

Benjamin Hitchings & Adam Lovelady
September 2020

Overview

Chapter 160D and Session Law 2019-111 clarify and update the rules applicable to permit choice and vested rights. Those provisions were merged through Session Law 2020-25. Many of the rules were applicable under prior laws but there are some changes. While local governments are updating ordinances for Chapter 160D, it is a good time to ensure that local regulations comply with the applicable statutes and the local policies and procedures facilitate effective decision-making on permit choice and vested rights.

This guidance outlines key considerations for permit choice and vested rights, summarizes the statutory rules for the distinct types of rights, details the provisions for site-specific vesting plans, and offers example ordinance and policy language for key provisions.

Summary of Permit Choice and Vested Rights Applicability.....	2
Key Considerations	3
Permit Choice.....	4
Statutory Vested Rights, Generally.....	5
Details of Site-Specific Vesting Plans	7
Definitions for Permit Choice and Vested Rights.....	9
Site-specific Vesting Plans (Sample Language)	11
Permit Vesting (Sample Language)	13
Application Completeness Review (Sample Language)	13
Substantially Commencing Development (Sample Language)	14
Example Language from North Carolina Ordinances.....	16

This Chapter 160D Guidance is one in a series of guidance documents intended to provide supplemental information on specific topics. Additional guidance documents, training videos, an explanatory book, and other Chapter 160D resources are available at nc160D.sog.unc.edu.

Summary of Permit Choice and Vested Rights Applicability

Type of Permit/Rights	Period of Validity	Summary of Applicability
Permit Choice	18 months from initial approval	Right for development applicant to choose for application to be reviewed under the regulations applicable at the time of initial application; applies to initial permit application and subsequent related development permits. G.S. 143-755 & 160D-108.
Building Permits	6 months	Work under a building permit must begin within six months. Permit expires after discontinuance of work for 12 months. G.S. 160D-1111.
Development Permits	12 months	General rule that development approvals (site plans, plats, special use permits, and more) are valid for twelve months unless altered by other statutes. Local regulations may extend the period of validity. G.S. 160D-108.
Site-Specific Vesting Plan	2 years (up to 5)	Certain approvals identified by local ordinance create extended vesting. Permit must be identified as such at the time of approval. G.S. 160D-108.1.
Multi-Phased Development	7 years from first site plan approval	Qualifying development enjoys extended vesting. Must be at least 25 acres in size, subject to a master development plan with committed elements, to be permitted and built in phases. G.S. 160D-108.
Validity after Development Discontinuation	2 years	For a development that has substantially commenced work, statutory vested rights expire after 24 consecutive months of discontinuance of the project. The discontinuance period is tolled for any litigation relating to the project or property. (Building permits limited to 12 months of discontinuation.) G.S. 160D-108.
Development Agreement	Per agreement	Negotiated agreement between developer and local government specifying a range of development topics, including period of vesting. G.S. 160D-108 & -1007.
Common Law Vested Right	Reasonable time	Established by substantial expenditures relying in good faith on a valid governmental permit. Authorized in caselaw.

Key Considerations

In thinking about vested rights and permit choice, state law establishes specific rules, but there is still a need for local policy decisions. What counts as a site-specific vesting plan? When is an application deemed complete? When and how should a development permit be extended? Here are some key considerations. Sample ordinance language for each topic is provided later in this guidance document.

- Identify site-specific vesting plans.** The local development regulations must specify which development approvals qualify as site-specific vesting plans. If that is not stated in the ordinance, then all development approvals are considered to constitute site-specific vesting plans, and any zoning permit will suffice for the extended vested rights. Site-specific vesting plans commonly are tied to existing development approvals such as special use permits, subdivision plats, and planned unit developments. Alternatively, a site-specific vesting plan may be a stand-alone approval approved through a legislative hearing. Either way, the approval must have a sufficient level of detail, as outlined in the statutes, and must be identified at the time of approval as a site-specific vesting plan. The standard term of validity for a site-specific vesting plan is two years, but the local government may set that initial term at up to five years based on factors such as the size of the project and market considerations.
- Expiration for development approvals.** Consider whether any development approvals should be valid for longer than one year. The shorter the vesting period, the more likely project approvals will expire. This can require more projects to go back through the development review process, requiring more time and resources to be expended by applicants, boards, and staff. At the same time, the threat of permit expiration can help motivate developer progress on a project, and expiration would require a development to incorporate any updated community ordinance requirements.
- Application completeness review.** Consider establishing a clear procedure for providing written confirmation of completeness of applications. This will provide clarity and consistency for applicants, help ensure a basic level of submittal quality necessary for plan review, and set a clear starting point for the permit choice rule.
- Defining “substantially commenced.”** When customizing the local vested rights framework to a particular community, an important item to establish is a definition of when work on a project has “substantially commenced.” Chapter 160D establishes that projects maintain their vested right once this is true, even if the original approval period has expired. The term “substantially commenced” is not specifically defined in state law. The statutory language indicates that the project has to have started in a substantial way, but components of the project do not necessarily have to be completed.
- Standards for Permit Extensions.** It is not uncommon for economic conditions or project-specific circumstances to affect the ability of a developer to move forward with an approved project. In many cases, the granting of a reasonable extension to the vesting period for a project that has already received approval would have negligible negative impact on a community. As a result, local

governments may also want to establish a clear procedure for reviewing and potentially granting extensions of a vested right that might be requested by an applicant.

