Text Amendments Required for 160D

Part 1: Statutory Reference Changes

Chapter 1
Page 1-2

155.102. Purpose and General Rules

A. ADOPTION AND ENACTMENT CLAUSE. The Town Board of Commissioners, under the authority granted to the Board by G.S. 160A, Article 19 160D, adopts this Title 155 as the Unified Development Ordinance for the Town of Matthews on December 9, 2013. These regulations may be cited as the Unified Development Ordinance, or UDO, of the Town. The established Enactment Date of April 1, 2014. ('72 Code, § 24-1001) (Ord. 477, passed 2-8-88) [formerly known as and/or replaces §§ 153.001, 151.01, 154.02, 149.01, 150.15, 150.31, 150.50 and 152.20, 153.002, and 153.098]

Chapter 2
Page 2-8

155.209. The Town Planning Board

A. ESTABLISHMENT. The Town Planning Board is authorized and established under the authority of G.S. Chapter 160A-361 160D-301 to perform the functions and duties prescribed by the General Statutes.

Chapter 4 – Application Requirements and Review Procedures

Notification
Page 4-1&2

155.401.1 General Requirements for Zoning Map Changes and Amendments

D. NOTIFICATION REQUIRED. A notice of the required public hearing shall be published in a local newspaper having general circulation in the area by the Town once a week for two (2) successive calendar weeks, or any other alternative notice as allowed by the NC General Statutes at Article 19, Chapter 160A. G.S. 160D. When provided by local newspaper, the notice will appear for the first time no less than ten (10) days and no more than twenty-five (25) days prior to the hearing date. If a public hearing is continued to a later date, no additional notice is required. [formerly part of § 153.268.A]
F. **ACTION BY THE BOARD OF COMMISSIONERS.** After receiving the recommendations and report of the Planning Board, the Board of Commissioners may adopt an ordinance approving, modifying, or rejecting the application or amendment. In accordance with GS 160A-75 G.S. 160D, a member of the Board of Commissioners who is present and not excused from participating on a final vote on a requested change in zoning district or text of this Title, and does not vote, that member’s lack of a vote will not be counted as an affirmative vote. (Am. Ord. 2141, passed 4-11-16)

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**155.401.2 Additional Standards and Criteria for Amending the Town Land Use Plan**

C. **NOTIFICATION REQUIREMENTS.** The Town Board of Commissioners shall call for a notice of public hearing on the application and the notice of public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area. or any other alternative notice as allowed by the NC General Statutes at Article 19, Chapter 160A.160D. When provided by local newspaper, the

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**155.401.4 Additional Standards and Criteria for Amending the Zoning Map**

C. **NOTIFICATION REQUIREMENTS.** In addition to the requirements for notification in § 155.401.1.D, the following forms of notice shall be provided:

1. **NOTICE BY MAIL.** The owner of the subject parcel(s) of land, and the owners of all parcels of land which abut, are across a public right-of-way, and/or are wholly or partially within one hundred feet (100’) of any point of the subject property, as shown on the most current county tax listing, shall be mailed a notice of a public hearing on the proposed zoning map amendment by first class mail. The applicant shall prepare such notices and shall deliver said notices to the Planning Office at the time of zoning application submission. If any citizen submits a written statement regarding the proposed zoning change to the Planning office and Town Clerk at least two (2) business days prior to the scheduled decision date, the Clerk shall deliver the written statement to the Board of Commissioners. (Am. Ord. 2141, passed 4-11-16)[formerly part of § 153.268.A]

2. **EXCEPTION TO NOTICE BY MAIL.** The first class mail notice required in § 155.401.4.C.1, above, shall not be required if the zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to either make the mailed notice provided for in § 155.401.4.C.1 or may, as an alternative, elect to publish notice of the hearing as required by GS 160A-364 160D-602 but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected properties, shall be notified according to the provisions of § 155.401.4.C.1. [verbatim from GS 160A-364]

3. **NOTICE BY POSTING A SIGN.** When a zoning map amendment is proposed, the Town shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, posting a sign on each individual parcel is not required, but the Town shall post sufficient notice signs to provide reasonable notice to interested persons. [verbatim from GS 160A-364]
155.402. Vested Rights

155.402.1 Purpose

The purpose of this section is to implement the provisions of GS Chapter 160A-385.1 160D 108.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan. (72 Code, § 24-1800) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.240]

155.402.2 Definitions

Multi-phased development: shall mean a development containing one hundred (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, all as provided by NCGS 160A-385.1(b) 160D-1-8.
(Am. Ord. 2188, passed 11-14-16)

