

§ 160D-108.1. Vested rights – site-specific vesting plans.

(a) Site-Specific Vesting Plan. – A site-specific vesting plan consists of a plan submitted to a local government in which the applicant requests vesting pursuant to this section, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a special use permit, a conditional district zoning plan, or any other land-use approval designation as may be utilized by a local government. Unless otherwise expressly provided by the local government, the 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. What constitutes a site-specific vesting plan under this section that would trigger a vested right shall be finally determined by the local government pursuant to a development regulation, and the document that triggers the vesting shall be so identified at the time of its approval. A variance does not constitute a site-specific vesting plan, and approval of a site-specific vesting plan with the condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

(b) Establishment of Vested Right. – A vested right is established with respect to any property upon the valid approval, or conditional approval, of a site-specific vesting plan as provided in this section. Such a vested right confers 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 vesting plan, including any amendments thereto.

(c) Approval and Amendment of Plans. – If a site-specific vesting plan is based on an approval required by a local development regulation, the local government shall provide whatever notice and hearing is required for that underlying approval. A duration of the underlying approval that is less than two years does not affect the duration of the site-specific vesting plan established under this section. If the site-specific vesting plan is not based on such an approval, a legislative hearing with notice as required by G.S. 160D-602 shall be held.

A local government may approve a site-specific vesting plan upon any terms and conditions that may reasonably be necessary to protect the public health, safety, and welfare. Conditional approval results in a vested right, although failure to abide by the terms and conditions of the approval will result in a forfeiture of vested rights. A local government shall not require a landowner to waive the landowner's vested rights as a condition of developmental approval. A site-specific vesting plan is deemed approved upon the effective date of the local government's decision approving the plan or another date determined by the governing board upon approval. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the local government as follows: any substantial modification must be reviewed and approved in the same manner as the original approval; minor modifications may be approved by staff, if such are defined and authorized by local regulation.

(d) Continuing Review. – Following approval or conditional approval of a site-specific vesting plan, a local government may make subsequent reviews and require subsequent approvals by the local government to ensure compliance with the terms and conditions of the original approval, provided that these reviews and approvals are not inconsistent with the original approval. The local government may, pursuant to G.S. 160D-403(f), revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations.

- (e) Duration and Termination of Vested Right. –
- (1) A vested right for a site-specific vesting plan remains vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the local government.
 - (2) Notwithstanding the provisions of subdivision (1) of this subsection, a local government may provide for rights to 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 and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the local government and shall be made following the process specified for the particular form of a site-specific vesting plan involved in accordance with subsection (a) of this section.
 - (3) Upon issuance of a building permit, the provisions of G.S. 160D-1111 and G.S. 160D-1115 apply, except that a permit does not expire and shall not be revoked because of the running of time while a vested right under this section is outstanding.
 - (4) A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.
- (f) Subsequent Changes Prohibited; Exceptions. –
- (1) A vested right, once established as provided for in this section, precludes any zoning action by a local government 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 vesting plan, except under one or more of the following conditions:
 - a. With the written consent of the affected landowner.
 - b. Upon findings, by ordinance after notice and an evidentiary 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 vesting plan.
 - c. To the extent that the affected landowner receives 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 consulting fees incurred after approval by the local government, together with interest as provided under G.S. 160D-106. Compensation shall not include any diminution in the value of the property which is caused by the action.
 - d. Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the local government of the site-specific vesting plan or the phased development plan.
 - e. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan or the phased development plan, in which case the local government may modify the affected provisions, upon a

finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.

- (2) The establishment of a vested right under this section does not preclude the application of overlay zoning or other development regulations which impose additional requirements but do not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to development regulation by a local government, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations become effective with respect to property which is subject to a site-specific vesting plan upon the expiration or termination of the vesting rights period provided for in this section.
 - (3) Notwithstanding any provision of this section, the establishment of a vested right does not preclude, change, or impair the authority of a local government to adopt and enforce development regulations governing nonconforming situations or uses.
- (g) Miscellaneous Provisions. –
- (1) A vested right obtained under this section is not a personal right, but attaches to and runs with the applicable property. After approval of a site-specific vesting plan, all successors to the original landowner are entitled to exercise these rights.
 - (2) Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.
 - (3) In the event a local government fails to adopt a development regulation setting forth what constitutes a site-specific vesting plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice. (2020-25, ss. 5(b), 50(b).)