

Subpart F. Vested Rights

§200A-331. General

All requests for a Vested Right shall include, at minimum: (1) the name(s) and address(es) of the owner(s) of the property in question; (2) the location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description and/or statement of the present zoning district; (5) the appropriate level of *site plan*; and, where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. All Vested Right requests shall adhere to the review and approval process as outlined in this subpart.

§200A-332. Vested Rights

- A. Purpose. A Vested Right is a right established pursuant to *NCGS* §153A-344.1 to undertake and complete the development and *use* of property under the terms and conditions of an approved *site-specific development plan*. Any request for a Vested Right shall be granted by the Zoning Board of Adjustment (*ZBA*) in accordance with the requirements and procedures set forth in this subsection.
- B. Application.
- (1) Pre-application Conference. Each *applicant* for a Vested Right shall meet with the *Planning Director* prior to, or at the time of, the submittal of an application. The purposes of this conference are to provide additional information regarding the review process and assist in the preparation of the application.
 - (2) Application. Each application for a Vested Right shall be submitted along with the appropriate fee(s) and *site plan* to the Planning Department. Applications shall additionally include: (1) a letter indicating the intent to obtain a Vested Right for the particular *use* or development proposed and (2) a *site-specific development plan*. Applications may be modified by Planning Staff as necessary, who may require the *applicant* to supply additional information pertaining to the Vested Right.
 - (3) Review Schedule. Applications for a Vested Right have a 30 day processing period for notification requirements and review by Planning Staff (and, if necessary, the Technical Review Committee (*TRC*)) prior to the public hearing.
 - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- C. Staff Review. Planning Staff shall process and review all applications for a Vested Right. Planning Staff may present the application to the *TRC* for its comments and recommendations and may forward the application on to the appropriate departments and agencies for their review. Planning Staff shall prepare a staff recommendation for the *ZBA* on the vested right application.
- D. Public Hearing. Prior to considering a vested right application the *ZBA* shall hold a public hearing on the application in accordance with §200A-338 (Quasi-Judicial Process Standards).

- E. Public Notification. Public notification of such hearing shall comply with the provisions of §200A-338 (Quasi-Judicial Process Standards). Planning Staff shall be responsible for all necessary public notifications.
- F. Quasi-Judicial Proceeding.
- (1) Standards of Review. The *ZBA* shall grant a Vested Right upon finding that all provisions of this Chapter are met in the proposed *use* or development plan and that the granting of the Vested Right does not materially endanger the public health, safety and welfare. The *Zoning Administrator* is directed to issue all required permits subject to the changes in the *site plan* (see §200A-332 (Vested Rights) subsection F(2)) to be made by the developer. A *variance* shall not constitute a *site-specific development plan* and approval of a *site-specific development plan* with the condition that a *variance* is obtained shall not confer a Vested Right unless and until the necessary *variance* is obtained.
 - (2) Conditions. The *ZBA* may approve a Vested Right request subject to conditions that are necessary to protect the public health, safety and welfare.
 - (3) Review. The *ZBA* shall reach a decision within 45 days of the conclusion of the Vested Rights hearing. The *ZBA* shall issue an order within 45 days of reaching its decision.
- G. Vested Right Validity. Upon the *ZBA* approving a *site-specific development plan*, there shall be a vest on such *site-specific development plan* for a period of two (2) years from the date of approval. A Vested Right shall confer upon the terms and conditions of the *site-specific development plan* as provided for in this section.
- (1) Vested Right Extension. The *ZBA* may approve a vesting period not to exceed five (5) years from the date of approval at the request of the landowner if it is found that the development cannot be secured within two (2) years because of the:
 - a. Size of the development,
 - b. Level of investment required, or
 - c. Current lack of, but potential future need for, the development.
 - (2) Vested Right Minor Modification. The *Zoning Administrator* may authorize minor modifications to the *site-specific development plan* provided that the changes in the plan do not change the basic relationship of the conditions set forth by the *ZBA*. Changes in detail that may be modified shall include, but not be limited to, the reduction in:
 - a. Square footage of *signs*,
 - b. Square footage of *buildings* and
 - c. The number of *buildings*.

Applications for a minor modification shall include a new *site-specific development plan* and a detailed description of the proposed changes. Each *applicant* may *appeal* the decision of the *Zoning Administrator* regarding the Vested Right to the *ZBA*.

- (3) Vested Right Revocation. The *ZBA* may conclude forfeiture of a Vested Right previously recorded where there is failure to abide by the terms and conditions placed upon the original approval.

§200A-333. Common Law Vested Rights

- A. Purpose. A Common Law Vested Right is a right established by common law to undertake and complete the development and *use* of property based on substantial expenditures in good faith reliance on a valid governmental approval. Any request for a Common Law Vested Right will be reviewed and acted upon by the *Planning Director* in accordance with the requirements and procedures set forth in this subsection.
- B. Application. The *applicant* must provide proof of each of the following provisions:
 - (1) A valid governmental permit has been obtained for the specific project;
 - (2) The developer made a substantial expenditure in reliance upon the permit;
 - (3) The developer was acting in good faith; and
 - (4) The developer suffers harm if required to comply with the new rules.
- C. Staff Review. The *Planning Director* shall review the evidence submitted as proof demonstrating the existence of each of the four (4) provisions above. All of these provisions shall be met in order to approve a Common Law Vested Right.
- D. Appeals. An *appeal* of the *Planning Director's* determination of the existence of a Common Law Vested Right shall be heard in a quasi-judicial hearing conducted by the Zoning Board of Adjustment (*ZBA*).

Subpart G. Variances

§200A-334. General

All applications for a *Variance* shall include, at minimum: (1) the name(s) and address(es) of the owner(s) of the property in question; (2) the location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description and/or statement of the present zoning district; (5) the appropriate level of *site plan*; and, where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. All applications for a *variance* shall adhere to the applicable review and approval process as outlined in this Subpart.

§200A-335. Variances

- A. Purpose. *Variances* are intended to provide limited relief from the requirements of this Chapter in those cases where the strict application of the provisions of this Chapter would result in unnecessary hardship. Any *use* which requires a *Variance* shall not be permitted without the approval of the Zoning Board of Adjustment (*ZBA*) in accordance with the requirements and procedures set forth in this section.
- B. Application.
 - (1) Pre-application Conference. Each *applicant* for a *Variance* shall meet with the appropriate Administrator (within this section "Administrator" shall refer to any of the following: *Communication Facilities, Manufactured Home Park, Soil*