Vested Right: shall mean a right pursuant to GS 160A-385.1 160D-1-8 to undertake and complete the development and use of property under the conditions and terms of an approved site specific development plan, upon receipt of a certificate of vested right. (72 Code, § 24-1801) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly §153.24]

155.402.4 Approval of a Site Specific Development Plan

B. APPROVAL OF SITE SPECIFIC DEVELOPMENT PLAN. Upon approval of a site specific development plan, a statement shall be placed on the plan reading:

"A vested right under GS 160A-385.1 160D-1-8 has been established for this property as shown on this site Specific Development Plan, approved on (date). Unless terminated at an earlier date, the vested right shall remain valid until (date)."

D. DURATION. A vested right shall be approved for a period of two (2) years, except a vested right for a multi-phase development (100 acres or larger) shall be approved for a period of seven (7) years. It shall be effective immediately upon approval. Upon issuance of a building permit, the expiration provisions of GS 160A-418 160D-11-13 and the revocation provisions of GS 160A-418 160D shall apply, except that a building permit shall not expire or be revoked due to the running of time while an established vested right is outstanding. A multi-phased development shall be vested for the entire development to utilize the provisions of this Title in place at the time of zoning and site plan approval for the initial phase of the multi-phased development. (Am. Ord. 2188, passed 11-14-16) (72 Code, § 24-1809) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly §153.249]

155.402.7 Repealer

In the event that GS 160A-385.1 160D-10-7 is repealed, § 155.402 shall be deemed repealed and the provisions within no longer effective. (72 Code, § 24-1812) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly §153.252]
155.403.2 Application Process

A. **APPLICATION REQUIRED.**

1. All interpretation or variance applications shall be filed with the Planning Office. An application shall be considered filed with the Planning Office when delivered to the Planning Office and the date and time of filing shall be entered on the application by the Planning Office staff.

2. An appeal of any determination, order, requirement or decision by an administrative official must be taken within thirty (30) days after the date of decision or order which is being appealed. An appeal shall be concurrently filed with the Town Clerk, the Planning Office and any administrative official charged with enforcement of this Title, which shall serve as the notice of appeal finding as required at NCGS 160A-388(b1)(1) 160D-4-4. An application shall be considered filed when delivered to both the Town Clerk and the Planning Office and the date and time of filing shall be entered on the application by the Planning Office staff.

D. **EFFECT OF APPEAL APPLICATION.** An appeal stays all actions by the enforcement official seeking enforcement of or compliance with the order or decision being appealed unless the enforcement official certifies to the Board of Adjustment in an affidavit that a stay would cause imminent peril to life or property, or because the violation is transitory in nature, a stay would seriously interfere with the enforcement of this Title. In that case, enforcement proceedings shall not be stayed except by restraining order. If enforcement is not stayed, the appellant may request an expedited hearing, as allowed at NCGS 160A-388(b1)(6) 160D-4-4.

155.405.2 Subdivision Plat Required

After the effective date of this Title and pursuant to GS 160A-372, GS 160D-804, a Final Plat shall be prepared, approved and recorded pursuant to the provisions of this Title whenever any subdivision of land occurs. [formerly § 152.20]

155.504.3 Approval Prerequisite to Plat Recording

Pursuant to GS 160A-373, GS 160D-8-3, no Final Plat of a subdivision within the jurisdiction of the Town shall be recorded by the Register of Deeds of Mecklenburg County until it has been approved as provided by this Title. To obtain approval of a Final Plat the subdivider shall follow the procedures established in this Chapter.
Part 2: Definitions 155.103

New Definitions to Section 155.103

155.103. Definitions

Administrative Decision: Decisions made in the implementation, administration, or enforcement of development regulations that involves the determination of facts and the application of objective standards set forth in this Chapter or local government development regulations. These are sometimes referred to as “ministerial” decisions or “administrative determinations.”

Conditional Zoning: A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

Developer: A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

Development: This definition includes any of the following: 1. The construction, erection, alteration, or enlargement, renovation of any structure. 2. The excavation, grading, filling, clearing, or alteration of land. 3. The subdivision of land as defined in G.S. 160D-802. 4. The initiation or substantial change in the use of land or the intensity of use of land.

Development Approval: An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.

Development Regulation: A legislative approval made pursuant to this Code including but not limited to a unified development ordinance, zoning regulation, text amendment, conditional zoning regulation, major subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, stormwater control regulation, or any other regulation adopted pursuant to this Code that regulates land use or development.