- **Beware with permit choice.** G.S. 6-27.1 provides that courts *shall* award attorneys' fees to a property owner who successfully challenges a local government's failure to adhere to the permit choice rule.

Permit Choice

The permit choice rule provides this: If an applicant submits a permit application for development, and after application submission but before the permit decision a rule or ordinance is amended, then the applicant may choose which version of the rule or ordinance (the former version or the new version) applies to the application and use of land. The permit choice rule was first adopted in 2014, expanded to apply to zoning in 2015, and broadened further in 2019.¹ The statutory provisions for permit choice are outlined at G.S. 143-755 and cross referenced at G.S. 160D-108.

G.S. 160D-108(e) provides that the permit choice rule extends to rules and regulations beyond the initial application. When a development requires multiple permits under local development regulations, the applicant may choose the regulations applicable to the project at the time of the initial permit application. In order to access this extended permit choice, the applicant must submit the subsequent permit applications within 18 months of approval of the initial permit. Sign permits and erosion and sedimentation control permits do not count as initial permits for purposes of this extended permit choice.

The statutes set certain procedural limits to protect applicants.² If the applicant chooses the former rule, then the local government cannot require the applicant to wait for final action on the proposed change. If an applicant challenges a permit denial and, in that proceeding it is determined that the permit was wrongfully denied or a condition was illegally imposed, then the applicant may choose whether the application will be reviewed under the rules and ordinance in effect at the time of application or as subsequently amended.

If a permit application is on hold for six consecutive months, then permit choice rule is waived. This may occur if the applicant voluntarily places the application on hold or if the applicant fails to respond to comments or reasonable requests for additional information for six months. If an applicant resumes an application after six months of discontinuation, then the rules in effect at the time of resuming consideration of the application apply.

An applicant may seek a court order compelling compliance. Such requests are set for immediate hearing, and subsequent proceedings are given priority. If a local government loses a challenge regarding permit choice, the local government likely will have to pay attorneys' fees for the challenger. G.S. 6-21.7 states that "In any action in which a city or county is a party, upon finding by the court that the city or county took action inconsistent with, or in violation of, G.S. 160D-108(b) or G.S. 143-755, the

¹ S.L. 2014-120, Sec. 16(a); S.L. 2015-246, Sec. 5(a); and S.L. 2019-111, Sec. 1.1

² G.S. 143-755.

court shall award reasonable attorneys' fees and costs to the party who successfully challenged the local government's failure to comply with any of those provisions.”

Statutory Vested Rights, Generally

A statutory vested right is a validity period for a particular development approval. While the approval is valid, subsequent changes to the local development regulations do not apply to the valid approval. As detailed below, different permits have different periods of validity during which time the developer must substantially commence construction. G.S. 160D-108(d) provides that once construction has substantially commenced, any statutory vesting expires if the development work is intentionally and voluntarily discontinued for a period of 24 consecutive months. The period of discontinuance is tolled during appeals or litigation about the development.

A vested right is not a free pass. Development must still adhere to the standards, conditions, and requirements of the approval and applicable regulations. G.S. 160D-108(g) states the local government may make inspections and reviews to ensure compliance with the applicable land development regulations.

Additionally, while vested rights insulate a development from most subsequent changes to local development regulations, state law includes an exception to override statutory vested rights when “a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.”³

Vested rights run with the land, so a new owner enjoys the same rights and responsibilities under a vested right as the prior owner. One notable exception: vested rights run with the owner of the permit for outdoor advertising permitted by the North Carolina Department of Transportation.⁴

A person claiming a vested right may submit information to substantiate the claim and request a determination from the zoning administrator. That determination may be appealed to the board of adjustment. Alternatively, a person claiming a vested right may bring an original civil court action under G.S. 160D-1403.1.⁵

Building Permits

Building permits expire after six months, or a shorter time if set by local ordinance, if the builder has not commenced work under the permit. If the builder begins work and then discontinues work for twelve months, the permit expires.⁶

Development Permits

G.S. 160D-108(d) provides that a property owner may obtain vested rights for a building, a land use, and/or a subdivision of land for which the property owner has obtained a development permit.

Development permit is defined very similarly to the term *development approval* that is used throughout

³ G.S. 160D-108(c).

⁴ G.S. 160D-108(i).

⁵ G.S. 160D-108(h).

⁶ G.S. 160D-1111.

Chapter 160D. The definition of *development permit* is provided below in the section on definitions. It includes zoning permits, site plan approvals, plat approvals, state development permits, and more.

