

**ARTICLE 3: DEVELOPMENT REVIEW AND APPROVAL PROCEDURES****Section 3.1 Zoning Permit**

**3.1.1** No building or structure or any part thereof shall be erected, extended, enlarged, or structurally altered or moved until a zoning permit has been issued by the Zoning Administrator or his/her authorized representative, except that signs shall require a zoning permit only if required in Article 11 of this ordinance. A fee in accordance with the town's fee schedule shall be charged for the issuance of each zoning permit.

**3.1.2** Application for permit. All applications for permits shall be in the form prescribed by the Zoning Administrator and shall include a plot or site plan drawn to scale which shall clearly show:

- 3.1.2.1 The actual shape and dimensions of the lot to be built upon or used and total acreage in the lot.
- 3.1.2.2 The location of the proposed structure or use on the lot.
- 3.1.2.3 The exact location and size of existing structures and uses, including the square footage of each building.
- 3.1.2.4 The existing and intended use of each structure or part of structure.
- 3.1.2.5 The number of dwelling units the building is designed to accommodate, if applicable.
- 3.1.2.6 The height and number of stories of the structure.
- 3.1.2.7 The location and design of any off-street parking and/or loading.
- 3.1.2.8 The location and dimensions of driveways. Driveway approval procedures as required by the North Carolina Department of Transportation shall be initiated.
- 3.1.2.9 Date of plan preparation.
- 3.1.2.10 Location and descriptions of landscaping, buffering, and signs.
- 3.1.2.11 Such other information as may be necessary for determining whether the provisions of this ordinance are being met.

**3.1.3** In addition to the information required in Subsection 3.1.2, any use which involves the grouping of more than one (1) principal building or use on the same lot shall include the following information:

- 3.1.3.1 A vicinity map showing the relationship of the proposed development to the surrounding area.
- 3.1.3.2 North arrow and declination.
- 3.1.3.3 Detailed layouts for all utilities, right-of-way, and roads and other improvements
- 3.1.3.4 Railroads, bridges, culverts, storm drains, wooded areas, marshes, swamps, rock outcrops, ponds or lakes, streams or stream beds, and any other similar features affecting the site.
- 3.1.3.5 A copy of any proposed deed restrictions or similar covenants.
- 3.1.3.6 For projects over an acre in size, or if otherwise required by the Zoning Administrator, a topographic map showing vertical contours every two (2) feet.

- 3.1.3.7 The names, addresses, and telephone numbers of owners, mortgagees, registered surveyors, land planners, architects, landscape architects, and professional engineers responsible for the development.
- 3.1.4 The Zoning Administrator may, in writing, exempt the applicant from meeting any plan requirement which is clearly inapplicable to the proposed use.
- 3.1.5 Mobile home parks shall comply with the requirements in Section 8.3 of this ordinance in lieu of the requirements in this Section.
- 3.1.6 Cancellation of permit. Any permit issued shall become invalid unless the work authorized by it shall have been commenced within six (6) months of its date of issue, or if the work authorized by it is suspended or abandoned for a period in excess of one (1) year.
- 3.1.7 Record of zoning permits. A record of all zoning permits shall be kept on file and open to the public, subject to State law.

### **Section 3.2 Certificate of Occupancy/Compliance**

No land shall be used or occupied, and no building or structure erected or altered shall be used or changed in use until a Certificate of Occupancy/Compliance has been issued by the Zoning Administrator stating that the building and/or the proposed use complies with the provisions of this ordinance. A certificate of the same shall be required for the purpose of changing any existing use; as well as for maintaining, reviewing, changing, or extending any nonconforming use. The aforementioned Certificate shall be applied for concurrently with the application for a zoning permit and shall be issued within ten (10) working days after the erection or alterations of such building or part shall have been completed in conformity with the provisions of this ordinance. A record of all such certificates shall be kept on file and open to the public subject to State law.

### **Section 3.3 Conformance with Plans**

Permits or certificates issued on the basis of plans and applications shall authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement, or construction.

