

Article III

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**ARTICLE III. VESTED RIGHTS REVIEW, NONCONFORMITIES, AND CONCURRENCY
MANAGEMENT**

DIVISION 1. VESTED RIGHTS REVIEW

Section 30-3.1. Statement of intent.

This division establishes the sole administrative procedures and standards by which a property owner may demonstrate that private property rights have vested against the provisions of the City of Gainesville Comprehensive Plan and this chapter; and when said development, which does not conform with the consistency and/or concurrency requirements of the City of Gainesville Comprehensive Plan or the requirements of this chapter, may continue.

(Ord. No. 3777, § 1, 6-10-92)

Section 30-3.2. Applicability of vested rights.

A. Presumptive vested rights.

- 1. The following categories shall be presumptively vested for the purposes of consistency with the City of Gainesville Comprehensive Plan and concurrency as specified in said plan:
 - a. All active and valid final development orders issued by the city prior to the effective date.
 - b. All technically complete building permit applications which are approvable in their submitted form, and received by the building official on or before the effective date.
 - c. All lots within a subdivision recorded as of the effective date, or lots in approved unrecorded subdivisions for which streets, stormwater management facilities, utilities and other infrastructure required for the development have been completed as of the effective date.
 - d. Lots of record not located within a subdivision, but only to the extent of one (1) single-family residence per lot. Lots of record not located within a subdivision must conform to current land development and/or zoning ordinances, must have legally conformed under some previous zoning ordinance, or must have existed prior to any zoning ordinance. Certified copies of deeds and subdivision plats recorded in the office of the clerk of circuit court, or records of lot splits maintained by the department of planning and development services, will prove the time of a lot's existence.
 - e. Any structure on which construction has been completed and a certificate of occupancy issued if a certificate of occupancy was required at the time of permitting.
- 2. The following categories shall be presumptively vested for the purpose of developing under the provisions of former Chapter 29 (zoning code) of the city Code of Ordinances:
 - a. All technically complete building permit applications which are approvable in their submitted form, and received by the building official on or before the effective date of this chapter.
 - b. All design plats that have been approved by the city commission on or before the effective date of this chapter.

B. Nonpresumptive vested rights.

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- 1. An application for a vested rights determination that does not satisfy the requirements for presumptive vested rights may be filed with the city plan board for a nonpresumptive vested rights determination or an applicant may choose to initially apply for a nonpresumptive vested rights determination.
- 2. In making this determination, the city plan board may consider all relevant factors, including but not limited to:
 - a. Whether the permitted construction or other development activity has commenced and is continuing in good faith.
 - b. Whether the expense or obligation incurred cannot be substantially saved by use and application of the plans, materials, studies, permits, approval and services acquired for a development permitted by the City of Gainesville Comprehensive Plan and applicable land development regulations without acquiring new permits or development plan.
 - c. The following shall not be considered development expenditures or obligations in and of themselves:
 - i. Expenditures for legal and other professional services that are not related to the design, or construction of improvements.
 - ii. Expenditures related to a rezoning action.
 - iii. Taxes paid.
 - iv. Expenditures for initial acquisition of the land.

C. Limitations on determination of presumptive and nonpresumptive vested rights.

- 1. If vested rights were determined based on the possession of a final development order or other unexpired city action, vested rights will expire with expiration of that final development order or action.
- 2. Any vested rights determination shall not create vested rights for additional phases or additional development not expressly authorized by the final development order. This section does not apply to any other subsequent final development order which may also be required for project completion, provided the densities and intensities allowed under the initial final development order are not increased and the specific development plan approved under the initial final development order remains substantially unchanged.
- 3. All development subject to a vested rights determination shall not deviate from the terms of the development orders or actions upon which the vested rights certificate was based.
- 4. A vested rights certificate shall run with the land and is therefore transferable from owner to owner of the land subject to the certificate.

(Ord. No. 3777, § 1, 6-10-92)

Section 30-3.3. Administrative procedures.

