

ARTICLE 20: VESTED RIGHTS

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§ 20:1 GENERAL LIMITATIONS AND CONDITIONS.

Except as hereinafter set forth, a vested right established by this Ordinance is subject to the limitations and conditions as set out in Sections 6-29-1540 and 6-29-1550 of the Code of Laws of South Carolina, as enacted by Act 287 of 2004.

§ 20:2 DEFINITIONS.

As used in this Article:

1. “Approved” or “approval” means a final action by the DSR, Zoning Board of Appeals, Planning Commission or County Council in those matters committed to their respective authority or discretion in accordance with the permitting procedures of this Ordinance, or an exhaustion of all administrative remedies/appeals that results in the authorization of a site specific development plan or a phased development plan.
2. “Building permit” means a written warrant or license issued by the Building Official or such other official as may be designated by the County Administrator that authorized the construction or renovation of a building or structure at a specified location.

3. “Conditionally approved” or “conditional approval” means an interim action taken by the County or its designees in accordance with this Ordinance and the S.C. Local Government Comprehensive Planning Act (the “Enabling Act”) that provides authorization for a site specific development plan or a phased development plan but is subject to approval. These authorizations include, but are not limited to, Concept Plan Planned Development Districts (“Concept PDD”) pursuant to Section 8:1.7, and a Master Plan Planned Development district (“Master Plan PDD”) pursuant to Section 8:1.11.
4. “Landowner” means an owner of a legal or equitable interest in real property including the heirs, devisees, successors, assigns, and personal representatives of the property pursuant to a contract with the owner to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan pursuant to this Article.
5. “Person” means an individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any legal entity as defined by South Carolina laws.
6. “Phased development plan: means a development plan submitted to the County by a landowner that shows the types and density or intensity of uses for a specific property or properties to be developed in phases, but which do not satisfy the requirements for a site specific development plan. These include, but are not limited to, Concept PDD and Master Plan PDD plans as authorized by Sections 8:1.7 and 8:1.11, respectively, and plans for properties for which only a portion of the whole property is designed and submitted as a site specific development, with the remainder reserved for future development.
7. “Real property” or “property” means all real property that is subject to the land use and development ordinances or regulations of a local governing body, and includes the earth, water, and air, above, below, or on the surface, and includes improvements or structures customarily regarded as a part of real property.
8. “Site specific development plan” means a development plan submitted to the County or its authorized boards, commissions or agents by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. These plans include planned development district (PDD) submissions pursuant to Section 8:1, and subdivision or development plans, including conditional use plans, submitted pursuant to Section 11.1, et seq. for proposals which comply with all of the required standards of the zoning district within which the property is located or have received a variance or special exception for which all appeals have been exhausted and the decision is final.

9. "Vested right" means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan as provided in this Ordinance.

§ 20:3 TWO-YEAR VESTED RIGHT ESTABLISHED ON APPROVAL OF SITE SPECIFIC DEVELOPMENT PLAN; PROCESS FOR RENEWAL.

1. A vested right is triggered and established for two years upon the payment of all applicable fees and final approval of a site specific development plan which authorizes the landowner to proceed with grading, installation of utilities, streets and other infrastructure, and to undertake other significant expenditures necessary to apply for a building permit or such other permit as may be required by the County.
2. A vested right for an approved site specific development plans expires two (2) years after the date of final approval by the final official or body authorized to approve a site specific development plan.
3. No sooner than six (6) months, or no later than forty-five (45) days prior to the expiration of the vested rights for a site specific development plan, the landowner of real property with a site specific vested right may apply to the DSR for an annual extension of the vested right. The DSR must approve applications for at least five (5) annual extensions of the vested right, unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval, such as a rezoning, zoning or comprehensive plan text amendment, or implementation of a health, safety, environmental or other general welfare provision applicable to the development or subdivision.
4. A vested site specific development plan may be amended if the amendment conforms to, or does not cause a greater nonconformity with the then current provisions of the municipal zoning, planning, or land development ordinances, code sections, or regulations. An approval of an amendment does not re-set or re-start the expiration period of a vested right.
5. Decisions of whether to grant the renewal or not by the DSR are appealable to the County Council by an interested party having standing as is generally applied in appeals in other zoning or planning matters. Within sixty (60) days of the filing of the appeal with the Clerk to Council, the County Council shall hear the appeal upon the materials submitted to the DSR, the arguments of the landowner and staff, any additional material as the Council may deem relevant and material which was not available to the DSR at the time the decision was made submitted by either the landowner or DSR, and such public comment as may be allowed. The County Council may grant or deny the renewal on appeal, or grant the renewal upon conditions. The County Council may defer its decision on the appeal until a date certain, for up to two (2) meetings, and may re-open the

hearing for additional fact finding in its sole discretion if such a deferral was made and either the landowner, the DSR, or a Council Member so requests.