### **Section 3.4 Enforcement**

- 3.4.1 **Violation-Penalty.** Any person violating any provisions of this ordinance shall be subject to a civil penalty as provided in Title I, Section 10.99 of the Town of Rolesville Code of Ordinances.
- 3.4.2 **Violation-Remedies.** In case any building or structure is erected, constructed, reconstructed, repaired, converted, or maintained, or any building, structure, or land is used in violation of this ordinance, the Zoning Administrator or any other appropriate Town authority, or any

person who would be damaged by such violation, in addition to other remedies, may institute injunction, mandamus, or other appropriate act in proceeding to prevent the violation.

### **Section 3.5 Right of Appeal**

If the zoning permit and/or Occupancy/Compliance Certificates are denied, the applicant may appeal the action of the Zoning Administrator to the Board of Adjustment.

### **Section 3.6 Special Uses and Quasi Judicial Evidentiary Hearings**

All quasi-judicial evidentiary hearings conducted by the Board of Commissioners and the Board of Adjustment shall be subject to the following provisions:

#### **3.6.1 Procedures.**

(A) All applications, including applications for rehearings, shall be accompanied by a filing fee in accordance with the Town's schedule of fees in effect at the time of filing. No fee shall be required if the application is made by the Town or any agency created and appointment by Town of Rolesville Board of Commissioners to perform governmental functions.

(B) All applications shall be accompanied by a site plan prepared in accordance with Section 3.1, including the number of copies required by the Zoning Administrator. Applicants shall supplement their application with additional information requested by the Zoning Administrator at least thirty (30) days prior to public hearing. Applicants are encouraged to meeting with the Zoning Administrator prior to filing an application.

(C) No application shall be heard until a notice of public hearing is published in a newspaper of general circulation in the Town at least seven (7) days prior to the hearing and no more than twenty-five (25) days prior to the hearing.

(D) The Town will post a sign or signs either upon the subject property or at a convenient location it deems appropriate. Such posting shall advise that a proceeding has been filed and direct further inquiry to a listed telephone number. All postings are for the convenience of the public and any defective postings shall not invalidate the proceedings.

(E) The Town will make a reasonable attempt to notify, by first class mail, the applicant and all persons shown on the county tax abstract at the time of filing, as the property owners of the subject property and properties immediately adjacent to or directly opposite across the street from the subject property. Such mailings shall advise that a petition has been filed affecting the subject property, the general nature of the question involved, and the time and place of the hearing. All notice made by mail shall be deemed completed upon mailing. All mailings are for the convenience of the public and any defective mailing shall not invalidate the proceeding.

(F) All parties in interest shall have the right to present evidence and cross-examine witnesses, as to any competent, material and relevant facts, inspect documents and make oral arguments.

(G) The reviewing body shall act as fact-finding body and shall approve or disapprove the application in accordance with the evidence presented before it which is competent, relevant and material.

(H) The burden of proof is upon the party who files the application, and if the party fails to meet its burden, the reviewing body shall deny the request.

### **3.6.2 Special Use Permit/Site Plan Findings of Fact**

The following findings, based on evidence and testimony received at a public hearing in accordance with procedures specified in this Ordinance, must be made by the Board of Adjustment or Town Board in order to approve any special use permit or any application for site plan:

(A) That the proposed development and/or use will not materially endanger the public health or safety;

(B) That the proposed development and/or use will not substantially injure the value of adjoining property;

(C) That the proposed development and/or use will be in harmony with the scale, bulk, coverage, density, and character of the neighborhood in which it is located;

(D) That the proposed development and/or use will generally conform with the Comprehensive plan and other official plans adopted by the Town;

(E) That the proposed development and/or use is appropriately located with respect to transportation facilities, water and sewer supply, fire and police protection, and similar facilities;

(F) That the proposed development and/or use will not cause undue traffic congestion or create a traffic hazard;

(G) That the proposed development and use comply with all applicable requirements of this ordinance.

