

ARTICLE 4.

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ARTICLE 4.

NONCONFORMITIES AND VESTED RIGHTS

DIVISION I. NONCONFORMITIES

Sec. 18-139. General.

After the effective date of this chapter, land or structures, or the lawful uses of land or structures which would be prohibited under this chapter and which were lawfully existing prior to the effective date of this chapter shall be considered as nonconforming. It is the intent of this article to permit these nonconformities to continue, but not to encourage their perpetual use. Except as otherwise provided herein, nonconforming structures or uses may be continued provided they conform to the provisions of this article.

Sec. 18-140. Use of undeveloped nonconforming lots.

(a) *Nonconforming single lot of record.* A vacant lot of record established prior to the effective date of this chapter which does not conform to the district in which it is located may be used as a building site for a use permitted within that district provided that all construction and the location of the building shall be in accordance with the applicable front, side and rear yard requirements of the zoning district in which it is located.

(b) *Nonconforming contiguous lots of record.* If two (2) or more contiguous vacant lots of record established prior to the effective date of this chapter are in single ownership, such lots, at the owner's option, may be designated to form a single or several lots which meet the minimum front, side and rear yard requirements of the zoning district in which they are located.

Sec. 18-141. Completion of nonconforming projects.

The construction or erection of any nonconforming project may be completed provided all construction is done pursuant to a valid building permit.

Sec. 18-142. Extension or enlargement of nonconforming situations.

(a) Except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.

(b) Subject to subsection 18-142(d) of this article, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this chapter, was manifestly designed or arranged to accommodate such uses. However, subject to subsection 18-141 of this chapter, a nonconforming use may not be extended to additional buildings or to land outside the original building.

(c) Subject to section 18-141 of this chapter, a nonconforming use of open land may not be

extended to cover more land than was occupied by that use when it became nonconforming. Uses that involve the removal of natural materials from the lot (e.g., a quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming, if ten (10) percent or more of the earth products had already been removed on the effective date of this chapter.

(d) Where a nonconforming situation exists the equipment or process may be changed if these or similar changes amount only to changes in degree of activity rather than changes in kind of activity and no violations of other provisions in this chapter occur.

(e) Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:

- (1) An increase in the total amount of space devoted to a nonconforming use; or
- (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations or density requirements;
- (3) Greater nonconformity with respect to the exterior architectural features of the conforming structures in the part of the zoning district in which the nonconforming structure is located.

(f) Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

(g) Notwithstanding subsection 18-142(e), any structure used for single family residential purposes and maintained as a nonconforming use or structure may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to yard size and setback requirements. For the purposes of this chapter, manufactured housing may be replaced with larger manufactured housing, and "single-wide" manufactured housing may be replaced with a "double-wide." This paragraph is subject to the limitations stated in section 18-144, Abandonment and discontinuance of nonconforming situations.

(h) Except for on-premises and outdoor advertising signs, a structure that is nonconforming in any respect or a structure that is used in a nonconforming manner may be reconstructed or replaced if partially or totally destroyed by fire, act of God or other accidental casualty loss, subject to the following restrictions:

- (1) A letter of intent to reconstruct is received by the building inspector within six (6) months from the time of destruction.
- (2) A building permit is obtained from the building inspector within one (1) year from the time the damage or destruction took place.
- (3) The total amount of space devoted to a nonconforming use may not be increased, except as provided in subsection 18-142(g) above.
- (4) The reconstructed building may not be more nonconforming with respect to dimensional

restrictions such as yard requirements, height limitations or density requirements, and such dimensional nonconformities must be eliminated if that can reasonably be accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of such building.

- (5) The reconstructed building may not be more nonconforming with respect to exterior architectural features than the previous building (e.g., if a nonconforming commercial use was occurring in a building exhibiting residential exterior architectural features, any reconstruction to that building must retain those residential architectural features). Such exterior architectural feature nonconformities must be eliminated if they can be reasonably accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of such building.

- (i) A nonconforming on-premises or outdoor advertising sign shall be subject to all requirements of this chapter regarding safety, maintenance, and repair. However, if the sign suffers substantial damage, the sign shall be brought into compliance with this chapter or removed.

Sec. 18-143. Change in kind of nonconforming use.

- (a) A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use except as provided herein.

- (b) A nonconforming use may be changed to another nonconforming use only in accordance with a special use permit issued by the city council. The city council may issue such special use permit if it finds that the proposed use will be no less compatible with the surrounding neighborhood than the use in operation at the time the approval is applied for. If a nonconforming use is changed to any use other than a conforming use without obtaining city council approval pursuant to this paragraph, that change shall constitute a discontinuance of the nonconforming use, with consequences as stated in section 18-144. A nonconforming accessory use or building may only be changed to another nonconforming accessory use or building as provided in this section. Changes in a principal use are also considered as changes to any accessory use or building. The city council shall comply with the provision of Article 3, Division IV of this chapter in issuing special use permits pursuant to this Section. The city council may issue such special use permit if it finds that all five (5) of the following factors exist:

- (1) That the proposed use will be no less compatible with the surrounding neighborhood than the use in operation at the time the approval is applied for.
 - (2) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the special use permit;
 - (3) That the use meets all required conditions and specifications;
 - (4) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
 - (5) That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the city's Future Land Use Plan, the CAMA plan, and adopted special area plans (i.e. corridor plans, neighborhood plans, Wilmington Vision 2020: A Waterfront

Downtown Plan).

