

CITY OF HENDERSON

**Article 600C: VESTED RIGHTS**

**Section 601C: Purpose**

The purpose of this chapter 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 602C: Definitions**

As used in this chapter, the following terms shall have the meaning indicated:

Approval authority- The Zoning Board of Adjustment or other board or official designated by ordinance or this chapter as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

Site specific development plan- A plan of land development submitted to the City for purposes of obtaining one of the following zoning or land use permits or approvals: planned unit development plan (Henderson Subdivision Ordinance), subdivision plat (Henderson Subdivision Ordinance) special use permit (Section 903, Section 904) and site plan (Section 903).

Such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions (including height) of the proposed buildings and other structures; the approximate location of all existing and proposed infrastructures on the site (including water, sewer, roads, and pedestrian walkways); and a statement of the proposed use; together with any other information or data requested by the Board of Adjustment.

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 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 603C: Establishment of a Zoning Vested Right.**

- (a) A zoning vested right shall be deemed established upon the valid approval, or conditioned approval, by the Zoning Board of Adjustment, as applicable, of a site specific development plan, following notice and public 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.

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- (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 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 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 604C: Approval Procedures and Approved Authority.**

- (a) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance 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. Nothing in the Article, however, shall authorize the establishment of any vested right unless due notice of such proposed vested right is given by proper advertisement of a properly held public hearing thereon.
- (b) Notwithstanding the provision of subsection (a), if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the Zoning 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 Zoning Board of Adjustment, following notice and 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 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)."

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- (e) Following approval or conditioned approval of site specific development plan, nothing in this Article 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 Article 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 605C: Duration.**

- (a) A zoning right that has been vested as provided in this Article 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 amendment or modifications to a specific development plan unless expressly provided by the authority a 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-418 and the revocation provision of G.S. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of running of time while a zoning vested right under this Article is outstanding.

### **Section 606C: Termination.**

A zoning right that has been vested as provided in this Article shall terminate:

- (a) at the end of the applicable vesting period with respect to building and uses for which no valid building permit applications have been filed,
- (b) with the written consent of the effected landowner,
- (c) upon findings by the City Council, by ordinance after a notice and public hearing, that natural or man-made hazard on or in the immediate vicinity of the property, if uncorrected, could 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

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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. 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 regulations 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 a fundamental effect on the plan, by resolution after notice and a hearing.

### **Section 607C: Voluntary Annexation.**

A petition for annexation filed with the City under G.S. 160A-31 or 160A-58.1 shall contain a sign statement under oath declaring whether or not 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 under oath 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 608C: Limitations.**

Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 160A-385.1.

### **Section 609C: Repealer.**

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

### **Section 610C: Effective Date.**

§This Article shall be effective October 1, 1995 and shall only apply to site specific development plans approved after a duly advertised public hearing thereon on or after October 1, 1991.