### **3.6.3 General Conditions and Limitations**

When passing on any case, the reviewing body is authorized to impose conditions and safeguards that limited the request as my be necessary or appropriate. Such limitation and conditions and safeguards may include, but are not limited to, the following:

(A) Access with respect to pedestrian and vehicular safety, traffic flow, and emergency vehicles.

(B) Appearance including architecture, fenestration and materials.

(C) Dedication of street and utility rights-of-way to the public, and facility improvements.

(D) Drainage with respect to erosion, siltation, pollution and flooding.

(E) Duration of the variance or special use for either a limited or an indefinite period of time.

(F) Intensity including such considerations as size, location, hours and/or conditions of operation, and number of participants.

(G) Landscaping, screening fencing with respect to protecting affected properties from anticipated noise, loss of privacy, and glare; preserving of important natural features; or harmonizing the request with affected properties.

(H) Location and character.

(I) Control or elimination of noise, dust, vibration, and lighting.

(J) Off-street parking.

(K) Provision of recreational space and facilities

(L) Signage, if any, with respect to type size, placement, illumination, compatibility, property values of the affected area.

(M) Use restrictions.

### **3.6.4 Special Use Permit to be Recorded**

The Property Owner shall record a copy of the special use permit approved by the Town Planning Director and describing the property subject to the special use permit by deed book and page, by metes and bounds description or other legal description approved by the Town Attorney with the Wake County Register of Deeds within ninety (90) days of approval of the special use permit by the Town Board of Commissioners. No building permit shall be approved by the Town until a copy of the recorded special use permit is provided to the Planning Director.

<h3><b>Section 3.7 Application to and Hearing by the Board of Adjustment on Appeals and Variances</b></h3>
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The applicant shall submit the appropriate appeal for administrative review or for a variance accompanied by a site plan, if applicable, prepared in accordance with Section 3.1 in the number of copies established by and along with any other information required by the Zoning Administrator for proper review of the application. The Board of Adjustment shall cause a public hearing to be held on the application and shall give due notice of the hearing to the parties involved. The hearing shall be conducted in accordance with the general law and court decisions of the State. More specifically, any interested party must be given the opportunity to present evidence or testimony, to cross-examine witnesses, to inspect documents, and to offer evidence or testimony in explanation or rebuttal. Findings shall be based on substantial evidence or testimony which is competent, relevant, and

material. Findings as to the existence or nonexistence of crucial facts shall be based on sworn evidence or testimony unless the party or parties before the board stipulate the facts or waive this requirement. A four-fifths (4/5) majority is necessary for the Board of Adjustment to grant a permit. The Clerk of the Board shall keep minutes of the proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact. A fee in accordance with the town's fee schedule shall be paid to the Town for each application, for an administrative review, for a variance not initiated by an officer or agency of the Town, to cover the costs of advertising and other administrative expenses involved. No application will be processed until the above fee has been paid.

### **Section 3.8 Accidental Violations of Interpretation**

The Town Board may authorize as a special use, a use which involves a modification of any of the standards of the Unified Development Ordinance to the extent necessary to accommodate an accidental good faith violation of the UDO involving a mistake by a town official or employee. The normal procedures and conditions for special use permits contained in the UDO shall not apply to this type of special use. Instead, the Town Board shall hold a hearing in accordance with State Law. In order for a special use permit to be granted, all of the following findings must be made:

- (1) One or more provisions of the UDO have already been violated.
- (2) A mistake in interpretation of the ordinance or in the process of an inspection by a town official or employee was made which led to the violation or substantially contributed to the extent of the violation.
- (3) The violation was accidental and made in good faith by the applicant.
- (4) Correction of the violation would result in substantial expenditures by the applicant, or the violation is minor in nature compared to the expenditure which would be needed to correct the violation.

In granting the special use permit, the Board of Commissioners may impose reasonable conditions to protect the interests of the town and the surrounding area.