Unless a different expiration is provided by statute, a development permit expires after one year unless work authorized by the permit is substantially commenced. A local ordinance may provide for a longer expiration period. Under 160D-403(c) a local ordinance also may provide for a shorter duration for temporary land uses, special events, temporary signs, and similar development.

Site-Specific Vesting Plans

Certain approvals identified by the local ordinance enjoy extended vesting for two-to-five years.⁷ State law outlines specific substantive and procedural requirements for site-specific vesting plans, as discussed more thoroughly in the next section.

Multi-Phased Development

A developer of a multi-phase development may obtain vesting for entire development in the land development regulations in place at the time of initial site plan approval. Such vesting is valid for seven years from the time of initial site plan approval.⁸

As defined at G.S. 160D-108(j), a development must meet certain criteria to qualify as a multi-phased development a development. These include:

- Development containing at least 25 acres;
- Development subject to a master development plan with committed elements showing type and intensity of use for each phase; and
- Development permitting to occur in more than one phase

Validity after Development Discontinuation

As outlined at G.S. 160D-108(d), after a development has substantially commenced work, statutory vested rights “expire[] for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months.” In calculating the period of discontinuance, any time for appeal or litigation relating to the development permit, the use of the property, or the existence of statutory vesting does not count toward the 24-month period.

Development Agreement

Development agreements are authorized in Article 10 of Chapter 160D of the General Statutes. Development agreements are a tool to manage large scale projects with multiple phases, significant infrastructure and investment, and, oftentimes, public land or money. Among the many details specified in the agreement, a development agreement must state the term of vesting.⁹

Common Law Vested Rights

Nothing in the provisions or standards of statutory vested rights precludes an individual from seeking common law vested rights. In order to establish common law vested rights a property owner must show that he or she made substantial expenditures relying in good faith on a valid governmental permit and

⁷ G.S. 160D-108.1.

⁸ G.S. 160D-108(f).

⁹ G.S. 160D-1007.

he or she would experience detriment if required to comply with a new regulation. Common law vested rights are valid for a reasonable time.

Details of Site-Specific Vesting Plans

A site-specific vesting plan is a particular statutory vested right with specific standards and procedures outlined by state law and local ordinance. Once an owner obtains approval of a development permit qualifying as a site-specific vesting plan, then the owner has the “right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto.”¹⁰ Site-specific vesting plans were authorized and required as *site-specific development plans* under prior law.

Defining Site-Specific Vesting Plan

A local government must specify in its development ordinances what approvals count as a site-specific vesting plan for that local government. The statutory guidance states that such approvals must describe “with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property.” Such plans should identify boundaries, topography, natural features, location and dimensions of proposed buildings, and location of proposed infrastructure. Examples include a planned unit development, a subdivision plat, a preliminary or general development plan, a special use permit, and a conditional district zoning plan. Variances do not qualify as site-specific vesting plans, and sketch plans do not qualify if they fail to show with reasonable certainty the type and intensity of use.¹¹

If a local government does not adopt a development regulation to specify what approvals constitute a site-specific vesting plan, then a basic zoning permit is sufficient as a site-specific vesting plan to establish a vested right.¹²

Term

As a general rule, a site-specific vesting plan is valid for two years. The period of vesting may be up to five years, as determined by the local government through the approval process. Factors for establishing a vesting period longer than two years include the size and phasing of the development, the level of investment, the need for the development, the economic cycles and market conditions, and other considerations. The term is not extended by an amendment to the plan unless expressly stated by the local government.¹³

¹⁰ G.S. 160D-108.1(b).

¹¹ G.S. 160D-108.1(a).

¹² G.S. 160D-108.1(g).

¹³ G.S. 160D-108.1(e).

While a site-specific vesting plan is valid, there are limitations on the expiration of a building permit for the development.¹⁴ At the conclusion of the vesting permit, rights to approved buildings and uses are waived if the owner has not applied for a building permit.¹⁵

Process

If a site-specific vesting plan is based on an underlying approval (such as a special use permit or conditional district zoning), then the local government must provide the standard notice and hearing for that underlying approval. If a local government creates a new category of approval—a stand-alone site-specific vesting plan approval—then such approval must be made through a legislative hearing with notice as required by G.S. 160D-602.¹⁶

“A local government may approve a site-specific vesting plan upon any terms and conditions that may reasonably be necessary to protect the public health, safety, and welfare.” However, a local government may not require a property owner to waive vested rights as a condition of a development approval.¹⁷

A document that qualifies as a site-specific vesting plan must be identified as such at the time of its approval.¹⁸ A site-specific vesting plan is deemed approved upon the effective date of local government decision on the underlying approval or upon another date as determined by the governing board at the time of approval.¹⁹

An approved site-specific vesting plan may be amended with the approval of the owner and the local government. Any major amendment must follow the standard approval process; minor modifications may be approved by staff as authorized by local regulation.²⁰ An amendment or modification does not extend the term of vesting unless expressly provided by the local government.²¹

Continuing Review

Even with the establishment of a site-specific vesting plan, the property owner must meet all standards and conditions of the development approval. The local government may make subsequent review and require subsequent approvals to ensure compliance with applicable requirements and conditions. “The local government may, pursuant to G.S.160D-403(f), revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations.”²² Additionally, for permits approved with conditions, “failure to abide by the terms and conditions of the approval will result in a forfeiture of vested rights.”²³

¹⁴ G.S. 160D-108.1(e). “Upon issuance of a building permit, the provisions of G.S. 160D-1111 and G.S. 160D-1115 apply, except that a permit does not expire and shall not be revoked because of the running of time while a vested right under this section is outstanding.”

