

MORRISTOWN REGIONAL PLANNING COMMISSION

Agenda November 14, 2017



Call to Order

- I.** Approval of October 10th, 2017 Minutes
- II.** Old Business: none
- III.** New Business:
 - A. Annexations: none
 - B. Subdivisions/Site Plans:
 - MASD-2116-2017: Preliminary Plat-Southwood Phase I
 - C. Zoning Issues:
 - REZN-2111-2017: R-2 to OMP @ 304 West 2nd North Street
 - D. Ordinance Reviews:
 - Text-2126-2017: Amendment- Vesting

Adjournment

*The next meeting of the Morristown Regional Planning Commission is scheduled for December 12, 2017 at 4:00 pm.
The deadline to submit applications for this meeting is November 20, 2017.*

Morristown Regional Planning Commission

Minutes

October 10, 2017

Members Present

Chairman Jim Beelaert
Vice Chairman Bill Thompson
Commissioner Sylvia Hinsley
Commissioner Wanda Neal
Commissioner Jack Kennerly
Commissioner Frank McGuffin
Commissioner Bob Garrett
Mayor Gary Chesney

Others Present

Steve Neilson, Planning Director
Lori Matthews, Senior Planner
Josh Cole, Planner
Randy Corlew
Robert Murphy
Doug Peterson
Randy Rosenbaum
Kimberly Rosenbaum

Members Absent

Secretary Rose Parella

Chairman Jim Beelaert called the meeting to order and invited anyone who wished to join the Commission in an Invocation and the Pledge of Allegiance to do so.

I. Chairman Beelaert called for the approval of the September 12th, 2017 minutes.

Vice Chairman Thompson made a motion for approval of the September 12th, 2017 minutes and it was seconded by Commissioner Kennerly. Upon voice votes, all Ayes.

II. Old Business: None

III. New Business:

PUD-2107-2017: Advanced Financial @ 178 South Liberty Hill Road

Planner Josh Cole discussed the request that was submitted by S & H Group for site plan approval of a proposed financial institution named Advanced Financial to be located at 178 South Liberty Hill Road. The location is zoned PCD (Planned Commercial District), thus under Section 14-222 of the Morristown Zoning Ordinance, must receive site plan approval from the Regional Planning Commission.

This parcel contains 0.63 acres and is currently vacant. This property is in the Popkin Town Center development with Food City serving as the anchor tenant. There's a Pal's fast food restaurant to the north; the city owned Popkin Field Park across East Morris Boulevard; and the property formerly occupied by Berkline across South Liberty Hill Road. Access to this site will be from the current development parking lot and the current site plan provides more than adequate parking for the proposed 1,500 square foot building. The developers are waiting upon this approval prior to going through the administrative site plan approval process.

PCD allows for a variety of commercial uses such as banks and retail stores, thus the proposed financial institution is a permitted use in this district. Staff recommended that the Planning Commission approve the concept plan.

Chairman Beelaert called for a motion. Mayor Chesney made a motion for approval and it was seconded by Commissioner Neal.

Voting Results: 8 yes, 0 no. Motion carries.

REZN-2098-2017: UGB Rezone @ Old 25E from Agriculture to Commercial

Senior Planner Lori Matthews stated that this item has been tabled by the request of the petitioner and it should make it to next month's meeting.

Windswept Phase I Bond Release

Senior Planner Lori Matthews discussed the Windswept bond release for the infrastructure. Phases I and II of the Windswept Subdivision have been completed with the exception of the turnabout at the end of Edgewater Sound and Windswept Way which will be completed with Phase III. Surety in place for Phase III exceeds the remainder of work to be done in this phase and it will easily cover the completion of the roundabout. The applicant, Mr. Rusty Rowe, acting on behalf of the development owner has asked that the bonds previously approved for these phases be released. All streets within these phases and entirety of the development will remain private as originally platted.

The bond amounts are as follows:

Phase I Edgewater Sound- \$435,000

Phase II Windswept Way- \$315,000

Staff recommended that the Planning Commission release both of the above referenced bonds effective immediately since the requirements for the release have been satisfied.

Chairman Beelaert called for a motion. Vice Chairman Thompson made a motion for approval of this request and it was seconded by Commissioner McGuffin.

Voting Results: 8 yes, 0 no. Motion carries.