### **Section 3.9 Zoning Amendments**

#### **3.9.1 Initiation of Amendments.**

This UDO, including the official zoning map, may be amended only by the Board of Commissioners of the Town of Rolesville (the Town Board), according to the procedures of this Article. Proposed amendments may be initiated by the Town Board, the Town Planning Board, or Board of Adjustment of the Town of Rolesville, provided that rezoning to the Special Use District classification and the Conditional District classification shall be initiated only by the owners of the property to be included. No land owned by the State of North Carolina may be included within a Special use District or a Conditional District without approval of the Council of State.

Proposed amendments to the text of this ordinance may also be initiated by any resident or property owner within the jurisdiction covered by this ordinance, and any property owner within the jurisdiction covered by this ordinance may initiate a request for a change in the zoning classification of his property.

### **3.9.2 Application.**

Except for amendments initiated by the Town Board, Planning Board, or Board of Adjustment, no proposed amendment shall be considered by the Town Board nor a public hearing held until the applicant has submitted an application containing the following information, and paid a fee in accordance with the Town's Fee Schedule:

- a statement of the present zoning regulations or district boundary;
- a statement of the reasonableness of the proposed rezoning which addresses consistency with the Comprehensive Plan and other Town adopted plans, the compatibility of the proposed rezoning with the property and surrounding area, the benefits and detriments on the proposed rezoning for the land owner, the immediate neighbors and the surrounding community
- the name and signature of the applicant;
- the tax parcel number of the lot in question;
- the current zoning and use of the subject lot, and
- any additional information requested by the Zoning Administrator, Planning Board, or Town Board.

If the proposed change involves rezoning to a Special Use District, the applicant shall simultaneously submit an application for a Special Use Permit. The applicant shall, as part of the Special Use Permit application, present a site plan in accordance with the requirement of section 3.1 of this ordinance of the proposed use for the district, and/or if the request involves other conditions, a detailed description of the proposed conditions. The Planning Director, Planning Board, and Town Board may require additional information and plan details necessary to determine whether the property will be developed consistent with the purposes of this ordinance as part of the Special Use Permit application, including any information required in Article 8 of this ordinance, if the use would be a special use in the corresponding district.

If the proposed change involves zoning to a Conditional District, the applicant shall follow the requirements outlined in Section 5.4 of this ordinance.

The Planning Director shall prepare a Zoning Report and forward both the original zoning application and the Zoning Report to the Planning Board. The Planning Board shall review the application and Zoning Report at a regularly scheduled Planning Board meeting.

After hearing presentations, the Planning Board must review the amendment application, staff report, and additional information and comments submitted or presented to the Planning Board, and must recommend to the Board of Commissioners approval or denial of the application in writing. In deciding whether to recommend approval or denial of the

application, the Planning Board shall consider whether the proposed amendment is consistent with the Comprehensive Plan and other town adopted plans and otherwise advances the public health, safety and general welfare.

### **3.9.3 Public Hearing and Notices.**

- (1) *Public Hearing.* No amendment shall be adopted by Town Board of Commissioners until they have held a public hearing on the amendment, and shall have given the Planning Board at least thirty (30) days to make a recommendation concerning the amendment. If the Planning Board does not make a recommendation with the thirty (30) day period, the Town Board may make a decision without their recommendation.
- (2) *Notice of Public Hearing.* Notice of public hearing shall state the time and place of the public hearing, summarize the nature of the application and proposed development, and invite interested parties to review the application at the Planning Department and submit oral or written comments on the application at the public hearing. Notice shall be provided as follows:
  - (a) *Published Notice.* An advertisement shall be placed by the Planning Director, or designee, in a local newspaper of general circulation once a week for two successive calendar weeks. The first notice shall be published not less than ten (10) days nor more than twenty-five (25) days before the date fixed for public hearing.
  - (b) *Mailed Notice.* The Planning Director, or designee, must notify by first class mail all property owners, as indicated by the latest County tax listings of property ownership, subject to the application and all property owners abutting that property subject to the application to the address listed for such owners in the county tax abstracts. This notice must be placed in the mail at least ten (10) days but not more than twenty-five (25) days prior to the date of the public hearing. The Planning Director, or designee, shall certify to the Board of Commissioners the date the notices were mailed.
  - (c) *Major Rezoning.* For zoning map amendments directly affecting more than fifty (50) properties owned by at least fifty (50) different property owners, the town may elect to provide notice with mailed notices as provided in Section 2(b) above or the Town may, as an alternative, elect to publish notice of the hearing as described in Section 2(a) above, provided that each advertisement must be at least one-half (1/2) of a newspaper page in size. The advertisement is effective notice only for those property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, must be provided with mailed notice.

