

PART 22

IMPLEMENTATION OF THE STATUTORY VESTED RIGHT PROVISIONS OF

Section 22.1 Purpose

The purpose of this part is to implement the provisions of G.S. 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.

Section 22.2 Definitions

As used in this chapter, the following terms shall have the meaning indicated. The terms of all other words used in this Part are found in Section 4.2.

Approval authority – The Lincolnton City Council

Site specific development plan – A plan of land development submitted to the city for purposes of obtaining a zoning permit.

Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

Zoning vested right – A right pursuant to G.S. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

Section 22.3 Establishment of a Zoning Vested Right

- a. Zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the City Council as applicable of a site-specific development plan, following notice and public hearing.
- b. The City Council 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 unless and until the necessary variance is obtained.
- d. A site-specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.
- e. 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 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 part.

- 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 22.4 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 City Council for the specific type of zoning or land use permit or approval for which application is made.
- b. Notwithstanding the provisions of subsection (a), the applicant must request in writing at the time of application that the application be considered and acted on by the City Council following notice and a public hearing as provided in G.S. 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 city, that a zoning vested right is being 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 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 (date)."
- e. Following approval or conditional approval of a site specific development plan, nothing in this part 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 part 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 22.5 Duration

- a. A zoning right that has been vested as provided in this part shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (b). This vesting shall not be extended by any amendments or modifications to a site-specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.
- b. Notwithstanding the provisions of subsection (a), the approval authority may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all 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 in 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 G.S. 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 22.6. Termination

A zoning right that has been vested as provided in this chapter 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 City Council, 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 all 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 City Council, 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 in State or Federal law has fundamental effect on the plan, by ordinance after notice and a hearing.

Section 22.7. Voluntary Annexation

A petition for annexation filed with the city under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. 160A-385.1 or G.S. 153A-344.1. A statement that declares that no zoning vested right has been established under G.S. 160A-385.1 or G.S. 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 22.8. Limitations

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

Section 22.9. Repealer

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

Section 22.10. Effective Date

This part shall be effective October 3, 1991 and shall only apply to site-specific development plans approved on or after October 3, 1991.