Down Zoning: A zoning ordinance that affects an area of land in one of the following ways: 1. By decreasing the development density of the land to be less dense than was allowed under its previous usage. 2. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

Legislative Decision: The adoption, amendment, or repeal of a regulation under this Code. Or, the decision to approve, amend, or rescind a development agreement.

Legislative Hearing: A hearing to solicit public comment on a proposed legislative decision, such as a rezoning or text amendment. Legislative hearings are conducted by the Town Board.
Part 3: Text Changes

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155.405.11 Development Agreements

A. Purpose. The Town may consider and enter into development agreements with developers, subject to the procedures of G.S. 160D Article 10, Development Agreements. Development agreements may be approved by the Town Board as a legislative decision and may, by ordinance, be incorporated, in whole or in part, into any development regulation adopted by the Town. If a development agreement is incorporated into a conditional zoning district, the provisions of the development agreement shall be treated as a development regulation in the event of the developer’s bankruptcy.

B. Pursuant to G.S. 160D-1001 (b), a local government must be a party to a development agreement (a water and sewer authority may enter an agreement as a party, but not independently). A development agreement shall, at a minimum, include all of the following:

1. A description of the property subject to the agreement and the names of its legal and equitable property owners.
2. The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.
3. The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
4. A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.
5. A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property.
6. A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.
7. A description, where appropriate, of any provisions for the preservation and restoration of historic structures. The development agreement may also cover any matter not inconsistent with G.S. 160D Article 10. The developer shall record the agreement with the Mecklenburg County Register of Deeds within 14 days after the Town Board and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. Subject to the provisions of G.S. 160D-1006(e), a development agreement may be amended or terminated by mutual consent of the parties.

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155.213 Compliance Documents

G. PERMIT CHOICE. If any regulations within this ordinance are amended after an application is submitted and before a decision is made, the applicant may choose the version of the rule that applies; however, the Town may require the applicant to comply with the new rules if the applicant delays the application for 6 months. Permit choice is valid for eighteen months after approval of the initial application.
155.402.1  Purpose

The purpose of this section is to implement the provisions of GS Chapter 160A-385.1 160D 108.1 (29) pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan. (72 Code, § 24-1800) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.240]

155.402.2  Definitions

Multi-phased development: shall mean a development containing one hundred (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, all as provided by NCGS 160A-385.1 (b)-160D-1-8 (29). (Am. Ord. 2188, passed 11 14-16)

Site Specific Development Vesting Plan: shall mean a plan of land development submitted to the Town for purposes of obtaining a certificate of vested right which plan shall include the following items: i) a boundary survey showing the total acreage, present zoning classifications, date, and north arrow; ii) the owners' names, addresses, and the tax parcel numbers of all adjoining properties; iii) all existing easements, reservations, and rights-of-way and all yards required for the zoning district requested; iv) proposed use of structures and land (for residential uses, this should include the number of units and an outline of the area where the structures will be located; for nonresidential uses, this should include the approximate square footage of all structures and an outline of the area where the structures will be located); and, v) traffic, parking, and circulation plans, showing proposed locations and arrangement of parking spaces and access points to adjacent streets. Notwithstanding the foregoing, neither a variance, a Sketch Plan, or any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development vesting plan.

155.402.3  Obtaining a Certificate of Vested Right

A.  CERTIFICATE OF VESTED RIGHT CONCURRENT WITH SUBMITTAL OF A PARALLEL TRADITIONAL OR CONDITIONAL-ONLY DISTRICT ZONING APPLICATION.

   3.  A multi-phased development of 25 acres or greater shall be vested for seven (7) years for the entire development with the zoning regulations, subdivision regulations, and unified development ordinance in place at the time a site plan approval is granted for the initial phase of the multi-phased development. Multi-phased developments are subject to a master plan with committed elements, including a requirement to offer land or public use as a condition of its master development plan approval.

B.  OBTAINING A CERTIFICATE OF VESTED RIGHT INDEPENDENT OF ZONING APPLICATION. To apply for a certificate of vested right, a property owner or his agent shall submit a site specific development vesting plan, a fee (in accordance with a fee schedule adopted by the Town Board of Commissioners) and an application for vested right on a form supplied by the Town. The application and plan shall be accepted by the Town Board of Commissioners and a hearing date shall be set. Following the hearing, the Board of Commissioners may submit the application to the Planning Board for its recommendation. The Board of Commissioners shall approve, approve with conditions, or deny the site specific development vesting plan. Conditions shall be reasonable and appropriate and relate to the relationship of the proposed use to surrounding property, proposed support facilities, such as parking areas and driveways, pedestrian and vehicular circulation systems, buffer and screening areas, the timing of development, and other matters the Board of Commissioners may deem necessary for public health or safety. (72 Code, § 24-1803) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.243]
155.402.4 Approval of a Site Specific Development Vesting Plan