TEXT AMENDMENT: Regulating on and off premise beer sales

Planning Director Steve Neilson discussed this Text Amendment request. At the October 3rd City Council meeting, the Council approved on 1st reading, an amendment to Title 8, Chapter 2 Beer, of the City's Code of Ordinances. The proposed amendment would allow microbreweries, limited service restaurants, catering service, and non-profit club/organizations to all serve beer. The proposed amendments to Title 8 mirrors language found in T.C.A. Title 57 which regulates intoxicating liquor and wine sales.

The City Code amendments currently before the City Council address what uses will be allowed to sell beer in the City. The Zoning Ordinance amendments before you address where those issues would be allowed.

Catering services and non-profit clubs are uses already addressed in the Zoning Ordinance. Staff proposed to add two new uses; Limited Service Restaurants and Microbreweries. To help clarify these uses, staff also proposed to add two new definitions to Chapter 2, 14-203 Definitions. They would include the following:

LIMITED SERVICE RESTAURANT is a restaurant which has gross revenue food sales of less than fifty percent (50%) of its total revenues which is allowed to serve beer. The limited service restaurant shall have a seating capacity of at least forty (40) people at tables and shall have a menu of prepared food available to patrons.

MICROBREWERY is a small brewery and/or restaurant engaged in the manufacture of beer or alcoholic content of not more than eight percent (8%) by weight, and which sells aforesaid beer for consumption on the premises and/or off the premises, provided that the aggregate sales shall not exceed twenty-five thousand (25,000) barrels of beer annually. Said microbrewery shall have a seating capacity of at least forty (40) people.

Staff proposed to allow these uses as USES PERMITTED in the following commercial districts: the IB (Intermediate Business District), the CB (Commercial Business District), the TA (Tourist Accommodation District, and the PCD (Planned Commercial Development District).

Under the State's regulations (Title 57), the State has the sole regulatory authority regarding the sale of liquor or wine. Under Title 57, the State has no distance requirements from churches, parks, or schools.

Under the City Council proposed amendments, the Council is deleting Section 8-210 which is the regulated distance requirement for beer. However, this section only applied to off premise sales. Section 8-210 states that "no event will an off premise permit be issued authorizing the sale of beer within 150 feet of any church, public or private school, or city park. The distances shall be measured in a straight line from the nearest point of any portion of the building from which the beer will be sold to the nearest point on the property line of the church, school, or park. This distance restriction shall not apply to any premises which are wholly separated from any church, public or private school, or city park by a state or federal road or highway having at least four lanes for traffic."

With the exception of a microbrewery selling growlers, this distance restriction would not apply to the two proposed uses which involve on-premises beer sales.

Staff recommended approval of the proposed text amendment.

Chairman Beelaert called for a motion. Commissioner Kennerly made a motion for approval of the text amendment and it was seconded by Vice Chairman Thompson.

Voting Results: 8 yes; 0 no. Motion carries.

VARI-2114-2017: Variance of paved parking @125 Pope Road

Planning Director Steve Neilson discussed the request for a variance to the Section 14-216(4) of the Zoning Ordinance to allow a gravel parking lot at 125 Pope Road. The petitioner is Randy Corlew acting on behalf of Mr. Billy and April King who are the owners of the Collision Center. The property is zoned HI (Heavy Industrial District).

The Board should have recalled this development submitted a similar request in October 2016. At that time the petitioner Mr. Ahron Zigelnik requested a variance to allow both a gravel driveway and gravel parking for the entire development. At that time staff recommended against the request finding no justification for the variances. In addition, the Fire Marshal was opposed to the gravel driveway expressing concerns about being able to access the property with heavy fire vehicles. The BZA denied both requests. Since that time, the petitioner has constructed a 20 foot wide concrete driveway running to the rear of the property addressing the Fire Marshal's concern.

The petitioners' now requested a variance to the paved parking requirement stating that they already have ten paved parking spaces for the Collision Center which they stated is adequate for their customer's needs. The petitioner also stated that the remaining required spaces are not for customer parking but for the storage of vehicles waiting to be repaired and that gravel storage is a common practice for the auto repair industry.

In order to grant a variance, the Board of Zoning Appeals must find that there is some unique feature or characteristic of the property such as exceptional narrowness, unique shape of a specific piece of property, exceptional topographic conditions or other extraordinary or exceptional situation of a piece of property, that the strict application of the provisions of this ordinance would result in practical difficulties to or undue hardship upon the owner of such property. Like before, staff found no hardship to the property owner other than they do not wish to pave it.

