

Section 18 Vested Rights

18.1 Purpose

The purpose of this Section is to establish procedures for obtaining a statutory vested right in conformance with NCGS 153A-344.1 and NCGS 160A-385.1. New or amended zoning regulations shall not apply to a property with an established vested right until the vested right expires or is terminated. A vested right may be established upon approval of a "site specific development plan." In order to qualify as a "site specific development plan," a plan must meet the requirements of this ordinance for, and undergo review as a "site plan", and must receive either City Council or Board of County Commissioners approval in accordance with the procedure given below.

18.2 Eligibility

1. Those landowners seeking to implement the provisions of NCGS 160A-385.1 or NCGS 153A-344.1 establishing a vested right may file a site plan application and as a part of that application request that the Governing Body hold a vested rights public hearing. The Governing Body may hold the vested rights public hearing at the same time that the site plan is considered for approval.
2. Landowners seeking zoning vested rights on plats, use permit applications, minor site plans, or other plans which would not normally receive major site plan approval, may apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans as required for a completed site plan application and an additional fee for a vested rights public hearing.

18.3 Establishment of a Zoning Vested Right

1. Application forms for a vested rights hearing are available at the City-County Planning Department. Applications shall include, among other things, information on the proposed use of the property that the applicant wishes to vest. Schedules indicating filing dates will be developed each year and made available to the public. A fee, as specified in the application, shall be charged to cover the expenses in conducting the vested rights hearing and providing notice. A notice of the time and place of such hearings shall be published in a paper of general circulation for two successive calendar weeks. The City-County Planning Department shall notify the applicant, the owner of the property, and all owners of property adjacent to or directly opposite the street from the subject property by first class mail of the time and place of the public hearing. Owners who shall receive notice and the addresses to which notices are sent shall be as shown on the County tax abstracts. Any defective notification shall not invalidate the application for vested rights.
2. Approval by the Governing Body shall confer upon the owner of the property a zoning "vested right" as defined in NCGS 160A-385.1 and NCGS 153A-344.1, effective on the date of approval. The City or County may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare.
3. Each approved site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under NCGS 160A-385.1 or NCGS 153A-344.1. Unless terminated at an earlier date, the zoning vested rights shall be valid until (date)." Site specific development plans shall be valid for 24 months after the date of approval.
4. 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.
5. 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 with the zoning ordinance.
6. The establishment of 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 Durham City or County. 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.
7. A zoning vested right is not a personal right, but shall be attached 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.

18.4 Duration

1. A zoning right that has been vested as provided in this Section shall remain vested for a period of 24 months. This vesting shall not be automatically extended by any amendment or modification to a site specific development plan. Amendments and modifications to an approved site specific development plan shall not be accorded "vested rights" unless such changes are processed as a new "site specific development plan".
2. 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.

3. A right which has been vested as provided in this Section 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.

18.5 Termination

A zoning vested right as provided in this Section shall terminate when any one of the following circumstances apply:

1. At the end of the applicable vesting period;
2. With the written consent of the affected landowner;
3. Upon findings by the Governing Body by ordinance and after 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;
4. Upon payment of compensation to the affected owner for all costs, expenses, and other losses incurred by the landowner together with interest,
5. Upon findings by the Governing Body by ordinance and after public hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Governing Body of the site specific development plan; or
6. Upon the enactment of a State or Federal law or regulation that precludes development as contemplated in the site specific development plan.

18.6 Annexation

1. Property that is annexed shall retain any vested rights throughout the original vesting period subject to the limitations of (2) below.
2. A property owner petitioning for annexation shall submit a signed statement declaring any existing vested right with respect to the properties subject to annexation, if the owner wishes to maintain the vested right. The failure to sign such a statement shall terminate any such vested right.

18.7 Limitations

Nothing in this Section shall be deemed to create any vested rights other than those established under NCGS 160A-385.1 or NCGS 153A-344.1. In the event that either NCGS 160A-385.1 or NCGS 153A-344.1 is repealed, the provisions of this Section are no longer effective to the jurisdiction involved.