(c) If a nonconforming use and a conforming use, any combination of conforming and nonconforming uses, or any combination of nonconforming uses exist on one (1) lot, the use made of the property may be changed substantially (except to a conforming use) only in accordance with a special use permit issued by the city council. The city council shall issue such special use permit if it finds that the proposed use will be no less compatible with the surrounding neighborhood than the use or combination of uses in operation at the time the special use permit is applied for. Sec. 18-88(c) shall apply to special use permits issued by the city council pursuant to this section.

(d) An application for city council approval pursuant to this section may be made up to one hundred eighty (180) days following abandonment or discontinuance of the previous nonconforming use, provided:

- (1) That the premises has not been used for a conforming purpose at any time following the discontinuance of the previous nonconforming use; and
- (2) That this subsection shall not be construed as extending the period specified in subsection 18-144(a).

Sec. 18-144. Abandonment and discontinuance of nonconforming situations.

(a) When a nonconforming use is discontinued for a consecutive period of one hundred eighty (180) days, the property involved may thereafter be used only for conforming purposes, except for those structures qualifying under subsection 18-142(h).

(b) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one (1) apartment in a nonconforming apartment building or one (1) space in a nonconforming manufactured housing park for one hundred eighty (180) days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or manufactured housing park as a whole is continuously maintained.

If a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for one hundred eighty (180) days shall terminate the right to maintain it thereafter. For example: If manufactured housing is used as a nonconforming use on the residential lot where a conforming residential structure also is located, removal of that manufactured housing for one hundred eighty (180) days terminates the right to replace it.

(c) When a structure or operation made nonconforming by this chapter is vacant or discontinued on the effective date of this chapter, the one hundred eighty (180) day period, for purposes of this section, begins on the effective date of this chapter.

Sec. 18-145. Nonconformities created by public action.

When lot area or setbacks are reduced as a result of conveyance to a federal, state or local

government for a public purpose and the remaining area is at least seventy-five (75) percent of the required minimum dimensional standard for the district in which it is located, then that lot shall be deemed to be in compliance with the minimum lot size and setback standards of this ordinance without the need for a variance from the board of adjustment.

Secs. 18-146--18-154. Reserved.

DIVISION II. VESTED RIGHTS

Sec. 18-155. Establishment of a vested right.

(a) A vested right shall be deemed established upon the valid approval, by the City Council, subdivision review board or planning commission as applicable, of a site specific development plan following notice and public hearing as provided for by law.

(b) The approval authority may approve a site specific development plan upon such terms and conditions as may be reasonably necessary to protect the public health, safety and welfare. Such conditional approval shall result in a vested right being established; provided, that failure to satisfy any of the terms and conditions so imposed will result in a forfeiture of vested rights.

(c) A site specific development plan shall be deemed approved as of the effective date of the approval authority's final action or adoption of an ordinance relating thereto.

Sec. 18-156. Approval procedures and approval authority.

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

(b) Notwithstanding the provisions 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 City Council or subdivision review board, 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 City Council following notice and a public hearing as provided in G.S. 160A-364, in accordance with the procedures set forth in Division IV of Article 3 for consideration of special use permit requests.

(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 a 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)."

Sec. 18-157. Duration of vested rights.

(a) A vested right established pursuant to this division shall remain vested for a period of two (2) years from the effective date thereof.

(b) Nothing in this division shall be construed to exempt a site specific development plan with respect to which a vested right has been established from subsequent review or approvals by the City to ensure compliance with the terms and conditions of the original approval as provided for in the original approval or by applicable City Code provisions.

(c) The establishment of a vested right pursuant to this division 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 City, including but not limited to: building, fire, plumbing, electrical and mechanical codes. New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right with respect thereto shall become effective upon the expiration or termination of the vested right in accordance with this division.

(d) Upon issuance of a building permit, the expiration provisions 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 zoning vested right under this section is outstanding.

Sec. 18-158. Termination of vested rights.

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

- (a) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- (b) Upon written request or with the written consent of the affected landowner;
- (c) Upon findings by the City Council, 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;
- (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 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 paid. 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 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.

Sec. 18-159. Miscellaneous provisions.

(a) A vested right, once established as provided for in this division, precludes any zoning action by the City 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 development plan.

(b) Nothing in this division 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.

(c) A vested right is not a personal right, but shall attach to and run with the land with respect to the affected property. All successors in title and interest of the owner who obtained the vested right shall be entitled to exercise the right.

Sec. 18-160. Voluntary annexation.

A petition for annexation filed with the City under G.S. 160A-31 or G.S. 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 G.S. 160A-385.1 or G.S. 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.

Sec. 18-161. Limitations.

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

Sec. 18-162. Repealer.

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

Sec. 18-163. Effective date.

This Division shall only apply to site specific development plans approved on or after October 1, 1991.