



LINCOLN COUNTY PLANNING & INSPECTIONS DEPARTMENT
302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092
704-736-8440 OFFICE 704-736-8434 INSPECTION REQUEST LINE 704-732-9010 FAX

To: Board of Commissioners
Planning Board

From: Randy Hawkins, Zoning Administrator

Date: October 13, 2017

Re: VR #2017-1
D.R. Horton, Inc., applicant
Parcel ID# 02378 and 33155

The following information is for use by the Lincoln County Board of Commissioners and the Planning Board at their joint meeting/public hearing on November 6, 2017.

Request

The applicant is requesting a zoning vested right for a period of five years for a planned residential development. This request involves the proposed Ingleside Farm development, which is the subject of a concurrent rezoning request (PD #2017-1). The plans call for 422 single-family detached houses, including 132 homes restricted to older adults (55+), on a 208-acre site located on the south side of N.C. 73 and east and west sides of South Ingleside Farm Road.

Under state law, a zoning vested right may be granted by a local government with respect to any property upon the approval of a site specific development plan or a phased development plan. A zoning vested right confers upon a landowner the right to undertake and complete the development and use of the property under the terms and conditions of the approved plan.

It exempts the owner from subsequent changes in zoning regulations that would prevent or reduce the development or use of the property as set forth in the approved plan. It does not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use.

The Lincoln County Unified Development Ordinance includes a section establishing a process to implement the provisions of the state statute that authorizes local governments to grant a zoning vested right. That section and the state statute are included in this packet.

Staff's Recommendation

Staff recommends approval of a zoning vested right for a period of five years. This is a reasonable expectation by the applicant, given the size of the project and the planned investment in infrastructure.



Zoning Vested Rights Application

Lincoln County Planning and Inspections Department
Zoning Administrator
302 N. Academy St., Lincolnton, NC 28092
Phone: (704) 736-8440 Fax: (704) 732-9010

Part I

Applicant Name D.R. Horton

Applicant Address 8001 Arrowridge Blvd, Charlotte, NC 28237

Applicant Phone Number 704-787-5622

Property Owner's Name Caroline Clark

Property Owner's Address 21 Formosa Dr, Charleston, SC 29407

Property Owner's Phone Number _____

Part II

Property Location Ingheside Farm Rd at NC 73

Property ID # (10 digits) 3692-24-5045
3692-24-9098 Property Size Approx 208.2 ac +/-

Parcel # (5 digits) 02378
33155 Deed Book(s) 928 Page(s) 102

Part III

The site specific development plan for which vested rights are being sought:

D.R. Horton development proposed in Rezoning Case

Proposed period of vesting 5 years

If more than two years is requested, briefly describe the relevant circumstances:

Project is large and includes multiple phases to be built over time. Project has challenging topography that may result in long design and development time periods

APPLICATION FEE (\$250) MUST BE RECEIVED BEFORE PROCESSING.

I hereby certify that all of the information provided for this application and attachments is true and correct to the best of my knowledge.

David Hughes (D.R. Horton) by [Signature]
Applicant

9/7/17
Date

§9.20. Zoning Vested Rights

§9.20.1. Applicability

- A. The purpose of this section is to implement the provisions of G.S. § 153A- 344.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.
- B. Following approval or conditional approval of a site specific development plan, nothing in this UDO shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval; provided that such reviews and approvals are not inconsistent with the original approval.
- C. Nothing in this UDO shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this UDO.

§9.20.2. Establishment

- A. A zoning vested right shall be deemed established upon the valid approval, or conditional approval of a site specific development plan.
- B. The approving authority may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare.
- C. Notwithstanding paragraphs A and B above, approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
- D. A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.
- E. The establishment of a zoning vested right 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 County, including, but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable, new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this UDO.
- F. A zoning vested right is not a personal right, but shall attach to the applicable property. After approval of a site specific development plan, all

§9.20.3 Application Requirements

successors to the original landowner shall be entitled to exercise such right while applicable.

§9.20.3. Application Requirements

- A. An application for zoning vested rights shall be submitted in accordance with §9.2.2, Application Requirements. In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate, at the time of application, that a zoning vested right is being sought.
- B. Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan established a zoning vested right under G.S. § 153A-344.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

§9.20.4. Notice and Public Hearings

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

§9.20.5. Action by Director

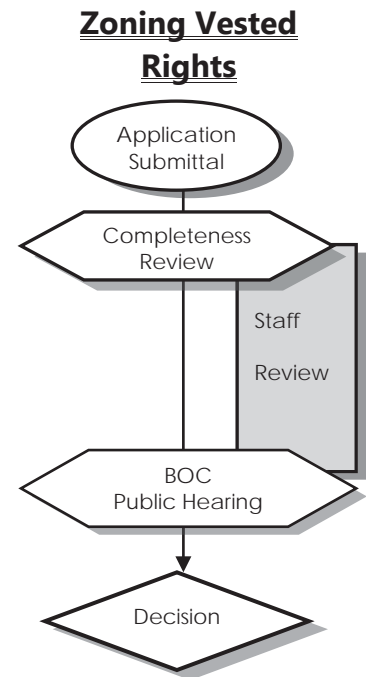
The Director shall transmit to the Board of Commissioners an application for zoning vested rights.

