

# ARTICLE 13

## NONCONFORMING USES AND STRUCTURES AND VESTED RIGHTS

*Summary: This Article provides guidance on nonconforming uses, lots, and structures, vested rights, and expiration of development approvals.*

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#### **13.1. NONCONFORMING USES, LOTS AND STRUCTURES - PURPOSE**

It is recognized that lawful nonconformities (uses, lots or structures) may currently exist or may develop as a result of either amendments to the CDO or amendments to the zoning map. Such nonconformities may continue, but generally should not be changed, expanded or enlarged in such a manner as to increase the extent of the nonconformity. It is the purpose of this section to encourage the eventual cessation of nonconformities, but to provide a procedure for approval of limited changes, expansions, and enlargements to nonconforming uses.

##### **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 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 one-hundred and eighty (180) day 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. The initial decision as to whether an 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. See Article 12.3.B for non-conforming sign requirements.

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

#### **A. Single Lot of Record**

1. Permitted uses in any district may be allowed on any single lot of record existing on November 23, 2000 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.
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.
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 CHANGES TO NONCONFORMING USES**

- A. A nonconforming use shall not be changed to another nonconforming use except as provided in this section 13.1.3.
- B. No structural alterations shall be made to a building or other Structure substantially occupied by a nonconforming use except as necessary:
  1. To comply with the requirements of a federal or state laws or regulations, or local ordinance of general applicability;
  2. To accommodate a Conforming Use; or
  3. To make such structure conform to the applicable dimensional regulations.
  4. A nonconforming use may be changed to any conforming use. The applicable zoning district dimensional regulations of Table 7.6.2.A shall not apply to such change of use. However, all other design

standards of this Ordinance (such as parking, landscaping, etc.) shall apply.

- C. A nonconforming use may be changed or converted 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, provided that such proposed use is not prohibited as specified in Section 13.1.3.D.4. Changes or conversions of an existing nonconforming use to another nonconforming use shall be subject to the following requirements.
1. Off-street parking and loading areas shall be improved to the minimum standards specified in Article 10.3. Changes which require additional parking shall provide the minimum required parking area.
  2. Standard landscaping and buffering shall be provided as specified in Article 11, to the greatest extent possible.
  3. All nonconforming signs located on the property shall be removed or replaced with conforming signs.
  4. Changes or conversions of an existing nonconforming use to any of the following nonconforming uses are prohibited:
    - Junkyards/salvage yards;
    - Sexually oriented businesses;
    - Outdoor storage yards; and
    - Signs.
- D. When considering a Certificate of Nonconformity Adjustment for the change or conversion of a nonconforming use to another nonconforming use, the Board of Adjustment shall evaluate the following:
1. whether the proposed use is of a less intense nature and scale than the existing use;
  2. the amount of traffic and parking associated with the proposed use as compared to the existing use;
  3. the number of persons (including employees and customers) on the premises at the time of peak demand;
  4. the potential noise and glare impacts associated with the proposed use; and
  5. the compatibility of the specific proposed use with the adjacent uses, and with the adjacent zoning pattern.
- E. Submission requirements for a Certificate of Nonconformity Adjustment shall include:

1. a site plan illustrating the existing conditions of the subject property and the required site improvements as specified above; and
  2. a written narrative on a form provided by the City, addressing the items specified in Section 13.1.3.D.1-5 above.
- F. In the event of the issuance of a Certificate of Nonconformity Adjustment to change or convert a nonconforming use, the use may not be changed back to the previous use through the Certificate of Nonconformity Adjustment process.

#### **13.1.4 EXPANSIONS OR ENLARGEMENTS OF NONCONFORMING USES**

- A. A nonconforming use shall not be expanded or enlarged except as provided in this section 13.1.4.
- B. A nonconforming use may be enlarged in order:
1. To comply with the requirements of a federal or state laws or regulations or local ordinance of general applicability;
  2. To make such structure conform to the applicable dimensional regulations.
- C. A nonconforming use may also be expanded or enlarged upon issuance of a Certificate of Nonconformity Adjustment. Expansions or enlargements of nonconforming uses shall be subject to the following requirements.
1. Expansions or enlargements of nonconforming uses shall be limited to a maximum of fifty percent (50%) of the floor area, or land area devoted to the nonconforming use. Only one expansion or enlargement of a nonconforming use shall be permitted. In the event that the property is subdivided after issuance of a Certificate of Nonconformity Adjustment, none of the resulting properties shall be eligible for approval of future expansions or enlargements. Additions of accessory uses and/or structures shall be considered expansions, however; installation of mechanical equipment incidental to the operation of the development (such as air conditioning or heating equipment, utility meters, etc.) shall not be considered expansion, provided such installation meets the building setbacks for the district in which the use is located.
  2. Off-street parking and loading areas shall be improved to the minimum standards specified in Article 10.3. Expansions or enlargements which require additional parking shall provide the minimum required parking area.

