

**ARTICLE 13  
NONCONFORMING USES AND STRUCTURES  
AND VESTED RIGHTS**

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## **13.1. NONCONFORMING USES AND LOTS**

### **13.1.1. CONTINUATION OF NONCONFORMING USES AND NONCONFORMING STRUCTURES.**

Any nonconforming uses or structures in existence at the time of the adoption of this Zoning Ordinance may be continued and shall not be subject to this Ordinance to the extent that the regulations, restrictions and requirements of this Ordinance would prohibit that use, or to the extent that such structure would not be permitted to remain. Any Nonconforming Use or Nonconforming Structure which, at any time, is not in use for a continuous six (6) month period following the adoption of these regulations shall be considered to have discontinued operations and, therefore, regardless of the reason or intent of such discontinuance, will no longer be permitted, except as allowed in Section 13.1.2 below. The initial decision as to whether a existing Nonconforming Use or Nonconforming Structure has been abandoned shall be made by the Administrator, subject to said decision being appealed to the Board of Adjustment by the affected property owner within thirty (30) days of the ruling by the Administrator.

**13.1.2** Certain nonconforming uses, due to their individual temporary circumstances, cannot be maintained as a year-round use. These uses, which are identified in Section 5.22.3.2, shall be considered abandoned if the temporary use is discontinued for longer than any twelve (12) month period

### **13.1.2. NONCONFORMING LOTS OF RECORD.**

#### **13.1.2.1. Single Lot of Record.**

**13.1.2.1.1.** Permitted uses in any district may be allowed on any single lot of record existing at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, generally applicable in the zoning district.

**13.1.2.1.2.** Any existing lot of record which does not conform with lot area, depth or width requirements may be used for any permitted use in that zoning district so long as the parcel is not reduced in any manner or diminished so as to cause yards, lot coverage, or other open spaces to be less than required, except as provided in subsection 13.1.2.1.3.

**13.1.2.1.3.** Dimensional requirements other than those applying to lot area, depth or width shall be met, provided that the Administrator may allow a reduction of not to exceed twenty-five per cent (25%) in the dimension of any required yard. Approval shall depend upon a written finding that such reduction is reasonably necessary for practical use of the lot and will not have substantial adverse effects on adjacent property. Reduction of yard requirements by more than twenty-five per cent (25%) shall be obtained only through a variance granted by the Board of Adjustment.

### **13.1.3. EXPANSION OR ENLARGEMENT OF NONCONFORMING USES OR CHANGE TO ANOTHER NONCONFORMING USE.**

**13.1.3.1.** A Nonconforming Use shall not be expanded, enlarged or changed to another Nonconforming Use except as provided in this section 13.1.3.

**13.1.3.2.** No structural alterations shall be made to a Building or other Structure substantially occupied by a Nonconforming Use except as necessary:

**13.1.3.2.1.** to comply with the requirements of a federal or state laws or regulations, or local ordinance of general applicability;

**13.1.3.2.2.** to accommodate a Conforming Use; or

**13.1.3.2.3.** to make such structure conform to the applicable dimensional regulations.

**13.1.3.3.** A Nonconforming Use may be changed to any Conforming Use. The applicable zoning district dimensional regulations of Table 4.7-1 shall not apply to such change of Use. However, all other

design standards of this Ordinance (such as parking, landscaping, etc.) shall apply. Nonconforming Uses shall not be expanded or enlarged unless such expansion or enlargement shall comply with all applicable zoning district dimensional regulations.

**13.1.3.4.** A Nonconforming Use may be changed to another Nonconforming Use which more closely approximates permitted Uses in the Zoning District, with respect to scale and intensity of use, upon issuance of a Certificate of Nonconformity Adjustment.

**13.1.4. NONCONFORMING STRUCTURES.**

**13.1.4.1.** Expansions or additions to structural parts of a Nonconforming Building or other Structure shall be permitted with the issuance of a Certificate of Nonconformity Adjustment. Repairs to existing Nonconforming Buildings or Structures that do not include an expansion or addition shall not require a Certificate of Nonconformity Adjustment.