- (d) *Posted Notice.* A sign noticing the public hearing must be prominently posted by the Planning Director, or designee, on the property(ies) subject to the application not less than fourteen (14) days prior to the public hearing at which the application will be reviewed. The sign must be posted on the property at a point visible from the nearest public street. In the case of multiple parcels, sufficient signage must be posted to provide reasonable notice to interested parties.
- (e) *Minor Defect in Notice.* Minor defects in notice will not impair the notice or invalidate proceedings pursuant to the notice if a good faith attempt has been made to comply with the applicable notice requirements

### **3.9.4 Evidence Presented at Public Hearings.**

The applicant for a zoning map change to any district other than a Special Use District shall be prohibited from offering any testimony or evidence at the hearing concerning the specific manner in which the property is to be used or developed.

If the applicant believes that development of the property in a specific manner will lessen adverse effects upon surrounding properties, or otherwise make the zoning map change more in accordance with the principles underlying this ordinance, the applicant may apply for a zoning map change to the appropriate Special Use District and simultaneously apply for a Special Use Permit, in accordance with Section 3.9.2 of this ordinance, and shall specify the nature of the proposed development. No permit shall be issued for any development within a Special Use District except in accordance with an approved Special Use Permit.

### **3.9.5 Amendment to the Official Zoning Map**

Amendments to the official zoning map shall be adopted by ordinance as provided in Section 3.9. Promptly after the adoption of an amendment, the Zoning Administrator shall alter or cause to be altered, the official zoning map to indicate the amendment. The Town Clerk shall enter in writing upon the face of the map a certification indicating the alteration and citing the date of adoption and the effective date of the amendment, as well as the book and page of record of the ordinance amending the map.

### **3.9.6 Special Use Permit Requests as Part of Change to Special Use District.**

Requests for Special Use Permits as part of a requested change to a Special Use District shall be processed and considered simultaneously with zoning map change requests for the Special Use District and the voting procedure shall be the same as that required for zoning map change requests. Procedures shall be as specified in Sections 3.9.1 through 3.9.6 of this ordinance. In considering such application for a Special Use Permit, the Town shall find that the conditions in Section 8.1 of this ordinance will be met. If the Town Board should find after the hearing that the proposed Special Use Permit should be granted, the Town Board may authorize the issuance of such permit. If the Town Board should find after the hearing

that the proposed Special Use Permit should not be granted, such proposed permit shall be denied.

In granting a Special Use Permit, the Town Board may impose such reasonable and appropriate special requirements upon the permit as it may deem necessary so that the purpose and intent of this ordinance is served, public welfare secured and substantial justice done. If the applicant accepts all requirements and conditions, the Town Board shall authorize the issuance of the Special Use Permit; otherwise, the permit shall be denied. Any Special Use Permit so authorized shall be perpetually binding upon the property included in such permit unless subsequently changed or amended by the Town Board after a public hearing by the procedures in this Section.

### **3.9.7 Duration of Zoning Amendment Approval to Special Use Districts.**

In the event that a property that has been rezoned to a Special Use District has not been developed within two (2) years of the approval of the Special Use District rezoning, the undeveloped tract(s) of the subject property shall revert back to the zoning that existed immediately prior to the rezoning.

It is intended that the Planning Board shall examine the progress made toward developing the property in accordance with the approved petition and any conditions attached thereto. If the Planning Board determines that construction has not commenced in furtherance of the approved petition and conditions, the Planning Board may, at its discretion, initiate a rezoning to the general zoning district consistent with the most detailed plan adopted for the area which includes the property in question.

