

CHAPTER 6. VESTED RIGHTS

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Sec. 9-6001. Statutory authorization and purpose.

- (a) *Authorization.* The Legislature of the State of North Carolina has required local governments to provide for the establishment of certain vested rights for landowners and/or developers after approval of a site specific development plan in accordance with the authority set forth in G.S. 160A-385.1.
- (b) *Purposes.* The purpose of this chapter is to implement the provisions of G.S. 160A-385.1. Application for vested rights pursuant to this chapter is an optional proceedings in order to insure reasonable certainty, stability and fairness in the land use planning process and protect the significant investment by a landowner or developer in site evaluation, planning, development costs, consultant fees or other related expenses. Landowners may continue to develop land through the normal process of obtaining any required zoning or subdivision approvals and building permits. However, in situations involving substantial planning costs, the landowner may find it convenient to protect the investment from subsequent changes in applicable zoning or subdivision regulations by having his zoning development rights vested through the procedures of this chapter. Compliance with these requirements is not a condition precedent to the development of property which is determined solely by the various permits or other approval under the applicable building code regulations established under chapter 1, and 2 the subdivision regulations established under chapter 3, the zoning regulations established under chapter 4 and flood damage regulations established under chapter 5 of Part 9 of this Code. Likewise, the establishment of vested rights does not give the landowner the right to disregard applicable development standards requirements and regulations in effect at the time the rights become vested.

(Ord. 93-10, passed 3-1-93)

Sec. 9-6002. Definitions.

For purposes of this chapter only, the following definitions shall apply:

Landowner means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns and personal representative of such owner. The owner may allow a person holding a valid option to purchase, to act as his agent or representative for purposes of submitting a proposed site specific development plan in the manner allowed by this chapter.

Property means all property subject to zoning regulations and restrictions and zone boundaries within the zoning jurisdiction of the city.

Site specific development plan means a plan which has been submitted to the city by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

Vested right or zoning vested right means the right to undertake and complete the development and use of the property under the terms and conditions of an approved site specific development plan.

(Ord. 93-10, passed 3-1-93)

Sec. 9-6003. Zoning vested rights.

A zoning vested right shall only be established in accordance with the procedures set forth in this chapter and nothing in this chapter is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 160A-385.1.

(Ord. 93-10, passed 3-1-93)

Sec. 9-6004. Application and consideration.

- (a) *Application.* An application for a zoning vested right shall be submitted to the Planning Director of the city. All information requested on the application form shall be accurately set forth and the date and time of receiving the application shall be noted on the application.
- (b) *Fee.* A nonrefundable processing fee in the amount set forth in the Schedule of Fees and Charges as adopted by the City Council from time to time, shall be due and payable upon submission of the application.
- (c) *Plans.* The landowner shall attach to his application a site specific development plan.
 - (1) *Site specific development plan.* A site specific development plan shall include the approximate boundaries of the site, significant topographical and other natural features affecting the development of the site; the approximate location of the site of the proposed buildings, structures and other improvements; the approximate location of all existing and proposed infrastructures on the site, including water, sewer, roads and pedestrian walkways.

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 G.S. 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until _____.”

- (d) *Initial review.* The application shall be initially reviewed by the Planning Department to determine if the application has been properly prepared and all fees paid. To allow adequate review time, the application shall thereafter be submitted to the first meeting of the Board of Adjustment held after the expiration of 15 days from the date of original submission.
- (e) *Board of Adjustment consideration.* Before acting on the application, the Board shall hold a public hearing. Notice of the public hearing shall be posted on the property and shall be published in a newspaper having general circulation in the area of Morganton at least ten days but not more than 25 days before the date fixed for the hearing. It shall not be necessary for the Board of Adjustment to officially schedule a public hearing and any required public hearing may be scheduled by the Director of Community Development after the required notice.

(Ord. 93-10, passed 3-1-93)

Sec. 9-6005. Alternative procedure.

Instead of filing a formal application for a zoning vested rights under section 9-6004, a landowner may elect to treat an application for a special use permit under section 9-4010 or an application for a conditional use under section 9-4008 or a subdivision approval request pursuant to section 9-3001, et seq. as an application for a zoning vested rights also. In electing to follow this alternative procedure, the following requirements shall apply;

- (a) *Special use.* The application for the special use permit shall have noted thereon that the application includes a request for zoning vested rights and shall be processed and acted on in accordance with the requirements of section 9-4010. Maps and other plans submitted in connection with the application shall comply not only with section 9-4010 but shall also comply with section 9-6004(c) and the maps, drawings and other plans shall be deemed to be a site specific development plan. The ordinance, order or other action by the City Council to approve the special use permit shall also be deemed to establish a zoning vested right and shall comply with the requirements of section 9-6006.

- (b) *Conditional use.* The application for a conditional use permit shall have noted thereon the landowners request for a zoning vested right and shall be processed and acted upon in accordance with section 9-4008. Maps and other plans submitted in connection with the application shall comply not only with 9-4008 but shall also comply with 9-6004(c) and the maps, drawings, and other plans shall be deemed to be a site specific development plan. The ordinance, order or other action by the City Council to approve the conditional use permit shall also be deemed to establish a zoning vested right and shall comply with the requirements of section 9-6006.
- (c) *Subdivision approval.* The request for approval of a subdivision shall have noted thereon the request of the landowner for zoning vested rights and shall be processed and acted on in accordance with section 9-3001. Final approval of the subdivision plat, following the notice and hearing required in section 9-6004(e) shall also be deemed to establish the zoning vested right. The ordinance, order or action of the Council in approving the subdivision plat shall also comply with section 9-6006.
- (d) *Fee.* In electing to proceed according to this section, the landowner shall not be required to pay two fees and only the higher processing fee shall apply and be due and payable.

