

From: [Rob Robinson](#)
To: [Hummel, Phillip A.](#)
Cc: [Gregory Mann](#)
Subject: RE: [EXTERNAL] Revised Retool up at: https://secure-web.cisco.com/1AqMQwp0H77teaV8JpqARX_E7KQpobMrRsqRgEUqWmWh-IFyEA4k50zpL3Fn8ngzJT2Q9mIGFIF4DeEseQbnCV6-ICzpPLNmjm2uR2zCUCR4i6BHaUkZEjcmnKciiLwBGr9Kyr4XSFL8tIOsFSNEB7nXhzwtuPBhjQEnVRerwCfjZRYqmttb_yVfq3...
Date: Wednesday, April 24, 2024 3:56:00 PM
Attachments: image002.png
image003.png

Hi Phil, this may make things clearer:

A final site plan must be **submitted for PC review** (*not approved and constructed*), within the 10 years (1). A final site plan approval is good for two years, with the ability to seek a one year extension (2) so
If (a) occurs, an approved final site plan was never acted upon and “vested” within its 3 year window and it is longer than 10 years since the SDP approval: SDP expires
If (b) occurs, the final is denied and it is longer than 10 years since the SDP approval: SDP expires
If (c) occurs, the final is denied or an approved expires without vesting, but it is hypothetically only 7 years since SDP approval, an applicant still has 3 years to resubmit a new final site plan before the SDP could expire.

- (1) Schematic Development Plans and amendments thereto approved after the effective date of this chapter shall expire ten (10) years after the subject plan’s approval date if during that time no associated final site plan application is submitted for Planning Commission review.
- (2) If a final site plan is submitted during the ten (10) year period specified in (1) above, the subject schematic development plan shall:
 - (a) If the final site plan is approved, upon expiration of the final site plan in accordance with Section 24-12.6(O)(1) without commencement of construction, also expire if and when the ten (10) year period specified in (1) above has passed.
 - (b) Upon denial of a submitted final site plan, expire if the ten (10) year period specified in (1) above has passed at the time of final site plan denial.
 - (c) Otherwise remain valid until the ten (10) years specified in (1) above has passed, during which time new final site plans may be submitted if others are denied.
- (3) Expired schematic development plans may be reapplied for in accordance with Section 24-4.2(C) and this section.

In short, a new SDP has possibly 13 years to get vested taking into account the final site plan process. Hope this helps!

Rob

From: Hummel, Phillip A. <p_hummel@MilesStockbridge.com>
Sent: Wednesday, April 24, 2024 3:45 PM
To: Rob Robinson <Rob.Robinson@gaithersburgmd.gov>
Cc: Gregory Mann <Greg.Mann@gaithersburgmd.gov>
Subject: RE: [EXTERNAL] Revised Retool up at: https://secure-web.cisco.com/1AqMQwp0H77teaV8JpqARX_E7KQpobMrRsqRgEUqWmWh-IFyEA4k50zpL3Fn8ngzJT2Q9mIGFIF4DeEseQbnCV6-ICzpPLNmjm2uR2zCUCR4i6BHaUkZEjcmnKciiLwBGr9Kyr4XSFL8tIOsFSNEB7nXhzwtuPBhjQEnVRerwCfjZRYqmttb_yVfq3...

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Got it. So to vest the entire SDP, an applicant needs to get at least one final site plan approved **and then** start construction within 10 years.

Phillip A. Hummel | *Principal*
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From: Rob Robinson <Rob.Robinson@gaithersburgmd.gov>
Sent: Wednesday, April 24, 2024 3:42 PM
To: Hummel, Phillip A. <phummel@MilesStockbridge.com>
Cc: Gregory Mann <Greg.Mann@gaithersburgmd.gov>
Subject: RE: [EXTERNAL] Revised Retool up at: https://secure-web.cisco.com/1AqMQwp0H77teaV8JpqARX_E7KQpobMrRsqRgEUqWmWh-IFyEA4k50zpL3Fn8ngzJT2O9mlGFIF4DeEseQbnCV6-ICzpPLNmjm2uR2zCUCR4i6BHaUkZEjcmnKciiLwBGr9Kyr4XSFL8tIOsfSNEB7nXhzwtpPBhjqEnVRerwCfjZRYqmttb_yVfq3...

[EXTERNAL]

No “vesting” is correct: for 700 as a hypothetical under the proposed code, the approved SDP shows multiple phases. Once the first final site plan was approved and construction occurred per the state definition thus vesting, the whole SDP and its various phases are then “vested” and would not expire even if the later phases are greater than 10 years out. So in practice, 700 could theoretically take decades to build out as long as the first final site plan is submitted within 10 years of SDP approval and that final site gets vested within the three year window (assuming the 1 year extension) of approval.