Staff recommended denial of this request at the October 11, 2016 meeting and have found nothing new to warrant a change in recommendation. Therefore, Staff recommended denial of this current request.

Chairman Beelaert called for a motion. Commissioner Garrett made a motion for approval and it was seconded Commissioner McGuffin.

Randy Corlew came forward to represent Mr. Zigelnik and Mr. King. Mr. Corlew stated that Mr. Zigelnik wants to sell the property to Mr. King and approval of this variance to the paved parking is what is holding them up. The reason Mr. King requested this variance is that it is similar to what other car repair shops in town currently have.

Mayor Chesney stated that he would be curious to know which properties that Mr. King is referring to that have gravel properties and he would get Staff to look into it.

Vice Chairman Thompson asked Mr. Corlew what the hardship currently was with the property. Mr. Corlew replied that the only hardship is that the current owner is aging and trying to run his business. He cannot afford to run his business and pay to get the parking paved.

Voting Results: 2 yes; 6 no. Motion fails.

The meeting was adjourned.

Respectfully submitted,

Rose Parella

Secretary

RP/jc

City of Morristown

Incorporated 1855

DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



TO: Morristown Regional Planning Commission
FROM: Lori Matthews, Senior Planner
DATE: November 14th, 2018
REQUEST: Preliminary and Final Subdivision Plat Approval – Southwood Subdivision

BACKGROUND:

A request for preliminary and final subdivision plat approval has been received from applicant Clint Harrison acting on behalf of property owner(s) CDC Property Group LLC and Walter Cooper.

The property is 16 acres in size and located on the south side of Valley Home Road across from Millstone Golf and Country Club. Being zoned RP-1 (Planned Residential Development), the submitted plat creates 18 lots from the existing 3 with Greenway Drive (50 foot right of way) to remain private.

This will be the third time this property has been before the Planning Commission. Initially platted for development of 20 duplex units in 2007, the owner had the property re-subdivided in 2014 into the existing right of way and 3 lots. The site currently has one house built and occupied. The applicant is wishing to build single-family residential homes in lieu of the originally approved duplex community.

RECOMMENDATION:

As it will remain private, the plat submitted meets the City's Subdivision Regulations with the exception of sanitary sewer which will be provided by Morristown Utilities Commission. Staff would recommend the Planning Commission grant final approval to the plat as submitted contingent on a letter of service being submitted to City Staff for the sewer.



City of Morristown

Incorporated 1855

DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



TO: Morristown Regional Planning Commission
FROM: Lori Matthews, Senior Planner *LM*
DATE: November 14th, 2017
REQUEST: Rezone Property from R-2 to OMP for Financial Business

BACKGROUND:

A request has been received from Ms. Christina Hayes on behalf of property owner David Hayes for property located at 304 W. 2nd North Street having Hamblen County Tax Map #033M K 00700 000. Currently zoned R-2 (Medium Density Residential), the applicant is requesting that the property be rezoned to OMP (Office, Medical & Professional) to accommodate a financial business.

As can be seen by the photograph below, properties on both sides of W. 2nd Street from N. Henry to Allison Street are zoned R2 with properties behind along W. 3rd North being zoned OMP. All R2 zoned properties shown below are utilized for residential use.

Financial office uses (Section 14-803; Bonding companies, Brokerage companies, Loan companies) are permitted within this district but only with BZA approval. (Use on Review Process)

Currently the OMP district does not allow financial institutions as a use permitted by right as seen from the list below:

14-802. USES PERMITTED

1. Accessory structures/buildings.
2. Architects' and Artists' Studios (limited practice).
3. Beauty Shops/ Barber Shops (limited practice).
4. Dentists (limited practice).
5. Doctors (limited practice).
6. Engineers (limited practice).
7. Group Home (see definition).
8. Kindergartens and child nurseries, provided that there are not more than six (6) pupils and provided that said activities are conducted as a customary home occupation.
9. Lawyers (limited practice).
10. Medical Campus with the provisions in Section 14-810. (3243-4/18/2006)
11. Optometrists (limited practice).
12. Parish houses.
13. Parsonages.
14. Psychiatrists (limited practice).
15. Psychologists (limited practice).
16. Residential Dwelling (single family).
17. Residential Dwelling (two-family).
18. Residential Dwelling (multi-family).
19. Roomers (the taking of), provided that no more than two (2) rooms are used for such purposes.
20. Rooming or boarding house.