(Ord. 93-10, passed 3-1-93)

Sec. 9-6006. Approval and establishment of zoning vested rights.

- (a) *Establishment of right.* Following the public hearing, a zoning vested right shall be deemed established upon approval by the Board of Adjustment or the City Council of the site specific development plan. The action taken by the Board of Adjustment or the City Council to approve the plan shall be in the form of an order or ordinance and the zoning vested rights shall thereafter confer upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site specific development plan, including any amendments thereto; however, in approving the site specific development plan, the Board of Adjustment or the City Council may attach such terms and conditions to its approval as may be reasonably necessary to protect the public health, safety and welfare and to insure further compliance with building codes and other development standards. Any plan approved pursuant to this section shall be deemed to be approved subject to the further requirements set forth in section 9-6007.
- (b) *Approval.* The Board of Adjustment or the City Council shall approve the plan with or without conditions, if the use anticipated is a permitted use, classification and if the plan substantially complies with all other land use regulations and development criteria in effect on the date of the approval. If the plan does not comply with applicable regulations but can be brought into compliance with minor changes, then the Board of Adjustment or the City Council shall conditionally approve the plan. Any conditional approval shall note all required changes in the plan to bring it into compliance or otherwise assure compliance during the development process. The action taken by the Board of Adjustment or the City Council to approve a plan shall clearly identify any additional conditions attached to such approval. Such conditions may require the landowner to obtain other necessary permits, both local, federal or state, require specific soil and erosion controls, traffic control plans, specific buffer or screening requirements, or other similar conditions designed to protect the value of adjacent property and to promote or improve the general health, safety and welfare of the public.
- (c) *Denial.* The Board of Adjustment or the City Council shall deny any approval of a site specific development plan if the plan anticipates uses which are not permitted in the particular zoning classification or if the plan does not substantially comply with other applicable land use regulations and development requirements and cannot reasonably be brought into compliance by amendments to the plan or if the plan poses a danger to the public health, safety and welfare. The plan shall include necessary findings of facts and conclusions to support the denial.

(Ord. 93-10, passed 3-1-93)

Sec. 9-6007. Conditions and other requirements.

- (a) *Variance.* Approval of a site specific development plan upon the condition that a variance be obtained, shall not confer a zoning vested right unless and until the necessary variance is obtained.

- (b) *Subsequent amendments.* The establishment of a zoning vested right shall not preclude the application of overlay zonings 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 regulations 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 chapter.
- (c) *Appurtenant to land.* 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 in title to the original landowner shall be entitled to exercise such right during the applicable period.
- (d) *Subsequent phases.* The landowner shall submit a site specific development plan for approval by the city with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications.
- (e) *Additional approvals.* Following approval or conditional approval of a site specific development plan, nothing in this chapter shall exempt such a plan from subsequent review and approvals to insure compliance with the terms and conditions of the original approval provided that such reviews and approvals are not inconsistent with the original approval.
- (f) *Renovation.* Nothing in this chapter shall prohibit the renovation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the Zoning Ordinance.
- (g) *Time limits.* A zoning right that has been vested as provided in this chapter shall remain vested for a period of two years, except that it may provided that rights shall be vested for a period exceeding two years where warranted in light of all the relevant circumstances, including, but not limited to, the size of the development, the level of the investment, the need for or desirability of the development, economic cycles and market conditions. These determinations shall be made in the sound discretion of the Board of Adjustment or the City Council at the time the site specific development plan is originally approved.
- (h) *Building permits.* Upon issuance of a building permit the expiration provisions of G.S. 140A-418 and the renovation provisions of G.S. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running time while a zoning vested right under this section is outstanding.

(Ord. 93-10, passed 3-1-93)

Sec. 9-6008. Subsequent changes and termination.

- (a) *Zoning changes.* A vested right, once established as provided in this chapter, precludes any zoning action by a city which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan except to the extent permitted in this chapter and consistent with G.S. 160A-385.1.
- (b) *Termination.* A zoning right that has been vested as provided in this chapter shall terminate:
 - (1) At the end of the applicable vesting period with respect to buildings and uses for which no valid Building permit applications have been filed;
 - (2) With the written consent of the affected landowner; or
 - (3) Upon findings by the Board of Adjustment or the City Council, by ordinance or order after notice and public hearing, that natural or manmade 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;
 - (4) Upon payment to the affected landowner of compensation for all costs, expenses or other losses incurred by the landowner, including but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal or other consultant 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;

- (5) Upon findings by the Board of Adjustment of the City Council, by ordinance after notice and hearing, that the owner or his representative intentionally supplied inaccurate information or made material misrepresentations which make a difference in the approval by the Board of Adjustment or in the City Council of the site specific development plan; or
- (6) Upon enactment or promulgation of a state or federal law 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 law has a fundamental effect on the plan, by ordinance after notice and hearing.

(Ord. 93-10, passed 3-1-93)

Sec. 9-6009. Voluntary annexation.

A petition for annexation filed with the city shall contain a signed statement declaring whether or not any zoning vested right with respect to the property subject to the petition has been established under G.S. 160A-385.1 or G.S. 153.344.1. A statement that declares that no zoning vested rights has been established under G.S. 160A-385.1 or G.S. 153.344.1 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 zoning vested right shall be terminated.

(Ord. 93-10, passed 3-1-93)

Sec. 9-6010. Repealer

In the event that G.S. 160A-385.1 is repealed, this chapter shall be deemed repealed and the provisions hereof no longer effective.

(Ord. 93-10, passed 3-1-93)