§9.20.6. Action by Board of Commissioners

- A. Before taking action on the zoning vested rights request, the Board of Commissioners shall consider the recommendations of the Director.
- B. The Board of Commissioners may approve or deny the request.

§9.20.7. Additional Conditions

- A. In granting approval of a zoning vested right, the Board of Commissioners may impose reasonable conditions which serve to assure that the required findings are upheld. Such conditions may include, but are not limited to, right-of-way or easement dedication; recreation and open space, or buffer provision; limitation in scale, intensity, or hours of operation; and other reasonable restrictions.
- B. Any additional condition approved by the Board of Commissioners shall become a part of the permit and be of equal importance in the responsibility of the applicant or subsequent assigns to adhere to its terms.



§9.20.8. Duration

- A. A zoning right that has been vested as provided in this UDO shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to paragraph B below. This vesting shall not be extended to any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.
- B. Notwithstanding the provisions of paragraph A above, the approval authority may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in accordance with all relevant circumstances, including, but not limited to, the size of the development, density and intensity of the development, economic cycles and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific development plan is approved.
- C. Upon issuance of a building permit, the expiration provisions of this §9.20.8 and the revocation provisions of G.S. § 153A-362 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

§9.20.9. Termination

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

- A. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- B. With the written consent of the affected landowner;
- C. Upon findings by the Board of Commissioners, 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 was contemplated in the site specific development plan;
- D. Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is cause by such action;
- E. Upon findings by the Board of Commissioners, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which

§9.20.10 Appeal to Court

made a difference in the approval by the approval authority of the site specific development plan; or

- F. Upon the enactment or promulgation of a State or Federal Law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in State or Federal Law has a fundamental effect on the plan, by ordinance after notice and a hearing.

§9.20.10. Appeal to Court

Any decision by the Board of Commissioners may be appealed within 30 days of the decision in accordance with G.S. § 153-345.

§ 153A-344.1. Vesting rights.

(a) The General Assembly finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning. Furthermore, the General Assembly recognizes that county approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses.

The ability of a landowner to obtain a vested right after county approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.

(b) Definitions.

- (1) "Landowner" means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.
- (2) "County" shall have the same meaning as set forth in G.S. 153A-1(3).
- (3) "Phased development plan" means a plan which has been submitted to a county by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the county to be a site specific development plan.
- (4) "Property" means all real property subject to zoning regulations and restrictions and zone boundaries by a county.
- (5) "Site specific development plan" means a plan which has been submitted to a 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 planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land-use approval designation as may be utilized by a county. Unless otherwise expressly provided by the county such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the county pursuant to an ordinance, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the county shall designate a vesting point earlier than the issuance of a building permit. 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 or parcels or property may constitute a site specific development plan.

- (6) "Vested right" means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.
- (7) "Multi-phased development" means a development containing 100 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

(c) Establishment of vested right.

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the county with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. A county may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. A county shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phased development plan shall be deemed approved upon the effective date of the county's action or ordinance relating thereto.

(d) Duration and termination of vested right.

- (1) A right which has been vested as provided for in this section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the county.
- (2) Notwithstanding the provisions of subsection (d)(1), a county may provide that rights shall be vested for a period exceeding two years but not exceeding five years where 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. These determinations shall be in the sound discretion of the county.
- (3) Notwithstanding the provisions of (d)(1) and (d)(2), the county may provide by ordinance that approval by a county of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The county still may require the landowner to submit a site specific development plan for approval by the county 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. Nothing in this section shall be construed to require a county

- to adopt an ordinance providing for vesting of rights upon approval of a phased development plan.
- (4) 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 county 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 county from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.
 - (5) Upon issuance of a building permit, the provisions of G.S. 153A-358 and G.S. 153A-362 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.
 - (6) A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.
- (e) Subsequent changes prohibited; exceptions.
- (1) A vested right, once established as provided for in this section, precludes any zoning action by a county 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:
 - a. With the written consent of the affected landowner;
 - b. 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 county, 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;
 - d. 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 county of the site specific development plan or the phased development plan; or
 - e. 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 county 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.

- (2) 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 a county, 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.
 - (3) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of a county to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.
- (f) Miscellaneous provisions.
- (1) 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.
 - (2) 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.
 - (3) In the event a county fails to adopt an ordinance setting forth what constitutes a site specific development plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice. (1989 (Reg. Sess., 1990), c. 996, s. 6; 2016-111, s. 4.)