**13.1.4.2.** Nonconforming Buildings or other Structures shall not be expanded or enlarged unless such expansion or enlargement shall comply with all applicable zoning district dimensional regulations.

**13.1.5. CONTINUED NONCONFORMANCE AFTER DAMAGE OR DESTRUCTION.**

**13.1.5.1.** When a Nonconforming Building or Structure or a Building containing a Nonconforming Use is damaged or destroyed by fire, storm or other casualty, such Building may be rebuilt, reconstructed and/or reoccupied only in accordance with the provisions of this § 13.1.5.

**13.1.5.2.** Where a Building or other Structure substantially occupied by a Nonconforming Use is damaged or destroyed as a result of fire or other natural/uncontrollable factor, such Building or Structure may be reconstructed and such Nonconforming Use may be continued, provided that any such reconstruction does not increase the degree of any Nonconformance, and only upon receipt of a Zoning Clearance Permit. However, if a Building or other Structure substantially occupied by a Nonconforming Use is voluntarily removed or altered, such structure and site shall be subject to all applicable design standards of this Ordinance, and shall be permitted only upon the issuance of a Certificate of Nonconformity as set forth in Section

13.1.6, below.

**13.1.6. CERTIFICATE OF NONCONFORMITY ADJUSTMENT REQUIRED.**

**13.1.6.1.** A Certificate of Nonconformity Adjustment shall be required to enlarge, expand or otherwise alter any Nonconforming Use or Structure as set forth in this Section 13.1. A Certificate of Nonconformity Adjustment shall be issued by the Administrator subject to the requirements of this section.

**13.1.6.2.** Application for a Certificate of Nonconformity Adjustment shall be submitted on a form prescribed by the Administrator. An applicant for a Certificate of Nonconformity Adjustment shall submit a detailed plan of the existing site, showing, the degree of Nonconformity with respect to the dimensional and design regulations of this Ordinance. In the case of a Nonconforming Use the application shall include an detailed explanation of the current Use including documentation of traffic generated by the current use.

**13.1.6.3.** A Certificate of Nonconforming Adjustment may be granted by the Administrator in accordance with the provisions of this section. Steps in the nonconformity adjustment process are:

- **Step 1 - Application.** An application for a nonconformity adjustment will be considered by the Zoning Administrator upon the filing of a form entitled "Request for Nonconformity Adjustment", available within the office of the administrator.
- **Step 2 - Notification of neighboring landowners.** All landowners adjoining to any degree (including lying across roadways) the site of the nonconformity will receive notification of the filing of the request for a Certificate of Nonconformity Adjustment and given an opportunity, should they desire, to comment on the nonconformity within seven (7) days of the date of filing.
- **Step 3 - Decision by Zoning Administrator.** Within 30 days of the date of receipt of a request for a nonconformity adjustment, the Zoning Administrator will either approve or deny the request. His decision to approve may be based upon the applicant agreeing to site changes. The

decision to approve or deny will be made based on the following criteria:

- Noise. Does the nonconformity create noise above and beyond levels considered normal to the area?
  - Traffic. Does the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?
  - Other measurable, physical effects. Does the nonconformity generate any other negative effects including but not limited to: dust, air pollution, foul smell, etc.?
  - Surrounding property values. Does the nonconformity detract from the prevailing property values?
  - Aesthetics. Does the nonconformity compliment or detract from the overall aesthetic character of the area?
- **Step 4 - Changes to the nonconformity.** The Zoning Administrator will determine what the nonconformity operator/owner must do to the property for certification. For example, landscaping or fencing may be required or a shift of operations away from adjoining properties may be stipulated.

**13.1.6.4. Denial by Administrator.** If the Administrator, after an analysis of the facts of the situation, finds the nonconformity cannot be adjusted, it will be handled as such and subject to those provisions of this Ordinance which deal with unreformable nonconformities. A denied applicant may petition the Planning & Zoning Board acting as a Board of Adjustment for a review of the Administrator's decision within 30 days. The procedures for an appeal are set forth in § 3.7 of this Ordinance.