A. CONSIDERATIONS FOR APPROVAL. The burden of proof of producing evidence to support these findings and to overcome challenges to them shall rest entirely with the property owner. In evaluating a site specific development vesting plan for approval, the Board of Commissioners shall find the following:

1. The policies and objectives of the Land Use Plan, particularly in relation to the proposed site and surrounding area shall be met.
2. The potential adverse impacts on the surrounding area, especially in regard but not limited to traffic, storm drainage, land values, and compatibility of land use activities shall be minimized to the greatest extent possible.
3. The plan meets all specifications required by this Title.
4. The use will not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed. [formerly § 153.246]

B. APPROVAL OF SITE SPECIFIC DEVELOPMENT VESTING PLAN. Upon approval of a site specific development vesting plan, a statement shall be placed on the plan reading:

“A vested right under GS 160A-285.1 160D-1-8 102 (29) has been established for this property as shown on this site Specific Development Vesting Plan, approved on (date). Unless terminated at an earlier date, the vested right shall remain valid until (date).”

(‘72 Code, § 24-1807)(Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.247]

C. OTHER REVIEWS. Following approval of a site specific development vesting plan, nothing in this chapter shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that those reviews and approvals are not inconsistent with the original approval. The establishment of a vested right on a property shall not preclude the Town from creating and approving one or more overlay districts which may impose additional restrictions on the property, provided that those restrictions do not affect the allowable type or intensity of use. The Town may also enforce on the property any regulations adopted during the effective time period of the vested right, which are general in nature and applicable to all property subject to the regulations of 155.402. (‘72 Code, § 24-1808) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.248]

D. DURATION. A vested right shall be approved for a period of two (2) years, except a vested right for a multi-phase development (100 25 acres or larger) shall be approved for a period of seven (7) years. It shall be effective immediately upon approval. Upon issuance of a building permit, the expiration provisions of GS 160A-418 160D and the revocation provisions of GS 160A-418 160D shall apply, except that a building permit shall not expire or be revoked due to the running of time while an established vested right is outstanding. A multi-phased development shall be vested for the entire development to utilize the provisions of this Title in place at the time of zoning and site plan approval for the initial phase of the multi-phased development. (Am. Ord. 2188, passed 11-14-16) (‘72 Code, § 24-1809) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.249]

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155.401.1 General Requirements for Zoning Map Changes and Amendments

A. APPLICATION AND FEE FOR AMENDMENT REQUIRED. An application for an amendment must be completed on the forms provided and filed with the Town Planning Office, together with the necessary fee as established by the Board of Commissioners. In accordance with G.S. 160D-601 (d) no amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Town. [formerly § 153.266]

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155.401.2 Additional Standards and Criteria for Amending the Town Land Use Plan
D. APPLICATION FOR AMENDING THE LAND USE PLAN.

5. ACTION BY THE BOARD OF COMMISSIONERS. After receiving the recommendations of the Planning Board, the Board of Commissioners may adopt an ordinance approving, modifying, or rejecting the amendment. The Board of Commissioners may refer the matter back to the Planning Board for further consideration. If an amendment is adopted which is deemed by the Town Council to be inconsistent with adopted plans, the zoning amendment shall have the effect of also amending any future land use map in the approved plans and no additional request or application for a plan amendment shall be required.

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155.401.6 Conditional-Only District and Parallel Traditional District Zoning Provisions

D. APPLICATION AND REVIEW PROCESS. The following process applies to both the Parallel Traditional and Conditional-Only districts. For simplicity the term conditional district shall be used in this section to refer to both types of districts unless otherwise noted.

3. REVIEW AND APPROVAL.

   a. In considering an application for the establishment of a conditional district, the Board of Commissioners may attach reasonable and appropriate conditions to the location, nature, and extent of the proposed use request conditions that exceed the minimum regulations set forth in the Unified Development Ordinance. Any conditions should exhibit the relationship of the proposed use to surrounding property, proposed support areas, the timing of development, and other matters that the Board may find appropriate or the applicant may propose. The applicant will have a reasonable opportunity to consider and respond to any such requirements prior to final action by the Board of Commissioners. All conditions included in any conditional zoning approval require agreement of the property owner, which may be accomplished by the owner’s authorized agent. The applicant must agree to such conditions and provide the Board of Commissioners with a signed written list of conditions to acknowledge their acceptance.