¹⁵ G.S. 160D-108.1(e).

¹⁶ G.S. 160D-108.1(c).

¹⁷ G.S. 160D-108.1(c).

¹⁸ G.S. 160D-108.1(a).

¹⁹ G.S. 160D-108.1(c).

²⁰ G.S. 160D-108.1(c).

²¹ G.S. 160D-108.1(e).

²² G.S. 160D-108.1(d).

²³ G.S. 160D-108.1(c).

Exceptions

While a vested right in a site-specific vesting plan protects a property owner from subsequent changes to development regulations, there are exceptions when new rules do apply despite the site-specific vesting plan.²⁴ A new overlay zoning district or other development regulation may be imposed on the development as long as it does not affect the allowable type or intensity of the land use. Additionally, new development regulations that are general in nature and applicable to all property subject to development regulation may be imposed despite vesting through a site-specific vesting plan. This includes, but is not limited to, new building code requirements.

Exceptions from site-specific vesting are allowed in certain circumstances, as follows:

- a. With the written consent of the affected landowner.
- b. Upon findings, by ordinance after notice and an evidentiary 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 vesting 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 consulting fees incurred after approval by the local government, together with interest as provided under G.S.160D-106. Compensation shall not include any diminution in the value of the property which is caused by the action.
- d. Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the local government of the site-specific vesting plan or the phased development plan.
- e. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan or the phased development plan, in which case the local government 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 an evidentiary hearing.

Definitions for Permit Choice and Vested Rights

For the purposes of vested rights and permit choice, G.S. 160D-108(j) incorporates the definitions from G.S. 143-755. The definitions are as follows.

Development. – Without altering the scope of any regulatory authority granted by statute or local act, any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.

²⁴ G.S. 160D-108.1(f)

- b. Excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S.160D-802.
- d. The initiation of substantial change^[25] in the use of land or the intensity of the use of land.

Development permit. – An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:

- a. Zoning permits.
- b. Site plan approvals.
- c. Special use permits.
- d. Variances.
- e. Certificates of appropriateness.
- f. Plat approvals.
- g. Development agreements.
- h. Building permits.
- i. Subdivision of land.
- j. State agency permits for development.
- k. Driveway permits.
- l. Erosion and sedimentation control permits.
- m. Sign permit.

Land development regulation. –Any State statute, rule, or regulation, or local ordinance affecting the development or use of real property, including any of the following:

- a. Unified development ordinance.
- b. Zoning regulation, including zoning maps.
- c. Subdivision regulation.
- d. Erosion and sedimentation control regulation.
- e. Floodplain or flood damage prevention regulation.
- f. Mountain ridge protection regulation.
- g. Stormwater control regulation.
- h. Wireless telecommunication facility regulation.
- i. Historic preservation or landmark regulation.
- j. Housing code.

²⁵ The definition is phrased as “initiation or substantial change” in G.S. 160D-102.

Site-specific Vesting Plans (Sample Language)

[Drafting note: Perhaps the simplest approach to handling site-specific vesting plans is to overlap the vesting plan framework with the existing framework that a local government uses for reviewing development applications. If the site-specific vesting plan is not based on the existing approval framework, then a local government may approve a site-specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare, and shall hold a legislative hearing with notice as required by G.S. 160D-6-2. Chapter 160D enumerates the required components of a site-specific vesting plan, unless the local government expressly establishes them instead. Again, the simplest way to set local standards for the required components is to make reference to existing ordinance requirements for development submittals. Chapter 160D establishes a two-year vesting period for site-specific vesting plans, and authorizes local governments to set a longer period, not to exceed five years, based on various factors.]

1. Site-Specific Vesting Plans

- a. An approved site-specific vesting plan precludes any zoning action by the [INSERT TYPE OF LOCAL GOVERNMENT], 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 vesting plan and in accordance with applicable limitations and exceptions.
- b. The development approvals listed below are determined by [INSERT LOCAL GOVERNMENT NAME] to qualify as site-specific vesting plans.

[INSERT DEVELOPMENT TYPES AS APPROPRIATE FROM ORDINANCE SUCH AS PLANNED UNIT DEVELOPMENT PLAN, SUBDIVISION PLAT, SITE PLAN, PRELIMINARY OR GENERAL DEVELOPMENT PLAN, SPECIAL USE PERMIT, CONDITIONAL ZONING, OR OTHER LOCAL DEVELOPMENT APPROVAL]
- c. A vested right established pursuant to this ordinance shall run for a period of [INSERT DESIRED LENGTH OF TIME, RANGING FROM 2-5 YEARS] from the effective date of the approval of the underlying development application.