### **3.9.8 Withdrawal or Amendment of Petition.**

The petitioner may withdraw a petition filed according to this section at any time up to adoption of a resolution by the Town Board scheduling the date of the public hearing on the petition.

If the petitioner wishes to withdraw the petition after adoption of a resolution scheduling the public hearing, the petitioner may file a request to withdraw with the Town Clerk. On the date scheduled for the hearing, the Town Board may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.

Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the Zoning Administrator no later than three weeks prior to the scheduled public hearing date. No changes to the petition shall be accepted in the intervening weeks prior to the public hearing. No changes to the petition shall be made at the hearing, although potential changes proposed by the petitioner, Planning Board, Town Board, and other interested parties may be presented at the hearing and considered by the Planning Board and Town Board during their deliberations. If the Town Board deems any amendment to be a substantial change to the petition, it shall defer action on the petition for 30 days to allow interested parties the opportunity to comment on the amendment to the petition.

If the Town Board deems any amendment as a proposal to intensify land use from that requested in the original petition, it shall call a new public hearing as required by North Carolina General Statutes and Section 3.9.3 of this Article

### **3.9.9 Protested Zoning Amendment.**

Submission of a written protest against an amendment to the zoning classification of property, excepting amendments which initially zone property added to the territorial coverage of the ordinance, shall require the Town Board to approve the subject amendment by a three-fourths (3/4) majority provided that:

- (a) The written protests are submitted by the owners of twenty percent (20%) or more of the area of the lots included in a proposed change; or
- (b) The written protests are submitted by the owners of twenty percent (20%) or more of the area of the property immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots.

To be valid and effective, protest letters shall:

- (a) Be presented in writing; and
- (b) Bear the signature and address of the protesting property owner; and
- (c) State that the signer does protest the proposed amendment; and
- (d) Be received by the Town Clerk at least two working days before the date established for a public hearing on the proposed amendment, in order to establish the sufficiency and accuracy of the petition.

### **3.9.10 Effect of Denial of Petition**

A petition for the reclassification of property that has been denied in whole or in part, or approved to a classification other than the one originally requested, shall not be re-submitted within one year of the date of the Town Board's action on the original petition, unless a petitioner applies for a district which is of lesser density or lesser land use impact.

The Town Board may allow re-submission of a petition within the one-year restricted period if it determines that, since the date of action on the prior petition, one of the following criteria has been met:

- (a) There has been a similar change in the zoning district classification of an adjacent property; or
- (b) The Town Board has adopted a new or amended plan for the area that changes public policy regarding how the property affected by the amendment should be developed; or
- (c) Construction or expansion of a road, water line, sewer line, or other infrastructure has occurred or is to occur in such a time frame as to serve the property and comfortably

accommodate the intensity of development allowed under the proposed classification;  
or

- (d) There has been a substantial change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the one-year restriction on a new petition; this shall not include a change in the ownership of the subject property nor a change in the scale or features of the development proposed in the prior petition.

### Section 3.10 Vested Rights

**3.10.1 Purpose.** The purpose of this section is to implement the provisions of G.S. 160A-385.1.

**3.10.2 Definitions.** As used in this section, the following terms shall have the meaning indicated:

*Approval authority:* The Board of Commissioners or other board or official designated by ordinance or the Code of Ordinances as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

*Landowner:* As defined by G.S. 160A-385.1 (b)(1).

*Property:* As defined by G.S. 160A-385.1 (b)(4).

*Site specific development plan:* As defined by G.S. 160A-385.1(b)(5), a plan of land development submitted to the town for purposes of obtaining one (1) of the following zoning or land use permits or approvals:

- (1) Site plan.
- (2) Master subdivision plan.
- (3) Preliminary plan
- (4) Special use permit including a site plan or master subdivision plan.
- (5) Special use permit including a site plan or master subdivision plan.