**13.1.6.5. Approval by Administrator.** Certificates of Nonconformity Adjustment may be issued with or without conditions. Those with conditions will be issued after a visual inspection by the Administrator.

**13.1.7. REPLACEMENT OF NONCONFORMING MANUFACTURED HOMES ON INDIVIDUAL LOTS.**

**13.1.7.1.** Nonconforming manufactured homes on individual lots may be removed and replaced

provided that the replacement manufactured home is no older than 1976, the unit must be replaced with the same type of home, or larger, as the previous structure, and must conform to the design and installation standards of Section 4.17.8.2 of this Ordinance.

**13.1.8. NONCONFORMING MANUFACTURED HOME PARKS.**

**13.1.8.1.** All manufactured home parks made nonconforming by this Ordinance and not operating under a conditional use permit in accordance with this Ordinance, may continue. However, the arrangement of spaces is not to be altered nor the number of spaces increased. In the absence of a plat recorded in the Cabarrus County Register of Deeds office prior to June 30, 1981, records in the Cabarrus County Tax Supervisor's office will be utilized as verification reflecting the number of lots the individual paid taxes on.

**13.1.8.2.** Manufactured homes within nonconforming parks may be removed and replaced provided that the replacement manufactured home is no older than 1976 and must conform to the design and installation standards of Section 4.17.8.2 of this Ordinance.

## 13.2. VESTED RIGHTS.

### 13.2.1. PURPOSE AND INTENT.

The purpose and intent of this Section is:

- To provide detailed administrative rules, regulations and procedures in order to guide officials in the administration, interpretation and implementation of the the Unified Development Ordinance, and/or any other ordinances, regulations and or administrative rules adopted by the Town in order to implement a comprehensive plan for development.
- To establish predictability and fairness for affected landowners;
- To recognize that development projects for which vested rights have been obtained must be accounted for in the *Comprehensive Plan*, the Unified Development Ordinance, capital improvements programs, and other land development regulations.
- To provide a method for determining and quantifying the number of projects, development projects, and land uses, which do not now comply with this Ordinance, or which may in the future fail to comply with this Ordinance due to subsequent amendments to this Ordinance but which are vested, so that such projects, development projects and land uses can be accounted for in the existing and future general plans and this Ordinance.
- To establish uniform and non-burdensome procedures and specific criteria for the determination of vested rights and claims of equitable estoppel in order to aid in the accomplishment of sound and orderly planning;
- To define the scope of vested rights that have been obtained by virtue of prior development approvals, including the expiration of development permits;
- To protect legitimate investment-backed expectations;
- To protect the planning and implementation process;

- To settle potential disputes and to minimize protracted and costly litigation;
- To facilitate implementation of the goals, objectives and policies set forth in the *Comprehensive Plan*; and
- To ensure that all applicable legal standards and criteria are utilized in the determinations to be made hereunder.
- To implement the provisions of NCGS § 160A-385.1 *Vested Rights*.

### 13.2.2. APPLICABILITY.

This § 13.2 shall apply to any person(s) desiring to obtain a right to develop land beyond the time limitations as set forth in other sections of this Ordinance.

### 13.2.3. AUTHORIZATION.

The provisions of this Section 13.2 are authorized by NCGS § 160A-385.1 *Vested Rights*.

### 13.2.4. DEFINITIONS.

The following terms shall have the definitions provided in this Section 13.2.3. If a contrary definition appears in § 160A-385.1(b), the term shall have the meaning set forth in that section. Any terms not defined herein shall have the meaning assigned in Appendix A to this Ordinance.

**LANDOWNER** - Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase or contract to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.

**TOWN** - The Town of Harrisburg, North Carolina.

**PHASED DEVELOPMENT PLAN** - A plan which has been submitted to a Town by a landowner for phased development which shows the type and

intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the Town to be a site specific development plan.