Professional standards dictate (generally) that requested changes in use must, at a minimum, mirror a permitted by right use to qualify for a possible rezoning. Otherwise, the point of rezoning property is a moot point and all land uses would go through the Board of Zoning Appeals.

RECOMMENDATION:

As the use requested does not qualify as a permitted use by right, and, rezoning this property would be a detriment to adjoining properties as all adjoining properties are residential in nature, and, because rezoning this property could possibly be a case for 'spot zoning', Staff would recommend the Planning Commission deny the rezoning request as submitted



PLANNING COMMISSION APPLICATION
City of Morristown

2102-1112
2527

Prior to an **annexation, rezoning, subdivision** (major or minor) and/or **site plan** (preliminary or final plat approval) request being placed on the Regional Planning Commission Agenda, the applicant must furnish to the Department of Community Development and Planning the following information:

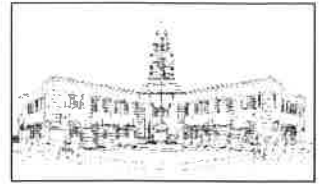
1. **Date:** 9/28/17
2. **Name of Property Owner:** David & Christina Hayes
Mailing Address: PO BOX 2348 **City/State/Zip** Morristown 37814
Telephone: (Home) 423-258-3071 **(Business)** 423-254-0555 **(Mobile)** _____
3. **Name of Applicant:** _____
Mailing Address: _____ **City/State/Zip** _____
Telephone: (Home) _____ **(Business)** _____ **(Mobile)** _____
4. **Name of Agent (if applicable):** _____
Mailing Address: _____ **City/State/Zip** _____
Telephone: (Home) _____ **(Business)** _____ **(Mobile)** _____
5. **Property information:** **Street Address:** 304 W. 2ND North Street
County Tax Map: 033L **Group:** K **Parcel(s)** 007.00
Current zoning: R2 **Parcel size:** _____ **City/U.G.B.** Morristown
Existing Use: Residential **Proposed Use:** OMP
6. **Nature of Request:** (please circle)
 - a) Annexation (state reason for request) _____
 - b) Right-of-way/Alley Closure (state reason for request) _____
 - c) Subdivision/P.U.D.: Name _____ Acres/lots _____ Subdivided into _____
☐ Concept Plan Approval ☐ Preliminary Plat Approval ☐ Final Plat Approval ☐ P.U.D. Approval
 - d) Zoning Classification Change (\$100.00 Fee): From Residential To OMP
 - e) Other Requests: _____
7. List name and addresses of **adjacent property owner(s)** that would be affected by request (reverse side).
8. Submit site plans, surveys, special fees or other items as required for review by City staff and Regional Planning Commission members.
9. **Applicant Signature:** Christina Hayes **Date:** 9/28/17

This application will not be accepted unless all information is complete. If a question is not applicable, please draw a line through the space provided or mark "n/a" (not applicable).

City of Morristown

Incorporated 1855

DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



TO: Morristown Regional Planning Commission
FROM: Steve Neilson, Planning Director *SN*
DATE: November 14, 2017
SUBJECT: Text amendment regulating Vested Property Rights (TEXT- 2126-2017)

BACKGROUND:

In 2014, the State passed legislation (Public Chapter 686) establishing new vesting rights extending the time a developer has to begin construction of a development. This legislation impacts both approved site plans and approved preliminary subdivisions. The term vesting means any development that has been approved by the city is allowed to continue regardless to any amendments to the city's rules and regulations prior to start of construction. The proposed text amendments bring the City's Zoning Ordinance and Subdivision Regulations in conformance with State requirements.

Under Public Chapter 686 an approved development (site plan/subdivision) is vested for three years from the date of approval provided the developer secures all necessary permits. The vesting period is extended an additional two years if the developer has begun site preparation. Site preparation is defined as excavation, grading, demolition, and infrastructure improvements such as water and sewer lines. Once construction has started, the development is vested for five years beginning at the start of construction. Construction is defined as the erection of construction materials in a permanent position and fastens in a permanent manner. Where excavation, demolition, or removal of an existing building has been substantially begun prior to rebuilding, such excavation, demolition, or removal shall be deemed to be construction: provided that work shall be carried on diligently and complies with applicable requirements. If the development involves multiple phases, the vesting may be extended for an additional five years. However, the entire vesting period shall not extend more than fifteen years.