2. Process for submittal, approval, and amendment of a site-specific vesting plan.

- a. Each site-specific vesting plan shall include the information required by the [INSERT TYPE OF LOCAL GOVERNMENT] for the underlying type of development plan.
- b. Each site-specific vesting plan shall provide the notice and hearing required for the underlying type of development plan.
- c. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the local government in the same manner as required for the underlying type of development plan.

- d. Upon following the same process as required for the original approval, the decision-making board or official may extend the vesting of a site-specific vesting plan up to three years (with total length of vesting not to exceed five years) upon finding that:
 - i. The permit has not yet expired;
 - ii. Conditions have not changed so substantially as to warrant a new application; and
 - iii. The extension is warranted in light of all other relevant circumstances—including, but not limited to the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations.

3. Limits of site-specific vesting plans

- a. Nothing in this ordinance 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. The development remains subject to subsequent review and approvals to ensure compliance with the terms and conditions of the original approval as provided for in the original approval or by applicable regulations.
- b. The establishment of a vested right pursuant to this ordinance 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 [INSERT TYPE OF LOCAL GOVERNMENT], including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.
- c. New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right shall become effective upon the expiration or termination of the vested rights period provided for in this ordinance.
- d. Upon issuance of a building permit, the expiration provisions of G.S. § 160D-1111 and 160D-1115 apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.
- e. Any vested rights for a site-specific vesting plan are subject to the exceptions specified at G.S. § 160D -108.1.

Permit Vesting (Sample Language)

[Drafting note: One user-friendly way to establish and communicate the process and vesting period for each application type is through a summary table, as in the Wilmington ordinance.]

The review process and vesting period for each type of development approval is specified in Table 1 and the corresponding sections of the ordinance referenced in the table.

Table 1

APPLICATION TYPE	ORD. REF.	DECISION TYPE	REVIEWING ENTITY(IES)	APPROVING ENTITY	PERMIT PERIOD	PERMIT EXTENSION
Minor Site Plan	3-24	Administrative	Technical Review Committee	Planning Director	2 years	1 year
Major Site Plan	3-25	Quasi-Judicial	Planning Board	Governing Board	2 years	1 year
Conditional Zoning	4-37	Legislative	Planning Board	Governing Board	See provisions for any site plan included as a condition	See provisions for any site plan included as a condition
<i>[NOTE: add other development types as appropriate]</i>						

Application Completeness Review (Sample Language)

[Drafting note: The following is sample language for requiring applications to be complete before they are accepted for review. This can help ensure the basic quality of the submittals and confirm that they include enough information in order to be adequately reviewed by local staff.]

1. Completeness Determination

Applicants shall submit applications to the [INSERT APPROPRIATE STAFF POSITION] in accordance with the applicable published schedule of submittal dates. Until an application is determined to be complete in accordance with the requirements in Section [INSERT APPROPRIATE ORDINANCE SECTION], an application has not been submitted.

On receiving a development application, the [INSERT APPROPRIATE STAFF POSITION] shall, within [INSERT APPROPRIATE TIME PERIOD] business days, determine whether the application is complete or incomplete. A complete application is one that:

- a. Contains all information and materials required by [INSERT APPROPRIATE ORDINANCE OR DOCUMENT REFERENCE] for submittal of the applicable type of application, and in sufficient detail, format, and readability for [INSERT TYPE OF JURISDICTION] staff to evaluate the application for compliance with applicable review standards; and
- b. Is accompanied by the fee established for the applicable type of application.

2. Application Incomplete

- a. On determining that the application is incomplete, the [INSERT APPROPRIATE STAFF POSITION] shall, as appropriate, provide the applicant written notice of the submittal deficiencies. The applicant may correct the deficiencies and resubmit the application for a completeness review.
- b. If the applicant fails to resubmit an application within [INSERT DESIRED TIME PERIOD] calendar days after being first notified of submittal deficiencies, the application submittal shall be considered abandoned. If an applicant submits a request in writing to the [INSERT APPROPRIATE STAFF POSITION] within 15 calendar days of the application abandonment date, [INSERT APPROPRIATE REIMBURSEMENT AMOUNT] percent of the application fee paid for the withdrawn application shall be refunded.

3. Application Complete

On determining that the application is complete, the [INSERT APPROPRIATE STAFF POSITION] shall:

- a. Accept the application as submitted in accordance with the procedures and standards of this Ordinance in effect at the time of the submittal; and
- b. Provide the applicant written notice of application submittal acceptance.

Substantially Commencing Development (Sample Language)

[Drafting note: Chapter 160D establishes that, unless otherwise specified by statute or local ordinance, local development approvals expire one year after issuance, unless work has substantially commenced. It can be helpful to provide a definition of “substantially commenced” to clarify the procedure for making this determination.]