**PROPERTY** - All real property subject to zoning regulations and restrictions and zoning boundaries by the Town.

**SITE SPECIFIC DEVELOPMENT PLAN** - A plan which has been submitted to a Town by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such 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 TND Greenfield plan, a subdivision plat, a conditional or special use permit, a conditional use district zoning plan, or any other land-use approval designation as may be utilized by the Town. Such plans include the information set required by § 13.2.8. A variance shall not constitute a site specific development plan. Neither a Sketch Plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific development plan.

**VESTED RIGHT** - 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.

**13.2.5. ESTABLISHMENT OF VESTED RIGHTS.**

**13.2.5.1.** A Vested Right shall be deemed established for any property upon the approval (with or without conditions) of a Site Specific Development Plan or a Phased Development Plan by the appropriate Town decision-making agency in accordance with the provisions of this section 13.2.

**13.2.5.2.** Notwithstanding the provisions of this § 13.2.4, the approval of a Site Specific Development Plan with the condition that a Variance be obtained shall not establish or be deemed to establish a Vested Right unless and until the Variance is obtained.

**13.2.6. DURATION.**

**13.2.6.1.** An amendment or modification of a Site Specific Development Plan or Phased Development Plan shall not extend the Vested Rights period unless

the approval shall specifically provide for such extension.

**13.2.6.2.** A Building Permit which is issued for a development for which Vested Rights have been established shall not expire or be revoked because of the time limitations on validity of permits under NCGS § 160A-418 prior to the expiration of the Vested Rights period.

**13.2.6.3.** Where a Variance is required as a condition of the approval of a Site Specific Development Plan, the effective date of the approval which commenced the period for development shall be the date on which the Variance is granted.

**13.2.6.4.** A right to develop a Building or Structure or Use which has been vested as provided in this section 13.2 shall terminate at the end of the applicable vesting period for all Buildings or Structures and Uses for which no valid application for a Building Permit has been filed.

**13.2.6.5. Voluntary Annexation.** In accordance with NCGS § 160A-31(h) and 160A-58.1(d), petitioners filing for voluntary annexation shall also submit a statement declaring whether or not vested rights with respect to the properties subject to the petition have been established. Whenever the Town acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights under a permit, certificate, or other evidence of compliance issued by the local government surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The Town may take any action regarding such a permit, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its ordinances and regulations.

**13.2.7. PROCEDURE FOR APPROVAL OF A VESTED RIGHT.**

**13.2.7.1.** The procedures for approval of a Site Specific Development Plan are set forth in § 13.2.8, below. The procedures for approval of a Phased Development Plan are set forth in § 13.2.9, below.

**13.2.7.2.** Upon approval of a Site Specific Development Plan or a Phased Development Plan, each and every map, plat, site plan or other document prepared or used for the Development shall contain the

following notation:

- “Approval of this Site Specific Development Plan establishes a Vested Right under North Carolina General Statutes § 160A-385.1. Unless terminated at an earlier date, the Vested Right shall be valid until [date approved by Town].”

**13.2.8. SCOPE OF VESTED RIGHTS.**

**13.2.8.1.** Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the Town to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the Town from revoking the zoning clearance permit for failure to comply with applicable terms and conditions of the approval or this Ordinance as set forth in Section 1.6.

**13.2.8.2.** A vested right, once established as provided for in this section, precludes any zoning action by the Town 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 or an approved phased development plan, except:

**13.2.8.2.1.** With the written consent of the affected landowner;

**13.2.8.2.2.** Upon findings, by ordinance after notice and a public 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 development plan or the phased development plan;

**13.2.8.2.3.** 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 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;

**13.2.8.2.4.** Upon findings, 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 Town of the site specific development plan or the phased development plan; or

**13.2.8.2.5.** Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site specific development plan or the phased development plan, in which case the Town 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.

**13.2.8.3.** The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does 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 land-use regulation by the Town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.

**13.2.8.4.** Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of the Town to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses. (See § 13.1 of this Ordinance).

**13.2.8.5.** A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan or a phased development plan, all successors to the original landowner shall be entitled to exercise such rights.