The proposed amendments also spell out under what conditions vesting rights may be terminated. They include:

- When the developer violates the terms and conditions specified in the approved site plan;
- When the developer violates any of the terms and conditions specified in the local ordinance;
- Upon a finding by the City that the developer intentionally supplied inaccurate information or knowingly made misrepresentations material to the issuance of site plan approval;
- Upon the enactment of new state or federal laws, regulations, rules, policies that is required to be enforced by the City and that precludes development as contemplated in the approved site plan.

RECOMMENDATION:

Staff recommends the approval of the proposed text amendment.

ZONING ORDINANCE

Chapter 19 ADMINISTRATION AND ENFORCEMENT

14-1901. ENFORCING OFFICERS

The provisions of this ordinance shall be administered and enforced by the City Administrator or their designee Municipal Building Inspector. This official shall have the right to enter upon premises for the purpose of making inspections of buildings or premises necessary to carry out his duties in the enforcement of this ordinance.

14-1902. BUILDING PERMIT REQUIRED

It shall be unlawful to commence the excavation for or the construction of any building or other structures including accessory structures or to commence the moving, alteration, or repair of any structure including accessory structures, until the City Administrator or their designee Municipal Building Inspector has issued for such work a building permit including a statement that the plans, specifications, and intended use of such structure in all respects conform with the provisions of this ordinance. Application for a building permit shall be made in writing to the City Administrator or their designee Municipal Building Inspector on forms provided for that purpose. Building permits shall be void after six months from date of issue unless substantial progress on project has been made by that time.

14-1903. APPROVAL OF PLANS AND ISSUANCE OF BUILDING PERMIT (3406-12/07/2010)

It shall be unlawful for the City Administrator or their designee Municipal Building Inspector to approve any plans or issue a building permit for any excavation or construction until he has inspected such plans in detail and found them in conformity with this ordinance. To this end, the City Administrator or their designee Municipal Building Inspector shall require that every application for building permit for excavation, construction, moving or alteration be accompanied by a site plan in sufficient detail to enable the City Administrator or their designee Municipal Building Inspector to ascertain whether the proposed excavation, construction, moving, or alteration is in conformance with this ordinance.

The **residential site plan** (1 or 2 units) shall at a minimum include the following:

- a. Location of all existing and proposed structures.
- b. Location of all existing and proposed utilities.
- c. Location of sidewalk if required by the Sidewalk Master Plan.

The **commercial or high density residential site plan** (3 or more residential units) shall include at a minimum, the following plans drawn to scale:

1. Existing Site Plan:
Shall show the existing buildings, topography, landscaping and utilities.
2. Proposed Site Layout:
Shall show the actual shape, location, and dimensions of the lot, the shape size and location of all buildings or other structures to be erected, altered or moved, state the intended use of any building or structure as well as the current zoning, show the proposed parking and parking calculations, the location of any signage, garbage or mail collection facilities.
3. Grading and Drainage Plan:
Shall show any proposed grading, provide the stormwater calculations meeting the current federal requirements, and show any stormwater improvements to be constructed.
4. Utility Plan:
Show the location of all proposed and existing utilities per the requirements of the utility provider.
5. Landscaping Plan:
Show any proposed or existing landscaping to be retained per ~~the current Landscaping Ordinance~~, Chapter 33 LANDSCAPE, BUFFERS, AND SCREENING.
6. Lighting Plan:
 - a. Show the layout and type of lighting per the requirements of ~~the current Lighting Ordinance~~, Chapter 32 EXTERIOR LIGHTING.
7. Pedestrian Plan:
 - a. Any development located along a corridor or pedestrian district as identified within the Sidewalk Master Plan shall provide sidewalks in accordance with the current development standards of the City of engineer.
 - b. Any development over ten acres must provide a plan illustrating pedestrian movement across the site.
 - c. Any development less than ten acres and located outside of a pedestrian district or corridor as identified on the Sidewalk Master Plan or granted a variance from constructing the sidewalks shall submit a pedestrian fee as follows:
 - i. 0 to 1 acre ----- \$ 500.00
 - ii. 1 to 2 acres----- \$1,000.00
 - iii. 2 to 3 acres----- \$1,500.00
 - iv. 3 to 4 acres----- \$2,000.00
 - v. 4 to 5 acres----- \$2,500.00
 - vi. 5 to 6 acres----- \$3,000.00
 - vii. 6 to 7 acres----- \$3,500.00
 - viii. 7 to 8 acres----- \$4,000.00
 - ix. 8 to 9 acres----- \$4,500.00
 - x. 9 to 10 acres--- \$5,000.00