- 1. A valid development approval shall not expire if work on the project has substantially commenced within the initial validity period. Substantial commencement of work shall be determined by the [INSERT NAME OF STAFF POSITION IN CHARGE OF MAKING ORDINANCE DETERMINATIONS] based on any of the following:
 - (a) The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than thirty (30) days;
 - (b) The development has installed substantial on-site infrastructure; or

(c) The development has received and maintained a valid building permit for the construction and approval of a building foundation.

2. Even if work has substantially commenced, a development approval still expires if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, as calculated and tolled pursuant to N.C.G.S. 160D-108.

Example Language from North Carolina Ordinances

Identify Site-Specific Vesting Plans

Guilford County Development Ordinance (2020)

(CK) SITE SPECIFIC DEVELOPMENT PLAN. A plan of land development submitted to the appropriate approval authority for the purpose of obtaining one (1) of the following zoning or land use permits or approvals pursuant to NCGS 154A-334.1:

- 1) A Special Use Permit;
- 2) A conditional use zoning sketch or site plan;
- 3) A Planned Development-Residential or Planned Development-Mixed unified development plan;
- 4) A preliminary plat for a major subdivision;
- 5) A major site plan prepared in accordance with Section 3-11 (Site Plan and Plot Plan Procedures), but not including a master or common sign plan, a watershed development plan, or a landscaping plan;
- 6) A preliminary plat for a minor subdivision;
- 7) A plot plan;
- 8) A minor site plan in accordance with Section 3-11 (Site Plan and Plot Plan Procedures);
- 9) A master or common sign plan prepared in accordance with Section 6-1.8 (Master or Common Site Plan);
- 10) A watershed development plan prepared in accordance with Section 7-1.5 (Watershed Development Plan); or
- 11) A landscaping plan prepared in accordance with Appendix 2 (Map Standards).

Henderson County Land Development Code (2020)

Site-Specific Development Plan. A plan which has been submitted to the County 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 preliminary or master development plan, special use permit, or any other land-use approval designation as may be utilized by the County. Such plan shall include: (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; and (5)

the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads and pedestrian walkways. A variance shall not constitute a site-specific development plan, and approval of a site-specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. 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/parcels or property may constitute a site-specific development plan. (See NCGS §153A-344.1(b)(5)).

Pitt County Zoning Ordinance (2020)

Section 15. Definitions and Word Interpretations

Plan, Site Specific Development: An approved or conditionally approved preliminary subdivision plat or preliminary site plan.

Section 3. Permits and Hearing Procedures

V. Zoning Vested Rights

2.c. *Site specific development plan.* A plan which has been submitted to Pitt County by a landowner describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of a site plan required to obtain a conditional use. The information required by Section 3(D) and Appendix B, as applicable, shall be included. All site specific development plans shall be approved by the Board of Commissioners.

[Expiration for Development Approvals](#)

City of Wilmington Land Development Ordinance (2020)

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.

City of Wilson Unified Development Ordinance (2020)

ADMINISTRATION
15.2 GENERAL PROVISIONS & APPLICABILITY

15

15.2.4 PERMIT/PROCESS TYPE TABLE

Permit/ Process Type	Section	Permit/ Process Type	Reviewing Agency	Public Notification (See 15.3)	Approving Agency	Appeal Process	Permit Period	Permit Extension
UDO Compliance Certificate	15.6.1	Administrative	Admin	None	Admin	BOA	6 months	6 months
Temporary Use Permit	15.6.2	Administrative	Admin	None	Admin	BOA	See 3.12	n/a
Certificate of Occupancy	15.6.3	Administrative	Admin	None	Admin	BOA	n/a	n/a
Modification of Dimensional Standards	15.6.4	Administrative	Admin	None	Admin	BOA	n/a	n/a
Grading Permit	15.7.1	Administrative	Admin	None	Admin	BOA	3 years	Re-submit
Erosion Control Plan	15.7.2	Administrative	Admin	None	Admin	Admin, NCSCC	3 years	Re-submit
Floodplain Development Permit	15.7.3	Administrative	Admin	None	Admin	BOA	1 year	Re-submit
Watershed Development Permit	15.7.4	Administrative	Admin	None	Admin	BOA	1 year	1 year
Stormwater Management Permit	15.7.5	Administrative	Admin	None	Admin	BOA	1 year	1 year
SFHCA Amendment	15.7.6	Administrative	Admin	None	Admin	BOA	n/a	n/a
Site Plan/Design Review (Minor)	15.8.1	Administrative	TRC	None	TRC	BOA	1 year	1 year
Site Plan/Design Review (Major)	15.8.2	Quasi-Judicial	TRC	Yes (1, 2)	P&DRB	SC	1 year	1 year
Subdivision (Minor & Recombination)	15.9.1	Administrative	TRC	None	TRC	BOA	180 days to record Plat	180 days
Subdivision (Major) – Preliminary Plan	15.9.2	Administrative	TRC	None	TRC	BOA	2 years to Final Plat	1 year
Subdivision (Major) – Final Plat	15.9.3	Administrative	TRC	None	TRC	BOA	180 days to record Plat	180 days
Special Use Permit	15.10	Quasi-Judicial	BOA	Yes (1, 3)	BOA	SC	2 years	6 months
Designation of Historic Landmarks	15.11.1	Legislative	HPC	Yes (1, 2, 3)	City Council	SC	n/a	n/a
Designation of Historic Districts	15.11.2	Legislative	HPC, P&DRB	Yes (1, 2, 3)	City Council	SC	n/a	n/a
Certificate of Appropriateness (Major Works)	15.11.3	Quasi-Judicial	Admin	Yes (1, 3)	HPC	BOA	12 months	Subject to Admin
Certificate of Appropriateness (Minor Works)	15.11.4	Administrative	Admin	None	Admin	HPC	12 months	Subject to Admin
Appeal of Administrative Decision	15.12	Quasi-Judicial	BOA	Yes (1, 3)	BOA	SC	30 days to Appeal	n/a
Variance	15.13	Quasi-Judicial	BOA	Yes (1, 3)	BOA	SC	30 days to Appeal	n/a
Text Amendment	15.14	Legislative	P&DRB	Yes (1, 2)	City Council	SC	n/a	n/a
Map Amendment (Rezoning)	15.14	Legislative	TRC, P&DRB	Yes (1, 2, 3)	City Council	SC	n/a	n/a
Conditional District	15.15	Legislative	P&DRB	Yes (1, 2, 3)	City Council	SC	May be rescinded after 2 years	n/a
Vested Right	15.16	Legislative	P&DRB	Yes (1, 2)	City Council	None	2-5 years	Up to 5 years total