**13.2.8.6.** Nothing in this section shall preclude 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.

**13.2.9. SITE-SPECIFIC DEVELOPMENT PLANS (SSDPs).**

**13.2.9.1. GENERAL.** The Town Council or the Planning and Zoning Board (for preliminary subdivision plats) may, but under no circumstances is it required, to approve a Site-Specific Development Plan (SSDP). The SSDP shall bind the applicant and the Town Council (the "parties") and shall contain those terms and conditions agreed to by the parties and those required by this Section. The Administrator and the Town Attorney, or their designees, are authorized to negotiate Development Agreements on behalf of the Town Council to enforce a SSDP.

**13.2.9.2. Applicability.** The Town Council or the Planning and Zoning Board may approve a SSDP pursuant to this Section only if the proposed development to which the SSDP pertains is in conformity with the then adopted *Comprehensive Plan* and capital improvements program, zoning regulations, and other applicable requirements of this Ordinance. The SSDP shall be used solely as a means to enforce compliance with the terms of this Ordinance, and shall not be considered an inducement for the approval of any application for development approval.

**13.2.9.3. Duration.**

**13.2.9.3.1.** Upon approval of a Site Specific Development Plan, the right to develop such Development or Use shall continue for period of two (2) years from the date of approval of such Site Specific Development Plan.

**13.2.9.3.2.** Notwithstanding the foregoing, the Town, in its approval, may authorize a Vested Rights development period of longer than two (2) years, but in no event longer than five (5) years, if, in the Town's sole discretion, such longer period is necessary because of the size and phasing of the Development, the investment in the Development, the need for the Development, economic cycles, and such other conditions as the Town may consider relevant.

**13.2.9.4. Procedure for Approval of an SSDP.**

**13.2.9.4.1.** An application for an SSDP may be made to the Administrator in accordance with the procedures set forth herein. Application may be made by the landowner. If made by the holder of an equitable interest, the application shall be accompanied by a verified title report and by a notarized statement of

consent to proceed with the proposed SSDP executed by the landowner. Application may be made by the Planning Board or the Town Council. If made by the Planning Board or the Town Council, the applicant shall obtain and attach a notarized statement of consent to proceed with the proposed SSDP executed by the owner of the subject property.

**13.2.9.4.2. Coordination of SSDP Application with other Discretionary Approvals.**

It is the intent of these regulations that the application for an SSDP will be made and considered simultaneously with the review of other necessary applications; including, but not limited to, land-use approval designation as may be utilized by the Town. If combined with an application for rezoning, subdivision and plat approval, planned development or conditional use permit, the application for a SSDP shall be submitted with said application and shall be processed, to the maximum extent possible, jointly to avoid duplication of hearings and repetition of information. A SSDP is not a substitute for, nor an alternative to, any other required permit or approval, and the applicant must comply with all other required procedures for development approval.

**13.2.9.4.3. Contents of a SSDP.** No SSDP shall be approved by the Town Council or Planning and Zoning Board, nor shall any such SSDP or any provision of such SSDP have any legal force and effect, unless the application contains the following minimum provisions:

- the approximate boundaries of the site;
- significant topographical and other natural features effecting 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;
- the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways; and
- Any other matters set forth in NCGS § 160A-385-1(b)(5).



- The provisions of this Section supplement, but do not replace, any additional information required by Appendix B for any site plan, Planned Unit Development plan, a TND Greenfield application, a subdivision plat, a conditional use permit, a conditional use district zoning plan, or any other application for development approval required for the proposed development.

**13.2.9.4.4. Approval of Town Council or Planning and Zoning Board.**

No SSDP shall become effective until approved by the Town Council or Planning and Zoning Board. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the document that triggers such vesting shall be so identified at the time of its approval. The Town Council or Planning and Zoning Board shall consider the proposed SSDP consistent with any procedures as may be established pursuant to NCGS § 160A-385.1. The Town Council or Planning and Zoning Board may:

- Approve the SSDP;
- Approve the SSDP with conditions; or
- Reject the SSDP, in whole or in part, and take such further action as it deems to be in the public interest.
- The Town Council or Planning and Zoning Board, in approving an SSDP, shall expressly find that the agreement meets those criteria in this Ordinance for approval of the Applications for Development Approval.