14-1904. CERTIFICATE OF OCCUPANCY REQUIRED

1. No land or building or other structures or part thereof hereafter erected, moved or altered in its use shall be used until the City Administrator or their designee ~~Municipal Building Inspector~~ shall have issued a Certificate of Occupancy stating that such land, structure, or part thereof is found to be in conformity with the provisions of this ordinance.
2. Within three (3) days after notification that a building or premises or part thereof is ready for occupancy or use, it shall be the duty of the City Administrator or their designee ~~Municipal Building Inspector~~ to make a final inspection thereof and to issue a Certificate of Occupancy, if the building or premises or part thereof is found to conform with the provisions of this ordinance or, if such certificate is refused, to state the cause of refusal in writing.

14-1905. PENALTIES

Any person violating any provision of this ordinance shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten (10) dollars no more than fifty (50) dollars for each offense.

Each day such violation continues it shall constitute a separate offense.

14-1906. REMEDIES

In case any building or other structure is erected, constructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this ordinance, the City Administrator or their designee ~~Municipal Building Inspector~~ or any other appropriate authority or any adjacent or neighboring property owner who would be specifically damaged by such violation, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; or to correct or abate such violation; or to prevent occupancy of such building, structure, or land.

14-1907. VESTING RIGHTS

1. To avoid undue hardship, an approved site plan shall be considered vested for a period of three (3) years from the date of site plan approval provided the developer secures all necessary permits. The vesting period shall be extended an additional two (2) years provided site preparation has begun during the initial three year period. If construction commences and the developer maintains all necessary permits, the site plan remains vested for a period not to exceed ten (10) years from the date of original approval. The vesting period for an approved site plan may be extended as deemed advisable by the Planning Commission. Developments involving multiple phases are vested for a period of fifteen (15) years.

Type of Project	Vesting Period	Required Actions
Site Plan	3 years	Obtain Site Plan approval and secure necessary permits
	2 additional years	Site preparation has commenced
	5 additional yrs. (not to exceed a total of 10 years)	Construction commences and developer maintains all permits.
Multi-phase Site Plans	15 years	Complete construction for each phase, maintain necessary permits.

In the event the City enacts a moratorium on development or construction, the vesting period shall be tolled during the moratorium period.

2. TERMINATION OF VESTING RIGHTS

The vested rights of an approved site plan may be terminated upon a written determination by the City under the following circumstances:

- a. When the developer violates the terms and conditions specified in the approved site plan; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the City may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;
- b. When the developer violates any of the terms and conditions specified in the local ordinance or resolution; provided, the developer is given ninety (90) days from the date of notification to cure the violation; provided further, that the City may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;
- c. Upon a finding by the City that the developer intentionally supplied inaccurate information or knowingly made misrepresentations material to the issuance of site plan approval or intentionally and knowingly did not construct the development in accordance with the approved site plan or an approved amendment for the building permit or the site plan; or
- d. Upon the enactment or promulgation of a state or federal law, regulation, rule, policy, corrective action or other governance, regardless of nomenclature, that is required to be enforced by the City and that precludes development as contemplated in the approved site plan, unless modifications to the development plan or building permit can be made by the developer, within ninety (90) days of notification of the new requirement, which will allow the developer to comply with the new requirements.

3. SITE PLAN REVIEW

An amendment to an approved site plan by the developer must be approved by the City to retain the protections of the vested property rights. An amendment may be denied based upon a written finding by the City that the amendment:

- a. Alters the proposed use;
- b. Increases the overall area of the development;
- c. Alters the size of any nonresidential structures included in the development plan;
- d. Increases the density of the development so as to affect traffic, noise or other environmental impacts; or
- e. Increases any local government expenditure necessary to implement or sustain the proposed use.

14-203 – DEFINITIONS

DEVELOPER: a landowner or any party, representative, agent, successor, or heirs of the landowner or developer.

