

ORDINANCE NO. 4569-14

AN ORDINANCE TO AMEND ARTICLE II, DEFINITIONS, ARTICLE III, NONCONFORMING PROVISIONS, ARTICLE IV, APPLICATION OF REGULATIONS, AND ARTICLE V, SITE PLAN REVIEW OF THE ZONING CODE OF THE CITY OF JOHNSON CITY, TENNESSEE CONCERNING VESTING RIGHTS OF DEVELOPMENT.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF JOHNSON CITY AS FOLLOWS:

SECTION 1. That Article II, Definitions, Article III, Nonconforming Provisions, Article IV, Application of Regulations, and Article V, Site Plan Review of the Zoning Code of the City of Johnson City, Tennessee be and the same is hereby amended and modified as follows:

Amend Article II, Definitions to include the following definitions:

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

Amend Article III, to delete Section 3.3.1, Construction Initiated

To avoid undue hardship, nothing in this Code shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Code and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the erection of construction materials in a permanent position and fastened 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 actual construction, provided that work shall be carried on diligently and complies with all applicable city requirements.

Amend Article IV, Application of Regulations to include the following:

4.15 -VESTING RIGHTS

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 yrs.	Obtain Site Plan approval and secure necessary permits
	2 additional yrs.	Site preparation has commenced
	5 additional yrs. (not to exceed a total of 10 yrs.)	Construction commences and developer maintains all permits.
Multi-phase Site Plans	15 yrs.	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.

4.15.1 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.

Amend Article V, Site Plan Review to include the following:

ARTICLE V, SITE PLAN REVIEW

5.1.6 Development Plan Amendment

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.

SECTION 2. BE IT FURTHER ORDAINED, That all ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. BE IT FURTHER ORDAINED, That this ordinance shall take effect from and after its passage on third and final reading and publication as required by law, the public welfare requiring it.

PASSED ON FIRST READING 11/06/2014
 PASSED ON SECOND READING 11/20/2014
 PASSED ON THIRD READING 12/04/2014
 APPROVED AND SIGNED IN OPEN MEETING
 ON THE 4th DAY OF December, 2014

/s/ Ralph Van Brocklin
 MAYOR

ATTEST:

/s/ Janet Jennings
 City Recorder

APPROVED AS TO FORM:

/s/ James H. Epps, IV
 City Attorney