**13.2.9.5. Recordation of SSDP.**

No later than ten (10) days after the Town Council or Planning and Zoning Board approves an SSDP, the Administrator shall record a copy of the SSDP with the county register of deeds, and the recordation constitutes notice of the SSDP to all persons. The burdens of the SSDP are binding on, and the benefits of the SSDP inure to, the parties to the agreement and to all their successors in interest and assigns.

**13.2.9.6. Covenants.** Unless otherwise provided in the SSDP, any covenant by the Town Council or Planning and Zoning Board contained in the SSDP to refrain from exercising any legislative, quasi-legislative,

quasi-judicial or other discretionary power, including rezoning or the adoption of any rule or regulation that would affect the proposed subdivision, shall be limited to a period not exceeding that specified in NCGS § 160A-385(d)(1). The covenant shall also contain a proviso that the Town Council or Planning and Zoning Board may, without incurring any liability, engage in action that otherwise would constitute a breach of the covenant if it makes a determination on the record that the action is necessary to avoid a substantial risk of injury to public health, safety and general welfare. The covenant shall contain the additional proviso that the Town Council or Planning and Zoning Board may, without incurring any liability, engage in action that otherwise would constitute a breach of the covenant if the action is required by federal or state law.

**13.2.9.7. Notice of Decision.**

Within ten (10) days following a decision of an SSDP, the Administrator shall give notice of such action to the applicant.

**13.2.9.8. Third Party Rights.** Except as otherwise expressly provided in the SSDP, the SSDP shall create no rights enforceable by any party who/which is not a party to the SSDP.

**13.2.9.9. Amendment or Cancellation.** An SSDP may be amended, or cancelled in whole or in part, by mutual consent of the parties to the SSDP or by their successors in interest or assigns.

**13.2.10. PHASED DEVELOPMENT PLANS (PDP's).**

The procedures and requirements pertaining to Phased Development Plans (PDP's) shall be the same as those set forth for SSDP's in § 13.2.8, except as provided below:

**13.2.10.1. Duration.** The Town Council or Planning and Zoning Board may, but under no circumstances is it required, provide by ordinance that approval by the Town Council or Planning and Zoning Board of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years.

**13.2.10.2. Procedure.** The document that triggers such vesting shall be so identified at the time of its approval. The Town Council or Planning and Zoning Board still may require the landowner to

submit a site specific development plan for approval by the Town with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications.

**13.2.10.3. Discretion.** Nothing in this section shall be construed to require the Town Council or Planning and Zoning Board to adopt an ordinance providing for vesting of rights upon approval of a phased development plan.

### **13.3. EXPIRATION OF DEVELOPMENT APPROVALS.**

#### **13.3.1. TIME OF EXPIRATION.**

Unless otherwise specifically provided for in this Ordinance, development applications shall automatically expire and become null and void, and all activities taken pursuant to such development application shall cease and become null and void, and all activities pursuant to such approval thereafter shall be deemed in violation of this Ordinance, when: 1) the applicant fails to satisfy any condition that was imposed as part of the original or revised approval of the application for development approval, or that was made pursuant to the terms of any development agreement, including the failure to abide by specified time limits established therein; or 2) the applicant fails to present a subsequent development application as required by this title within the time so required or as may be required by Table 13.3-1 or 13.3-2 this Ordinance or North Carolina law. If no time limit for satisfaction of conditions is specified in the original or revised approval of the development application, the time shall be presumed to be twelve (12) months from the date of approval.

#### **13.3.2. DATE FROM WHICH TIME LIMIT IS MEASURED.**

**13.3.2.1.** Each time period referenced on Table 13.3-1 and Table 13.3-2 shall run from the final action of the appropriate official, officer, commission, board or the governing body with valid and legal jurisdiction to take such action or to approve such plans or to issue such permits. Except as may be otherwise indicated herein, the date of final action shall be the date such action was taken or such approval was granted or such permit was issued, as set forth on such action, approval or permit.

