

## Section 9.08      Zoning Vested Right Provisions

### A.      Purpose

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

### B.      Establishment of a Zoning Vested Right

1.      A *zoning vested right* shall be deemed established upon the valid approval, or conditional approval, by the *Board of Commissioners, Planning Board* or *Board of Adjustment* of a *site specific development plan*, following notice and public hearing.
2.      The *approving authority* may approve a *site specific development plan* upon such terms and conditions, in accordance with applicable law, as may reasonably be necessary to protect the public health, safety, and welfare.
3.      Notwithstanding sub-Sections 1. and 2., above, 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.
4.      A *site specific development plan* shall be deemed approved upon the effective date of the *approval authority's* action or ordinance relating thereto.
5.      The establishment of a *zoning vested right* shall not preclude the application of: *conditional use district* regulations; *overlay zoning district* regulations; Architectural and Site Design Requirements that impose additional requirements but do 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, *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 *zoning vested right* in accordance with this UDO.
6.      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 prior to its expiration or termination in accordance with this UDO.

**C. Approval Procedures and Approval Authority**

1. Except as otherwise provided in this Section, an application for *site specific development plan* approval shall be processed in accordance with the procedures established in this UDO. The *Board of Commissioners, Planning Board* or *Board of Adjustment*, as applicable, shall be the final *approval authority*.
2. 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 Town, that a *zoning vested right* is being sought.
3. Each map, plat, site plan or other document evidencing a *site specific development plan* seeking a *zoning vested right* shall contain the following notation:  
"Approval of this plan establishes a *zoning vested right* under GS § 160A-385.1. Unless terminated at an earlier date the *zoning vested right* shall be valid until (date)."
4. Following approval or conditional approval of a *site specific development plan*, nothing in this Section 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.
5. Nothing in this Section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval, this UDO, or other provisions of local, state or federal law.

**D. Duration**

1. A *zoning vested right* that has been vested as provided in this Section shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to sub-Section 2., below. 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.
2. Notwithstanding the provisions of sub-Section 1., above, the *approval authority* may provide that *zoning vested 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 *approval authority* at the time the *site specific development plan* is approved.

3. Upon issuance of a *building* permit, the expiration provisions of GS § 160A-418 and the revocation provisions of GS § 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.

**E. Termination**

A *zoning vested right* that has been vested as provided in this Section 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 findings by the *Board of Commissioners*, by ordinance after notice and a 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 *approval authority* 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 *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 ordinance after notice and a hearing.

**Section 9.08**  
**Zoning Vested Right Provisions**

---

**F. Voluntary Annexation**

A petition for annexation filed with the Town of Holly Springs under GS § 160A-31 or GS § 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 GS § 160A-385.1 or GS § 153A-344.1. A statement that declares that no *zoning vested right* has been established under GS § 160A-385.1 or GS § 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.

**G. Limitations**

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

**H. Repealer**

In the event that GS § 160A-385.1 is repealed, this Section 9.08 shall be deemed repealed and the provisions hereof no longer effective.