Admin – Administrator (14.1) | City Council (14.2) | TRC – Technical Review Committee (14.3) | P&DRB – Planning & Design Review Board (14.4) | BOA – Board of Adjustment (14.5) | HPC – Historic Preservation Commission (14.6) | NCSCC – North Carolina Sedimentation Control Commission | SC – Superior Court of North Carolina

Application Completeness Review

City of Wilmington Land Development Ordinance (2020)

Sec. 18-60(3) Application completeness. An application for a site plan shall be deemed complete if it is submitted in the required number and form, includes all requested information and is accompanied by the applicable fee. A determination of application completeness shall be made within five (5) working days of application filing. If an application is determined to be incomplete, the city manager shall provide written notice to the applicant along with the explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within twenty (20) working days, the application shall be considered withdrawn.

City of Wilson Unified Development Ordinance (2020)

15.2.3 APPLICATION COMPLETENESS REVIEW

A. Application Deadline: Applications shall be submitted to the Administrator in accordance with a published calendar schedule indicating submittal dates. The Administrator may accept applications on other dates as available.

B. Evidence of Authority: The Administrator may require an applicant to present evidence of authority to submit the application.

C. Application Filing Date: An application shall be considered as “filed” or “submitted” on the date it is received if it is found to be complete and sufficient for processing by the Administrator.

D. Application Sufficiency to be Determined by the Administrator: The Administrator shall review the application and accompanying evidence and thereafter determine if the application is complete and sufficient for processing. The presumption shall be that all of the information required for an application to be considered complete and sufficient for processing is outlined in Section 15.4, according to the appropriate permit type, and in the “Application Submittal Requirements” list on file in the Planning and Development Services Department. However, it is recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. In general, an application shall be complete and sufficient for processing when it contains all of the information necessary to decide whether or not the development as proposed will comply with all of the requirements of this ordinance.

E. Application Processing: Applications deemed to be sufficient for processing shall be scheduled for review in accordance with the Permit/Process Type Table below (Section 15.2.4). If, in the opinion of the Administrator, a submittal at any stage of review is incomplete, the application shall be removed from the agenda of the appropriate board/commission and not further processed until deemed complete and sufficient for processing. At any stage of review, the Administrator or any city board or commission, may require, at the applicant’s expense, the submission of any plan, study or other information, in addition

to that specified in the submittal requirements, in order to determine the development as proposed will comply with all of the requirements of this ordinance.

Town of Morrisville Unified Development Ordinance (2019)

E. Application Submittal

Applications shall be delivered to the Planning Director or Town Engineer, as appropriate, in the form established under subsection B above, along with the appropriate application fee. Until an application is determined to be complete in accordance with Section 2.4.3.F.3, Application Complete, an application has not been submitted.

F. Determination of Application Completeness

1. Completeness Review

On receiving a development application, the Planning Director or Town Engineer, as appropriate, shall, within two business days, determine whether the application is complete or incomplete. A complete application is one that:

- a. Contains all information and materials required by the Administrative Manual for submittal of the particular type of application, and in sufficient detail and readability to evaluate the application for compliance with applicable review standards;
- b. Is in the form required by the Administrative Manual for submittal of the particular type of application; and
- c. Is accompanied by the fee established for the particular type of application.