CONSTRUCTION: the erection of construction materials in a permanent position and fasten in a permanent manner. Where excavation, demolition, or removal of an existing building has been substantially begun prior to rebuilding, such excavation, demolition, or removal shall be deemed to be construction: provided that work shall be carried on diligently and complies with applicable requirements.

SITE PREPARATION: excavation, grading, demolition, removing excess debris to allow for proper grading, or providing a surface for a proper foundation, drainage, and settling for a development project, and physical improvements including, but not limited to, water and sewer lines, footings, or foundation installed on the site for which construction permits are required.

SUBDIVISION REGULATIONS

3.4 PRELIMINARY PLAT AND CONSTRUCTION PLANS CONTENT

~~D. Elapsed Time~~

~~Unless a time extension has been requested by the subdivider in writing and granted by the Regional Planning Commission, all final plats shall be submitted within twelve (12) months of the approval date of the preliminary plat. Expired Preliminary Plats and construction plans shall be deemed obsolete upon a lapse of a twelve (12) month period and the developer shall be required to resubmit the Preliminary Plat and Construction Plans in accordance with the time requirements set forth in these Regulations prior to Final Plat submittal.~~

D. Vesting Rights

1. To avoid undue hardship, an approved subdivision plat shall be considered vested for a period of three (3) years from the date of Planning Commission approval provided the subdivider obtains construction plan approval and obtains the necessary permits. The vesting period shall be extended an additional two (2) years provided site preparation has begun during the initial three year period. If construction commences and the developer maintains all necessary permits, the Preliminary Plat remains vested for a period not to exceed ten (10) years from the date of Planning Commission approval. Subdivisions involving multiple phases are vested for a period of fifteen (15) years.

Type of Project	Vesting Period	Required Actions
Preliminary Plat	3 years	Obtain Construction Plan approval and secure necessary permits
	2 additional years	Site preparation has commenced
	5 additional yrs. (not to exceed a total of 10 yrs.)	Construction commences and developer maintains all permits.
Multi-phase Subdivisions	15 years	Complete construction for each phase, maintain necessary permits.

The vesting period for an approved subdivision may be extended as deemed advisable by the Planning Commission. In the event the City enacts a moratorium on development or construction, the vesting period shall be tolled during the moratorium period.

2. Termination of Vesting Rights

The vested rights of an approved subdivision may be terminated upon a written determination by the City under the following circumstances:

During the vesting period, the Subdivision Regulations which are in effect on the date of approval of a Preliminary Plat remain the development standards applicable to the property described in such site

plan except such vested property rights terminate upon a written determination by the City under the following circumstances:

- a) When the subdivider violates the terms and conditions specified in the approved Preliminary Plat; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the City may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;
- b) When the subdivider violates any of the terms and conditions specified in the local ordinance or resolution; provided, the subdivider is given ninety (90) days from the date of notification to cure the violation; provided further, that the City may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;
- c) Upon a finding by the City that the subdivider intentionally supplied inaccurate information or knowingly made misrepresentations material to the Planning Commission or staff during Preliminary Plat approval or intentionally and knowingly did not construct the development in accordance with the approved Preliminary Plat or an approved amendment for the building permit or the Preliminary Plat; or
- d) Upon the enactment or promulgation of a state or federal law, regulation, rule, policy, corrective action or other governance, regardless of nomenclature, that is required to be enforced by the City and that precludes development as contemplated in the approved Preliminary Plat or building permit, unless modifications to the Preliminary Plat or building permit can be made by the subdivider, within ninety (90) days of notification of the new requirement, which will allow the subdivider to comply with the new requirements.

The Planning Commission may allow a subdivision to remain vested despite such a determined occurrence when a written determination is made that such continuation is in the best interest of the community by the City.

2.2 DEFINITIONS

CONSTRUCTION: Construction of streets, stormwater infrastructure, and/or the water and sewer lines have commenced. Where excavation, demolition, or removal of an

existing building has been substantially begun prior to rebuilding, such excavation, demolition, or removal shall be deemed to be construction: provided that work shall be carried on diligently and complies with applicable requirements.

SITE PREPARATION: means excavation, grading, demolition, drainage, and physical improvements such as water and sewer lines, footings, and foundations.

CONCEPT PLAN: A Concept Plan is a nonbinding subdivision plan which may be submitted for an informal consideration by the Planning Commission. The Concept Plan shall include as a minimum the delineation of streets and lots.