§ 20:4 TWO-YEAR VESTED RIGHT ESTABLISHED ON APPROVAL OF CONDITIONALLY APPROVED SITE SPECIFIC DEVELOPMENT PLAN; PROCESS FOR RENEWAL.

1. The County may, in its sole discretion, and upon such conditions as it may see fit, provide for the establishment of a two-year vested right in the ordinance creating a Concept PDD, Master Plan PDD, or other conditionally approved site specific development plan. Such vested right may be terminated by the County in accordance with Section 6-29-1540 (4), if after notice and public hearing, the county determines the landowner has failed to meet the terms of the conditional approval.
2. The County may in its sole discretion, and upon such conditions as it may see fit, provide for the establishment of up to a five (5) year vested right in the ordinance creating a Concept PDD, Master Plan PDD, or an approved or conditionally approved phased development plan. Such vested right may be terminated by the County in accordance with § 6-29-1540 (4), if after notice and public hearing, the county determines the landowner has failed to meet the terms of the conditional approval.
3. Phased development plans shall submit site specific development plans for each phase, which shall conform to the requirements and regulations in effect at the time of the submission of the site specific plan. Such site specific plans shall thereafter be vested in accordance with the provisions of Section 8.300.
4. The County may, in its sole discretion, provide for a renewal of the vested right granted in accordance with either 1 or 2 above, either in the ordinance creating or authorizing the Concept PDD, Master Plan PDD, conditionally approved site specific plan, or the approved or conditionally approved phased development plan.

§ 20.5 CONDITIONS AND LIMITATIONS.

In addition to the terms, condition and requirements above:

1. Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations;
2. A vested site specific development plan or vested phased development plan may be amended if approved by the local governing body pursuant to the provisions of the land development ordinances or regulations, subject to the limitations of Section 20.3 (4) above;

3. A validity issued building permit does not expire or is not revoked upon expiration of a vested right, except for public safety reasons or as prescribed by the applicable building code;
4. A vested right to a site specific development plan or phased development plan is subject to revocation by the County upon its determination, after notice and public hearing, that there was a material misrepresentation by landowner or substantial noncompliance with the terms and conditions of the original or amended approval;
5. A vested site specific development plan or vested phased development plan is subject to later enacted federal, state, or local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. The issuance of a building permit vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical, and mechanical codes in force at the time of the issuance of the building permit;
6. A vested site specific development plan or vested phased development plan is subject to later County overlay zoning that imposes site plan-related requirements but does not affect allowable types, height as it affects density or intensity of uses, or density or intensity of uses;
7. A change in the zoning district designation or land-use regulations made subsequent to vesting that affect real property under a vested site specific development plan or vested phased development plan without consent of the landowner;
8. If real property having a vested site specific development plan or vested phased development plan is annexed, the County must determine after notice and public hearing in which the landowner is allowed to present evidence, if the vested right is effective after the annexation;
9. The County may not require a landowner to waive his vested rights as a condition of approval or conditional approval of a site specific development plan or a phased development plan.

§ 20:6 Vested Right Attaches to Real Property; Applicability of Laws Relating to Public Health, Safety and Welfare

1. A vested right pursuant to this Article 20 is not a personal right, but attaches to and runs with the applicable real property.
2. The landowner and all successors to the landowner who secure a vested right pursuant to this article may rely upon and exercise the vested right for its duration subject to applicable federal, state, and local laws adopted to protect public health,

safety, and welfare including but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right.

3. This article does not preclude judicial determination that a vested right exists pursuant to other statutory provisions.
4. This article does not affect the provisions of a development agreement executed pursuant to the South Carolina Local Government Development Agreement Act in Chapter 31 of Title 6.