**13.3.2.2.** In order to assure that all applicants for actions, approvals or permits are informed of the applicable time limit, the date of final action and the expiration date shall be shown on each such action, permit or approval; but provided, however, that the Administrator's failure to include either the date of final action or the expiration date shall not be deemed to be a waiver of such dates nor shall it be the basis of any action by the applicant to challenge the applicable expiration date. The burden is on the applicant to know the date of issuance and the

expiration date. If either or both of such dates are not shown, the applicant may request, and the Administrator shall promptly supply such date or dates.

**13.3.2.3.** All actions, approvals or permits shall expire on the expiration date unless a valid extension has been granted on or before the expiration date pursuant to section 13.3.3 herein.

#### **13.3.3. EXTENSIONS OF TIME LIMITS.**

**13.3.3.1. First Extension.** Unless otherwise prohibited by North Carolina law or this Ordinance, the Administrator may extend the time for expiration of a development permit or approval for a period not to exceed one (1) year from the date of the original decision granting approval, if the application for extension is made in writing within the original period of validity. Subsequent extensions may be made by the final approval body upon finding that conditions at the time of approval have not changed.

**13.3.3.2. Additional Extensions.** There shall be no additional extensions of any time limits for actions, approvals or permits set forth herein, as of right. Any extensions must be expressly requested by the applicant, in writing, and approved by the appropriate official, officer, board, commission or the governing body which originally took the action, approved the plan or issued the permit.

**13.3.3.3.** A request for an extension of an expiration date shall be made on a form provided by the Administrator and shall include, but shall not necessarily be limited to, the following:

- the current date of expiration;
- the extension period requested, which shall be no longer than the original period of time granted; and
- the reason(s) that the applicant has been unable to proceed within the period of the original expiration date.

**13.3.3.4.** Before granting an extension, the official, officer, board, commission or the governing body

shall determine whether any applicable changes in land use regulations have occurred which would impose new requirements with respect to such action, approval or permit, if an extension were denied, and the applicant were compelled to re-file for an original action, approval or permit. If changes have occurred, the official, officer, board, commission or the governing body shall balance the burden imposed on the applicant if required to re-file for an original action, approval or permit against the benefit accruing to the public by requiring the applicant to comply with the new regulation.

**Table 13.3-1  
TIME LIMITS FOR USE OF ZONING APPROVALS AND PERMITS \***

<b>Action/Permit/Approval</b>	<b>Time Limit</b>
Conditional Use Permit under the current or a former ordinance (or a Special Use Permits under a former Ordinance)	One year to obtain a building permit and commence construction of the primary use authorized by the permit or, in the case of home occupations, to complete any necessary alterations, adjustments, modifications, or other activities authorized by the permit.
Variance	Six (6) months to obtain a building permit and to commence construction of the primary use authorized by the variance
Preliminary Site Plan	The approval of a preliminary site plan shall be effective for a period of one (1) year from the date of approval, at the end of which time the applicant must have submitted a complete final site plan for approval. If a final site plan is not submitted for final approval within the one (1) year period, the preliminary approval shall be null and void, and the applicant shall be required to submit a new preliminary site plan for review.
Final Site Plan	The approval of a final site plan shall be effective for a period of one (1) year from the date that the final site plan is approved by the Administrator at the end of which time, substantial construction shall have commenced and shall continue without interruption, or a complete building permit application shall be submitted and reviewed by the Administrator. Failing same, the final approval shall be null and void, and the applicant shall be required to submit a new preliminary site plan subject to the then existing provisions of this Ordinance.

\* Where Vested Rights have been established in accordance with Section 13.2 of this Ordinance, the time limits as set forth in Section 13.2 shall apply.

**Table 13.3-2  
TIME LIMITS FOR USE OF SUBDIVISION APPROVALS**

<b>Plan/Plat Approval</b>	<b>Time Limit</b>
Sketch Plan	Not applicable (not approved or rejected)
Preliminary Plat (for Major Subdivision)	Two years to obtain final plat approval.
Final Plat or Conveyance Plat	Thirty (30) days to record plat.