
- 4.** The request is in accordance with NCGS Section 160D-108; and
- 5.** The application is warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations.

E. EFFECT

- 1.** A vested rights certificate shall be approved prior to issuance of a building permit.
- 2.** Each document used to establish a site-specific vesting plan shall bear the following notation:

“Approval of this application establishes a zoning vested right under NCGS Section 160D-108, as amended. Unless terminated at an earlier date, the vested right shall be valid until _____(date).”

- 3.** The establishment of a vested right shall not preclude the application of overlay zoning district provisions that impose additional requirements but do not affect the allowable type and intensity of use, or through ordinances that are general in nature and are applicable to all property subject to land use regulation by the County, including, but not limited to: building, fire, plumbing, electrical, and mechanical codes.

F. DURATION

- 1.** In no instance shall a vested right certificate provide a vested right for a period of longer than five years from the date of approval.
- 2.** A vested right certificate shall expire and become null and void:
 - i.** At the end of the applicable vesting period; or
 - ii.** If a building permit application for the development subject to the certificate is not submitted within two years of the approval of the vested rights certificate associated with a special use permit, preliminary plat, or site plan, or five years of the approval of a vested rights certificate associated with a conditional rezoning; or
 - iii.** Upon a finding by the Board of Commissioners after public notice and a public hearing, that:
 - 01.** Natural or man-made hazards on or in the immediate vicinity of the land, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated;
 - 02.** The landowner or landowner’s representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval of the site-specific vesting plan;
 - 03.** The landowner failed to comply with any condition imposed upon the establishment of the site specific vesting plan or vested rights certificate; or
 - iv.** Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant fees incurred after approval of the certificate by the County, together with interest at the legal rate until paid. Compensation shall not include any diminution in the value of the land which is caused by such action; or
 - v.** With the written consent of the affected landowner.
- 3.** Upon enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan, the Board of Commissioners may modify the affected provisions of the certificate by ordinance, if after conducting a hearing, it finds the changed conditions created by the change in the State or federal law have a fundamental effect on the site-specific vesting plan.

SECTION 15.7. APPEAL**A. ADMINISTRATOR'S DECISION**

Appeal of a decision by the Administrator on a vested rights determination shall be reviewed and decided by the Board of Adjustment in the nature of certiorari and in accordance with NCGS Section 160D-405, and Section 14.1, Administrative Appeal.

B. BOARD OF COMMISSIONER'S DECISION

A legislative decision of the Board of Commissioners with regard to a vested right certificate application may be challenged by the filing of a declaratory judgement action in the Superior Court of Moore County in accordance with Section 14.3, Challenge to Legislative Decision.