A. Application for vested rights determination.

- 1. Any person claiming vested rights, as provided in section 30-3.2, to develop property shall make an application for a vested rights determination pursuant to this chapter. An application for a vested rights certificate shall be approved if an applicant has demonstrated that his/her rights are vested under the standards of presumptive or nonpresumptive vesting.
- 2. The property owner shall request a determination of vested rights by submitting a technically complete, sworn application to the planning and development services department upon a form to be provided for that purpose, setting forth the following information:

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- a. The name(s), signature(s) and address(es) of the owner(s) of the property;
- b. The names(s) and address(es) of the applicant(s), who shall be the owner(s) or an agent authorized by affidavit to apply on behalf of the owner(s);
- c. A legal description and survey of the property which is the subject of the application;
- d. A copy of approved and unexpired final development orders, which may include a final site plan, final subdivision plat or building plan;
- e. Identification by specific reference to any ordinance, resolution or other action of the city, or failure by the city to act, upon which the applicant relied and which the applicant believes to support the owner's vested rights claim;
- f. A statement of facts which the applicant intends to prove in support of the application; and
- g. Such other relevant information which the director may request.

B. Determination procedures.

- 1. Incomplete applications. Within ten (10) calendar days after the receipt of an application, the director shall make a determination as to whether or not the application is technically complete. If not technically complete, the application shall be returned to the applicant with a written notification of the items required by section 30-28(a)(1) and (2) and which are absent or insufficient.
- 2. Decision by director. Upon determination that an application is technically complete, the director shall review the application and make a determination within thirty (30) calendar days whether or not the application clearly and unequivocally has vested rights.
- 3. Notice of decision. Within seven (7) calendar days after making a determination of vested rights, the director shall provide the applicant with written notification of the determination of vested rights. The owner shall have the right to rely upon such written notification that the proposed development is vested; such determination that the development is vested shall be final and not subject to administrative appeal, revocation or modification.

Application for hearing before city plan board. In the event the applicant desires to challenge the decision made by the director for a presumptive vested right, the applicant may file an application for a hearing before the city plan board to make a determination for nonpresumptive vested rights. The application shall be accompanied by a fee as indicated in Appendix A. The director shall set a date for a hearing to be held by the city plan board within thirty (30) calendar days of the director's decision and shall notify the applicant and the city plan board of the date, time and place of the hearing. The notice shall be mailed to the applicant not less than ten (10) calendar days prior to the date of the hearing. At the applicant's option and with city plan board concurrence, stipulations and sworn affidavits may be submitted in lieu of testifying at the city plan board hearing.

- 1. Conduct and recording of city plan board hearing. At the hearing, the applicant shall present all of the owner's evidence in support of the application. The city shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript or existing hearing record available at no more than actual cost. At the conclusion of the testimony, the city plan board shall adopt a decision of approval, denial, or approval with conditions, or continue the proceedings to a date certain. A written decision shall follow in not more than ten (10) calendar days. A city plan board decision to grant vested rights shall be final and not subject to administrative appeal, revocation or modification.
- 2. Appeals to hearing officer.

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- a. Purpose. It is the purpose of this section to provide an administrative process for appealing written decisions of the city plan board which deny vested rights. In particular, it is intended that such administrative relief be provided in the most professional, objective and equitable manner possible through the appointment of a hearing officer to adjudicate matters as provided herein. The function of the hearing officer shall be to serve as the third step of a three-step administrative process relating to the determination of vested rights. No party shall be deemed to have exhausted his/her administrative remedies for the purpose of seeking judicial review unless the party first obtains review of the city plan board's decision by a hearing officer as provided herein.
- b. Intent and nature of appeal process. The hearing officer "appeal" process provided in this division is designed to allow for an appeal of city plan board action after a full and complete hearing. This "appeal" is not intended to mean an appeal in the traditional sense, that is, only a review of the city plan board record of their hearing. The hearing officer "appeal" shall be construed in its broadest, nontechnical sense, which is merely an application to a higher authority for a review of the city plan board action taken.
- c. Presentation of additional evidence. If the city plan board record of their hearing is full and complete, the hearing officer may determine that the record is the only evidence that is necessary. However, the hearing officer may determine that additional evidence and oral or written testimony, including cross examination, is necessary to properly evaluate the city plan board's action and render a decision as to its validity. The hearing officer shall have the authority to determine the need for additional evidence and/or testimony.
- d. Applicability. The property owner may appeal to the hearing officer, a decision rendered by the city plan board on an application denying vested rights.
- e. Filing of appeal; records; notice of decision. The procedure for filing an appeal shall be as follows:
 - i. Appeals shall be commenced by filing a notice of appeal with the director within twenty (20) calendar days of the date of the decision of the city plan board accompanied with a nonrefundable filing fee of five hundred dollars (\$500.00).
 - ii. The notice of appeal shall set forth in detail the basis of the appeal.
 - iii. All expenses associated with the hearing officer appeal process, except attorney fees, shall be the responsibility of the nonprevailing party.
 - iv. The city shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript or existing hearing record available at no more than actual cost.
 - v. In any case where a notice of appeal has been filed, the decision of the city plan board shall be stayed pending the final determination of the case.
 - vi. Following the hearing, the hearing officer shall prepare the written findings and decision; copies of the findings and decision shall be mailed by the hearing officer to each party to the appeal and to the director, with a copy provided to the clerk of the commission.
- f. Conduct of hearing. Conduct of the hearing before the hearing officer shall be as follows:
 - i. The hearing officer shall set forth at the outset of the hearing the order of the proceedings and the rules under which the hearing will be conducted.
 - ii. The order of presentation at the hearing shall be as follows:
 - Receipt of the transcript minutes and exhibits from the city plan board and any records of the director, if any.