The required characteristics of a site specific development plan for purposes of granting a vested right shall be determined by the Town's Code of Ordinances. As a minimum, the site specific development plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting 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; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads and pedestrian walkways.

A variance or a sketch plan shall not constitute a site-specific development plan.

*Vested right:* As defined in G.S. 160A-385.1(b)(6), the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

### **3.10.3 Establishment of a vested right.**

- (a) A vested right shall be deemed established upon the valid approval, or conditional approval, by the Board of Commissioners of a site-specific development plan, following notice and public hearing.
- (b) Upon receipt of a complete application for approval of a site specific development plan as defined in Section 15.3, the Planning Director shall cause notice of a public hearing before the board of commissioners to be given according to the same rules and procedures as rezoning cases.
- (c) The Board of Commissioners may approve a site-specific development plan upon such terms and conditions as may reasonable be necessary to protect the public health, safety, and welfare.
- (d) Notwithstanding subsections (a) and (c) above, approval of a site-specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained.
- (e) A site-specific development plan shall be deemed approved upon the effective date of the board of commissioners action relating thereto, or, if no effective date is stated, upon adoption of the ordinance or motion.
- (f) The establishment of a 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 town, including, but not limited to, state building, fire, plumbing, electrical, and mechanical code and the town standard specifications and construction details as amended or updated by the board of commissioners. 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.
- (g) A vested right is not a personal right, but shall attach to and run with the applicable property.

### **3.10.4 Approval procedures and approval authority.**

- (a) Excepted as otherwise provided in this section, an application for a site specific development plan approval shall be processed in accordance with the procedures

established by ordinance and shall be considered by the Board of Commissioners for the specific type of zoning or land use permit or approval for which application is made.

- (b) In order for a vested right to be established upon approval of a site specific development plan, the applicant must indicate in writing that a vested right is being sought. The application for site specific development plan approval shall be submitted with an administrative fee as specified on the town's schedule of fees as adopted by the Board of Commissioners.
- (c) 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 vested right under G.S. 160A-385.1. Unless terminated at an earlier date, the vested right shall be valid for two (2) years after date of approval."
- (d) Following approval or conditional approval of a site specific development plan, nothing in this UDO 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.
- (e) The original approval may be revoked for failure to comply with applicable terms and conditions of the approval or the zoning ordinance, provided that prior to revocation, the landowner shall be given notice and an opportunity to be heard.

### **3.10.5 Duration.**

- (a) A right that has been vested as provided in this article shall remain vested for a period of two (2) years from the effective date of approval unless specifically and unambiguously provided otherwise pursuant to subsection (b) below. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the Board of Commissioners at the time the amendments or modifications are approved. An application to amend or modify a previously approved site specific development plan shall be submitted through the approval process with an administrative fee as required in Section 15.3.
- (b) The Board of Commissioners may provide that rights shall be vested for a period exceeding two (2) years but not exceeding five (5) 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 Board of Commissioners at the time the site specific development plan is approved.
- (c) Upon issuance of a building permit, the expiration provision of G.S. 160A-418 and the revocation 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 vested right under this section is outstanding.

**3.10.6 Termination.**

A right that has been vested as provided in this article 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;
- (3) Upon finding by the Board of Commissioners, by ordinance 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 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 town, 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 Commissioners, 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 Board of Commissioners of the site specific development plan; or
- (6) 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 Board of Commissioners may modify the affected provision, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and hearing.

**3.10.7 Voluntary annexation**

A petition for annexation filed with the town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any 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 vested right has been established under G.S. 160A-385.1 or G.S. 153A-344.1, or failure to sign a statement declaring whether or not a vested right has been established, shall be binding on the landowner and any such vested right shall be terminated.

**3.10.8 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.

Amendments

*10/04/04 to entire document; 7/10/06 to §3.9.1, §3.9.2, §3.9.3 through TA06-03; 5/19/09 to §3.6 through TA09-03; 1/7/13 to §3.6.2 & §3.6.4 through TA12-07*