Rob

From: Hummel, Phillip A. <phummel@MilesStockbridge.com>
Sent: Wednesday, April 24, 2024 3:31 PM
To: Rob Robinson <Rob.Robinson@gaithersburgmd.gov>
Cc: Gregory Mann <Greg.Mann@gaithersburgmd.gov>
Subject: RE: [EXTERNAL] Revised Retool up at: https://secure-web.cisco.com/1AqMQwp0H77teaV8JpqARX_E7KQpobMrRsqRgEUqWmWh-IFyEA4k50zpL3Fn8ngzJT2O9mlGFIF4DeEseQbnCV6-ICzpPLNmjm2uR2zCUCR4i6BHaUkZEjcmnKciiLwBGr9Kyr4XSFL8tIOsfSNEB7nXhzwtpPBhjqEnVRerwCfjZRYqmttb_yVfq3...

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Hi Rob,

Thanks for the quick reply. I shouldn't have used the term “vesting” in my last e-mail, as I understand that is a legal term with a specific meaning. Let's use 700 North Frederick Avenue as an example. That project had an SDP approval that anticipated being implemented in multiple site plans (the flex buildings, the Chick-fil-a, the Sheetz). Let's say in this theoretical, an applicant only got final site plan approval for the two flex buildings approved within 10 years after the SDP approval. Under the current version of 24-12.5(A), does this mean an applicant could still get final site plan approval for the Chick-fil-A and Sheetz more than 10 years after the approval of the SDP?

Thanks,
Phil



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From: Rob Robinson <Rob.Robinson@gaithersburgmd.gov>
Sent: Wednesday, April 24, 2024 3:18 PM
To: Hummel, Phillip A. <phummel@MilesStockbridge.com>
Cc: Gregory Mann <Greg.Mann@gaithersburgmd.gov>
Subject: RE: [EXTERNAL] Revised Retool up at: https://secure-web.cisco.com/1AqMQwp0H77teaV8JpqARX_E7KQpobMrRsqRgEUqWmWh-IFyEA4k50zpL3Fn8ngzJT2O9mlGFIF4DeEseQbnCV6-ICzpPLNmjm2uR2zCUCR4i6BHaUkZEjcmnKciiLwBGr9Kyr4XSFL8tIOsfSNEB7nXhzwtpPBhjqEnVRerwCfjZRYqmttb_yVfq3...

[EXTERNAL]

Hi Phil,

Legal has made clear the role of vesting. As long as a final site plan places a foundation, it vests the final, the SDP, and if applicable the sketch even if there are additional plans to be submitted under the SDP. The expiration will only be applicable to non-vested SDPs. This is why we stated we could not retroactively expire old SDPs that have had not traction like Watkins Mill TC commercial core - the constructed residential portion vested the entire SDP. The changes in yellow are the only changes made to the document. Thank you in fact for catching the incorrect State citation in the first article. You are correct, we, the Council, and the Planning Commission received and reviewed your comments (we sent to PC prior to the hearing), and we are only moving forward with the substantive edits we have posted. There is not support for dedications included in FAR, concurrent submission of sketch and SDPs/Final, allowing applicants to choose what ordinance they follow, reductions in MXD areas or allowing what we call the "Amazon" model, etc. As an FYI, our designation of housing types as SF or MF was not done for impact taxes as that is county's purview and they determine that typology designation. We did the designation for implementing other sections of the City code such as Forest Con. We wanted to get the "meat" revisions out for public review, but we may do one more "clerical" review such as for your "nonresidential" density comment in the next week.

Rob

From: Hummel, Phillip A. <phummel@MilesStockbridge.com>
Sent: Wednesday, April 24, 2024 2:56 PM
To: Rob Robinson <Rob.Robinson@gaithersburgmd.gov>
Cc: Gregory Mann <Greg.Mann@gaithersburgmd.gov>
Subject: RE: [EXTERNAL] Revised Retool up at: https://secure-web.cisco.com/1AqMQwp0H77teaV8JpqARX_E7KQpobMrRsqRgEUqWmWh-IFyEA4k50zpL3Fn8ngzJT2Q9mlGFIF4DeEseQbnCV6-ICzpPLNmjm2uR2zCUCR4i6BHaUkZEjcmnKciilwBGr9Kyr4XSFL8tIOSfSNEB7nXhzwtpPBhjqEnVRerwCfjZRYqmttb_yVfq3...

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Hi Rob,

Thanks for sending. To confirm, are the only changes in this draft highlighted in yellow? I also want to confirm I'm understanding the SDP expiration period. Let's say there's an approved SDP that anticipates implementation through multiple site plans. If one of those site plans is approved within the 10 year validity period, does that "vest" the remaining development approved in the SDP? In other words, if an SDP is expected to be implemented through three site plans, and the first site plan is approved within the 10 years, can an applicant file the second site plan application in the 11th year after SDP approval?

Lastly, does City staff have any thoughts/responses on our practice group's letter? Or should we assume that the changes in the latest draft are the only additional modifications supported by staff?

Thanks,
Phil



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From: Rob Robinson <Rob.Robinson@gaithersburgmd.gov>
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To: Hummel, Phillip A. <phummel@MilesStockbridge.com>
Subject: [EXTERNAL] Revised Retool up at: <https://www.retoolgaithersburg.com/project-updates>

[EXTERNAL]

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