3. Standard landscaping and buffering shall be provided as specified in Article 11, to the greatest extent possible.
  4. All nonconforming signs located on the property shall be removed or replaced with conforming signs.
  5. Expansions or enlargements of the following nonconforming uses are prohibited:
    - Junkyards/salvage yards;
    - Sexually oriented businesses;
    - Outdoor storage yards; and
    - Signs
- D. When considering a Certificate of Nonconformity Adjustment for an expansion or enlargement of a nonconforming use, the Board of Adjustment shall evaluate the following:
1. The increase of intensity and scale of the expansion or enlargement;
  2. The amount of traffic and parking associated with the proposed increase of floor and/or land area;
  3. The anticipated increase in the number of persons (including employees and customers) on the premises at the time of peak demand;
  4. The potential noise and glare impacts associated with the proposed expansion or enlargement; and
  5. The compatibility of the specific proposed addition or enlargement with the adjacent uses, and with the adjacent zoning pattern.
- E. Submission requirements for a Certificate of Nonconformity Adjustment shall include:
1. A site plan indicating the proposed expansion or enlargement; and the required site improvements as specified above; and
  2. A written narrative on a form provided by the City, addressing the items specified in Section 13.1.4.D.1-5 above.

**13.1.5. NONCONFORMING STRUCTURES**

- A. 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.
- B. 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.

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

- A. 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 § 13.1.6.
- B. 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 13.1.3 and/or 13.1.4, above.

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

- A. Nonconforming manufactured homes on individual lots may be removed and replaced provided that the replacement manufactured home is a Type II (double-wide) or larger, and must conform to the design and installation standards of Section 9.6.3 of this Ordinance.

**13.1.8. NONCONFORMING MANUFACTURED HOME PARKS**

- A. All manufactured home parks made nonconforming by this Ordinance and not operating under a special 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.

- B. Manufactured homes within nonconforming parks may be removed and replaced provided that the replacement manufactured home conforms to the design and installation standards of Section 9.6 of this Ordinance.

## 13.2 VESTED RIGHTS

### 13.2.1 PURPOSE AND INTENT

The purpose and intent of this Section is:

- A. To provide detailed administrative rules, regulations and procedures in order to guide officials in the administration, interpretation and implementation of the Concord Development Ordinance, and/or any other ordinances, regulations and or administrative rules adopted by the City in order to implement a comprehensive plan for development.
- B. To establish predictability and fairness for affected landowners;
- C. To recognize that development projects for which vested rights have been obtained must be accounted for in the *Comprehensive Plan*, this Development Ordinance, capital improvements programs, and other land development regulations.
- D. 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.
- E. 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;
- F. To define the scope of vested rights that have been obtained by virtue of prior development approvals, including the expiration of development permits;
- G. To protect legitimate investment-backed expectations;
- H. To protect the planning and implementation process;
- I. To settle potential disputes and to minimize protracted and costly litigation;
- J. To facilitate implementation of the goals, objectives and policies set forth in the *Comprehensive Plan*; and
- K. To ensure that all applicable legal standards and criteria are utilized in the determinations to be made hereunder.
- L. To implement the provisions of NCGS § 160D-108 *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 § 160D-108 *Vested Rights*.

**13.2.4. ESTABLISHMENT OF VESTED RIGHTS**

- 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 City decision-making agency in accordance with the provisions of this section 13.2.
- B. 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.

**13.2.5. DURATION**

- A. 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.
- B. 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 § 160D-403 et seq. prior to the expiration of the Vested Rights period.
- C. 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.
- D. 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.
- E. **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 City 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 City 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.

#### **13.2.6. PROCEDURE FOR APPROVAL OF A VESTED RIGHT**

- A. 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.
- B. 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:
  - 1. “Approval of this Site Specific Development Plan establishes a Vested Right under North Carolina General Statutes § 160D-108. Unless terminated at an earlier date, the Vested Right shall be valid until [date approved by City].”

#### **13.2.7. SCOPE OF VESTED RIGHTS**

- A. 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 City 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 City 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.
- B. A vested right, once established as provided for in this section, 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 or an approved phased development plan, except:
  - 1. With the written consent of the affected landowner;
  - 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;

- 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 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;
  - 1. 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 City of the site specific development plan or the phased development plan; or
  - 2. 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 City 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.
- D. 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 City, 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.
- E. Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of the City to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses. (See § 13.1 of this Ordinance).
- F. 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.
- G. 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.