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- Opening statements by the parties.
 - Appellant's case.
 - Respondent's case.
 - Rebuttal by appellant.
 - Summation by respondent.
 - Summation by appellant.
 - Conclusion of the hearing by the hearing officer.
- iii. The director's records and the record of the city plan board's hearing and decision, including all exhibits, shall be received and constitute a part of the record.
 - iv. The hearing officer shall have the authority to determine the applicability and relevance of all materials, exhibits and testimony and to exclude irrelevant, immaterial or repetitious matter.
 - v. The hearing officer is authorized to administer oaths to witnesses.
 - vi. A reasonable amount of cross examination of witnesses shall be permitted at the discretion of the hearing officer.
 - vii. The time for presentation of a case shall be determined by the hearing officer.
 - viii. The hearing officer may allow the parties to submit written findings of fact and conclusions of law following the hearing, and shall advise the parties to the timetable for so doing if allowed.
3. Decision by hearing offices. The decision of the hearing officer shall be based upon the following criteria and rendered as follows:
 - a. The hearing officer shall review the director's records and record and testimony presented at the hearing before the city plan board, and at the hearing officer's hearing. Although additional evidence may be brought before the hearing officer, the hearing shall not be deemed a hearing de novo, and the record before the city plan board shall be incorporated into the record before the hearing officer, supplemented by such additional evidence as may be brought before the hearing officer.
 - b. The hearing officer shall be guided by the previously adopted comprehensive plan, the adopted Comprehensive Plan, the land development regulations, this article, the Code of Ordinances of the city, and established case law.
 - c. The burden shall be upon the appellant to show that the decision of the city plan board cannot be sustained by a preponderance of evidence or the city plan board decision departs from the essential requirements of law.
 - d. The hearing officer's determination shall include appropriate findings of fact, conclusions of law, and decisions in the matter of the appeal. The hearing officer may affirm, affirm with conditions, or reverse the decision of the city plan board.
 - e. The hearing officer shall file his/her written determination on each appeal with the director within thirty (30) calendar days of the date of the appeal hearing and a copy shall be provided to the clerk of the commission and the applicant.
 - f. The decision of the hearing officer shall be final, subject to judicial review.
 4. Judicial review. Judicial review of the hearing officer's decision is available to the property owner and the city and shall be by common-law certiorari to the Eighth Judicial Circuit Court. In any case where

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judicial review is sought, the decision of the hearing officer shall be stayed pending the final determination of the case.

- C. Appointment and qualifications of hearing officer.
 - 1. The city commission shall provide a hearing officer to conduct appeal hearings.
 - 2. No hearing officer shall act as agent or attorney or be otherwise involved with any matter which will come before the city during the term of the hearing officer's appointment. Further, no hearing officer shall initiate or consider ex parte or other communication with any party of interest to the hearing concerning the substance of any proceeding to be heard by the hearing officer, except such expert advice as the hearing officer may determine appropriate and solicit.

(Ord. No. 3777, § 1, 6-10-92)

Section 30-3.4. Rules for determination of vested rights.