2. Application Incomplete

- a. On determining that the application is incomplete, the Planning Director or Town Engineer, as appropriate, shall provide the applicant written notice of the submittal deficiencies. The applicant may correct the deficiencies and resubmit the application for a completeness review.
- b. If the applicant fails to resubmit an application within 30 calendar days after being first notified of submittal deficiencies, the application submittal shall be considered abandoned. If an applicant submits a request in writing to the Planning Director or Town Engineer, as appropriate, within 15 calendar days of the application abandonment date, 50 percent of the application fee paid for the withdrawn application shall be refunded.
- c. No development application shall be considered as submitted until it is determined to be complete.

3. Application Complete

On determining that the application is complete, the Planning Director or Town Engineer, as appropriate, shall:

- a. Accept the application as submitted in accordance with the procedures and standards of this Ordinance in effect at the time of the submittal; and
- b. Provide the applicant written notice of application submittal acceptance.

G. Application Revisions

1. An applicant may revise a development application for any of the following reasons.

- a. To address deficiencies provided as part of the staff review (see Section 2.4.4.B, Staff Review and Opportunity for Application Revision),
- b. To make limited changes that directly respond to specific requests or suggestions made by a reviewing board or staff in response to a reviewing board, as long as they constitute only minor additions, deletions, or corrections and do not include substantive changes to the development proposed in the application. Such changes shall only occur after requesting and receiving permission from the Planning and Zoning Board (see Section 2.4.6.C, Revision of Application) or the Board of Adjustment or Town Council (see Section 2.4.7.D, Revision of Application) after such board has reviewed, but not yet taken action on the application.

Additional application fees to defray the additional costs of processing the revised application may be required; or

- c. To have the application reviewed under a new rule or ordinance change that went into effect after the applicant received a written notice of application submittal acceptance, but prior to receiving a written decision on the application. This revision option is limited to application types listed below, and additional application fees to defray the additional costs of processing the revised application may be required.

- (1) Section 2.5.6, Subdivision Approvals;
- (2) Section 2.5.8, Construction Plan Approval;
- (3) Section 2.5.9, Floodplain Development Permit;
- (4) Section 2.5.10, Riparian Buffer Development Review; and
- (5) Section 2.5.11, Stormwater Management Permit.

2. Any other revisions to a development application may be submitted at any time during the review procedure, but the original application shall be withdrawn and the revised application shall be submitted and reviewed as a new application. The revised application submittal may be subject to additional application fees to defray the additional costs of processing the revised application.

H. Application Withdrawal

After an application has been accepted for review, the applicant may withdraw the application at any time by submitting a letter of withdrawal to the Planning Director or Town Engineer, as appropriate, but the application fee shall not be refunded.

Defining Substantially Commenced

City of Salisbury Land Development Ordinance (2020)

Substantial progress (Stormwater): For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

Pitt County Zoning Ordinance (2020)

Section 3. Permits and Hearing Procedures

Q. Expiration of Permits

1. Except as provided in Section 3(Q)(6), zoning special use, and conditional use permits (including approved site or plot plans) shall expire automatically if, within one year after the issuance of such permits:
 - a. The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
 - b. Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 3(P)), this requirement shall apply only to the first phase.
2. If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the zoning special use, or conditional use permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 3(R).
3. The permit-issuing board may extend for a period up to six months the date when a zoning special use, or conditional use permit would otherwise expire pursuant to Sections 3(Q)(1) or 3(Q)(2) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

Standards for Permit Extensions

Henderson County Land Development Code (2020)

§42-371 (Quasi-Judicial Process Standards).

G. Vested Right Validity.

(1) Vested Right Extension. The ZBA may approve a vesting period not to exceed five (5) years from the date of approval at the request of the landowner if it is found that the development cannot be secured within two (2) years because of the: a. Size of the development, b. Level of investment required, or c. Current lack of, but potential future need for, the development.

(2) Vested Right Minor Modification. The Zoning Administrator may authorize minor modifications to the site-specific development plan provided that the changes in the plan do not change the basic relationship of the conditions set forth by the ZBA. Changes in detail that may be modified shall include, but not be limited to, the reduction in: a. Square footage of signs, b. Square footage of buildings and c. The number of buildings. Applications for a minor modification shall include a new site-specific development plan and a detailed description of the proposed changes. Each applicant may appeal the decision of the Zoning Administrator regarding the Vested Right to the ZBA.

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

Town of Morrisville Unified Development Ordinance (2019)

2.5.21C. Site-Specific Development Plan Designation Procedure

6. Town Council Review and Decision

b. If the Town Council approves the application, it shall designate each of the site-specific development plans in the concurrently reviewed development application as a site-specific development plan that establishes a vested right in accordance with Section 160A-385.1 of the North Carolina General Statutes for at least two years after the date of approval. The Town Council may extend the vested rights period to up to five years if it determines the extension is warranted in light of all relevant circumstances—including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions.

Pitt County Zoning Ordinance (2020)

Section 3. Permits and Hearing Procedures

Q. Expiration of Permits

3. The permit-issuing board may extend for a period up to six months the date when a zoning special use, or conditional use permit would otherwise expire pursuant to Sections 3(Q)(1) or 3(Q)(2) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.