### 13.2.8 SITE-SPECIFIC DEVELOPMENT PLANS (SSDPs)

- A. **GENERAL:** The City Council or the Planning and Zoning Commission may, but under no circumstances is it required, to approve a Site-Specific Development Plan (SSDP). The SSDP shall bind the applicant and the City 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 City Attorney, or their designees, are authorized to negotiate Development Agreements on behalf of the City Council to enforce a SSDP.
- B. **Applicability:** The City Council or the Planning and Zoning Commission 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.
- C. **Duration:** Upon approval of a Site Specific Development Plan, the right to develop such Development or Use shall continue for period of two (2) to five (5) years from the date of approval of such Site Specific Development Plan.

Notwithstanding the foregoing, the City, 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 City'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 City may consider relevant.

- D. **Procedure for Approval of an SSDP:** 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 Commission or the City Council. If made by the Planning Commission or the City 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.
- E. **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 City. If combined with an application for rezoning, , planned development or conditional district zoning, 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.

**F. Contents of a SSDP:** No SSDP shall be approved by the City Council or Planning and Zoning Commission, 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:

1. The approximate boundaries of the site;
2. Significant topographical and other natural features effecting development of the site;
3. The approximate location on the site of the proposed buildings, structures, and other improvements;
4. The approximate dimensions, including height, of the proposed buildings and other structures;
5. The approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways; and
6. Any other matters set forth in NCGS § 160D-385-1(b)(5).
7. 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.

**G. Approval of City Council or Planning and Zoning Commission:** No SSDP shall become effective until approved by the City Council or Planning and Zoning Commission. 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 City Council or Planning and Zoning Commission shall consider the proposed SSDP consistent with any procedures as may be established pursuant to NCGS § 160D-108. The City Council or Planning and Zoning Commission may:

1. Approve the SSDP;
2. Approve the SSDP with conditions; or
3. Reject the SSDP, in whole or in part, and take such further

action as it deems to be in the public interest.

4. The City Council or Planning and Zoning Commission, in approving an SSDP, shall expressly find that the agreement meets those criteria in this Ordinance for approval of the Applications for Development Approval.

- H. **Recordation of SSDP:** No later than ten (10) days after the City Council or Planning and Zoning Commission 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.
- I. **Covenants:** Unless otherwise provided in the SSDP, any covenant by the City Council or Planning and Zoning Commission 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 City Council or Planning and Zoning Commission 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 City Council or Planning and Zoning Commission 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.
- J. **Notice of Decision:** Within ten (10) days following a decision of an SSDP, the Administrator shall give notice of such action to the applicant.
- K. **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.
- L. **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.

#### 13.2.9. MULTI-PHASE DEVELOPMENTS

The procedures and requirements pertaining to Multi-Phase Developments shall be the same as those set forth for SSDP's in § 13.2.8, except as provided below, and in accordance with 160D-108:

- A. **Duration:** The City Council or Planning and Zoning Commission may, but

under no circumstances is it required, provide by ordinance that approval by the City Council or Planning and Zoning Commission of a multi-phase development shall vest the zoning classification or classifications so approved for a period not to exceed seven (7) years.

- B. **Procedure:** The document that triggers such vesting shall be so identified at the time of its approval. The City Council or Planning and Zoning Commission still may require the landowner to submit a site specific development plan for approval by the city 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.
- C. **Discretion:** Nothing in this section shall be construed to require the City Council or Planning and Zoning Commission to adopt an ordinance providing for vesting of rights upon approval of a multi-phase development.

### **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**

- A. 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, board, commission 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.

- B. 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.
- C. 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

- A. **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.
- B. **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.
- C. 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:
  - 1. The current date of expiration;
  - 2. The extension period requested, which shall be no longer than the original period of time granted; and
  - 3. The reason(s) that the applicant has been unable to proceed within the period of the original expiration date.
- D. 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 \***

Action/Permit/Approval	Time Limit
Zoning Map Amendments including Conditional District Map Amendments	Indefinite. Zoning Map amendments must be processed and approved under the procedures in Article 3 in order to modify the zoning.
Special Use Permit under the current or a former ordinance (or a Conditional Use Permits under a former Ordinance)	The permit is valid until it is amended, modified or removed by a subsequent quasi-judicial procedure or the owner has abandoned the Permit by constructing a different use on the property.
Special Use Permit granted after June 30, 2021	Two (2) years from date of approval
Variance	No expiration date
Preliminary Subdivision Plat	The approval of a preliminary site plan shall be effective for a period of three (3) years from the date of approval, at the end of which time the applicant must have submitted an application for a final plat. Extensions are permissible in certain instances. (See Section 5.2.5). Once furtherance of the preliminary plat is determined, the plan shall remain valid through the period of construction.
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 14.2 of this Ordinance, the time limits as set forth in Section 14.2 shall apply.