The city plan board and the hearing officer shall be guided by the following rules:

- A. *Common law vesting.* A right to develop or to continue the development of property notwithstanding the Comprehensive Plan may be found to exist whenever the applicant proves by a preponderance of evidence that the owner, acting in good faith upon some act or omission of the city, has made a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right to develop or to continue the development of the property.
- B. Statutory vesting.
 - 1. The right to develop or to continue the development of property shall be found to exist if a valid and unexpired final development order was issued by the city prior to the effective date, and substantial development has occurred on a significant portion of the development authorized in a single final development order, and is completed or development is continuing in good faith as of the effective date.
 - 2. Each statutory vesting determination also requires that all material requirements, conditions, limitations and regulations of the development order have been met.
 - 3. The right to develop or continue the development of a planned development shall be found to exist if a planned development was subject to a valid and unexpired final development order issued prior to the effective date. However, planned developments approved prior to May 23, 1991, must have commenced substantial development on the planned development consistent with the planned development layout plan as approved and continued development in good faith as of the effective date in order to qualify for vested rights under this subsection.

(Ord. No. 3777, § 1, 6-10-92)

Section 30-3.5. Reserved.

DIVISION 2. –NONCONFORMING LOTS, USES AND STRUCTURES.

Section 30-3.6. Intent.

- A. Within the districts established by this chapter there exist lots, structures and uses of land or land and structures which were lawful before this chapter was adopted or amended but which will be prohibited, regulated or restricted under the terms of this chapter. It is the intent of this chapter to permit these

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nonconformities to continue until they are removed but not to encourage their continuation. Except as otherwise provided, it is the further intent of this chapter that nonconformities shall not be enlarged upon, expanded, intensified or extended nor be used as a basis for adding other structures or uses prohibited within the district. Improvements to nonconforming uses shall be allowed as long as they:

- 1. Do not involve increases in the size of structures or changes in the character of existing uses;
 - 2. Are reasonably related to the continuation of those uses; and
 - 3. Will not have an adverse impact on the surrounding neighborhood and general public;
- B. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building on which a building permit has been issued prior to the effective date of adoption or amendment of this chapter. If actual substantial construction has not begun, under a permit issued prior to the adoption or amendment of this chapter, within six months of the date of issuance of the permit, such permit shall become invalid and shall not be renewed except in conformity with this chapter.

Section 30-3.7. Nonconforming buildings or structures.

Nonconforming principal buildings and structures shall be made to comply with these regulations only after destruction which exceeds 80 percent of its then physical value immediately prior to the time of destruction as determined by the building official with substantial competent evidence. An existing nonconforming principal building or structure may be maintained and repaired, remodeled or altered provided that such remodeling or alteration is in compliance with this chapter. Provided, however, that, in the case of a single-family structure where the nonconformity is created by an encroachment into a required yard setback, such nonconforming single-family structure may be added onto or altered as long as the addition or alteration is in line with the legally existing encroachment and does not extend further into the required setback.

Section 30-3.8. Nonconforming lots.

- A. *Dwellings on nonconforming lots.* The building official may issue a building permit for a single-family dwelling on any nonconforming lot which is not substandard; provided that the remedy set forth in subsection A of this section cannot be complied with, that a single-family dwelling is a permitted use in the district in which the lot is located, and that the district minimum yard setbacks and building size limitations are met.
- B. *Buildings on nonconforming or substandard lots.* The reviewing board may authorize by special exception the issuance of a building permit for a building to be located on a substandard or nonconforming lot, provided that the remedies set forth in subsection A of this section cannot be complied with and that the building use is permitted in the zoning district in which the lot is located, as long as the appropriate review board finds that such building will not create any condition detrimental to the safety, convenience and quiet possession of surrounding properties and uses. The appropriate review board shall not authorize a multiple-family dwelling on a substandard or nonconforming lot in any district in which a single-family dwelling is a permitted use.

Section 30-3.9. Nonconforming uses of buildings, structures and premises.

If a lawful use of a structure, or of a structure and premises in combination, exists in a district other than a residential district on the date this chapter was adopted or amended, that would not be allowed in the district under the terms of this chapter as a result of the adoption or amendment, the lawful use may be continued as long as it remains otherwise lawful. However, if a lawful use of a structure, or of a structure and premises in combination, exists in a residential district on the date this chapter was adopted or amended, that would not be

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allowed in that district under the terms of this chapter as a result of the adoption or amendment, the lawful use may be continued as long as it remains otherwise lawful, except that in accordance with the Religious Land Use and Institutionalized Persons Act, as codified in 42 U.S.C.A. § 2000cc et. seq., a membership organization may be changed to a place of religious assembly and, for the purpose of the Act, shall be considered the same use. All nonconforming uses shall be subject to the following provisions:

- A. Non-conforming uses, on streets designated as urban throughways in the transect zones, or outside of the transect area on arterial roadways designated on the official roadway map of the City Of Gainesville, the appropriate review board may allow the expansion and remodeling of a legal nonconforming use that meets the following conditions:
 - 1. The expansion cannot exceed more than 50% of the existing building square footage
 - 2. The development must be brought into compliance with other provisions of this chapter
 - 3. No additional property can be added to the site to facilitate the expansion
 - 4. The use must not abut single-family zoning
 - 5. The cost of remodeling and expansion cannot exceed 80% of the assessed value of the property
- B. No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, remodeled, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located. The city plan board may allow, by special use permit, minor decorative, functional or safety improvements to existing structures devoted to legal nonconforming uses. Such improvements may not include:
 - 1. An increase in floor area;
 - 2. Enclosures of previously unenclosed areas; or
 - 3. Improvements involving the installation of marquees, canopies, awnings and signs unless they comply with the provisions of this code.
- C. When nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
- D. There may be a change of tenant, ownership or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.
- E. Whenever a nonconforming use of land or of a building or other structure or any portion thereof is abandoned or the use is discontinued for a continuous period of twelve months or more, such abandonment or discontinuance shall be presumed to constitute an intention to abandon or discontinue such use, and such use shall no longer be permitted. Any subsequent use of such building or structure or land shall be in conformity with the provisions of this chapter. A use is deemed abandoned or discontinued if:
 - 1. Business taxes are allowed to lapse;
 - 2. Utility meters are removed; and/or
 - 3. The structure is not maintained in a habitable condition.

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Section 30-3.10. Expansion and renovation of nonconforming single-family and two-family uses and structures.

- A. An existing nonconforming single-family or two-family use may be expanded or renovated in accordance with the development standards for the zoning district in which it is located. However, the use shall not be expanded or renovated to include any additional units.
- B. An existing nonconforming single-family or two-family building or structure may be expanded or renovated in accordance with the provisions of section 30-3.7.

Section 30-3.11. Improvements to vehicular use areas associated with nonconforming uses.

The city plan board may allow by special use permit improvements to vehicular use areas associated with legal nonconforming uses relating to size, location, design, landscaping, drainage, lighting, or buffering and screening to protect neighboring land uses. Proposed improvements must comply with the dimensional and other requirements applicable to new development to the maximum extent possible with recognized site constraints. If a request is made to move a vehicular use area, the applicant must additionally show that the relocation is needed to meet dimensional, landscaping, drainage or buffering requirements. Paving or repaving of an existing vehicular use area which utilizes a local street or alley for vehicle access or maneuvering may be allowed if the city manager or designee determines traffic movement and circulation would not be endangered.

Section 30-3.12. Findings of fact required for issuance of special use permits relating to this section.

Any other provision of this section or this chapter notwithstanding, the city plan board must make the following additional findings of fact before it may approve a special use permit under this section:

- A. That the applicant has demonstrated with competent substantial evidence the legality of the nonconforming use of the structure or structure and premises in combination addressed in the application. Competent substantial evidence may include but is not limited to historic aerial photographs, use and property records maintained by the city's business tax and code enforcement departments, records maintained by the county property appraiser's office, business records, and photographs that can be certified as to their date and authenticity;
- B. That the proposed improvements are reasonably related to the continuation of a nonconforming use and associated facilities and will not result in an increase in the floor area of structures, enclosure of previously unenclosed areas, a change in the existing character of a use or detrimental impacts on surrounding uses and properties or the general public; and
- C. That the proposed improvements are in compliance with all other applicable regulations of this chapter to the maximum extent practicable.

(Ord. No. 3777, § 1, 6-10-92; Ord. No. 3996, § 1, 7-25-94; Ord. No. 060109, § 2, 11-13-06; Ord. No. 070022, § 13, 6-25-07; Ord. No. 070089, § 1, 7-23-07)

Section 30-3.13. Reserved.

DIVISION 3. - CONCURRENCY MANAGEMENT

Note: this division is being updated by separate Petition PB-13-127.

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DIVISION 4. PROPORTIONATE FAIR-SHARE

Note: this division is being updated by separate Petition PB-13-127.