



## BUNCOMBE COUNTY PLANNING & DEVELOPMENT

## STAFF ANALYSIS CONDITIONAL USE PERMIT *Quasi-Judicial Hearing*

**CASE NUMBER:** ZPH2020-00034

**PROJECT:** SOUTH BEAR CREEK  
STATUTORY VESTED RIGHT

### A. PROPERTY INFORMATION

**PIN(s):** 962789678000000

**Addresses:** 20 S. Bear Creek Road, Asheville, NC 28806

**Owner:** GATEWAY AVL LLC

**Applicant:** Catalyst Capital Partners

**Agent:** Warren Sugg, P.E., Civil Design Concepts, P.A.

**Acreage:** 55.40

**Maximum Elevation:** 2105 feet above sea level

**Average Natural Slope:** 18.39%

**Zoning:** Public Services / Special Flood Hazard Area

**Current Land Use:** Open space

**Utilities:** Public water and public sewer

### B. CONDITIONAL USE PERMIT PROJECT SUMMARY:

Applicant seeks approval for a Planned Unit Development (Level 1) in order to construct the following:

- 660 dwelling units in 14 multi-family structures.

### C. APPLICABLE ORDINANCE SECTIONS

Sec. 78-622. Statutory vested rights provisions

### D. PUBLIC NOTICE

Notice in AVL Citizen Times legal ad: 11/25/2020  
Notice mailed to owners within 1,000 feet: 11/25/2020  
Physical posting: 11/27/2020  
Notice on BC Website: 11/25/2020  
Hearing Date: 12/09/2020

### E. PURPOSE OF STATUTORY VESTED RIGHT

Statutory vested rights are authorized under NCGS 153A-344.1 and 160A-385.1, and will be continued with minor changes under NCGS 160D. North Carolina General Statutes and local ordinances set specific time durations for some development approvals. For example, building permits expire in six months, and Conditional Use Permits / Planned Unit Developments expire in two years, if work is not commenced. A vested right is the right to continue a use or complete a project as it was approved, despite subsequent changes to local ordinances. Vested rights are intended to balance the public need to make necessary changes to local regulations, and the private interest in protecting good faith investments and securing reasonable investment-backed expectations in land development. Statutory vested rights protect those property owners who have relied on site-specific development approvals from the local government.

**F. APPLICANT NARRATIVE**

Application for Conditional Use & Planned Unit Development Permit  
ZPH2020-000134 South Bear Creek PUD Vested Right

*This is a 55-acre parcel of land that anticipates building 660 multi-family units in multiple phases. Given the size of this tract and the intended phased build-out and development of the tract, the applicant would like to have additional security in the land use entitlements. This request is all the more important during this uncertain economic time drive by COVID-19 concerns and corresponding responses from lenders and consumers.*

**G. STAFF REVIEW**

| <b>STATUTORY VESTED RIGHTS PROCEDURES</b><br><b>[Sec. 78-622(c) Approval procedures and approval authority, &amp; (d) Duration]</b>  | <b>STAFF REVIEW</b>  |
|--|--|
| <p><i>(c)(1) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the board of adjustment for the specific type of zoning or land use permit or approval for which application is made.</i></p>   | <p>No comment.</p>   |
| <p><i>(c)(2) Notwithstanding the provisions of subsection (1) above, if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the board of commissioners, board of adjustment or other planning agency designated to perform any or all of the duties of a board of adjustment, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the approval authority, following notice and a public hearing as provided in G.S. 153A-323 and Chapter 160A, Article 19.</i></p> | <p>The Board of Adjustment has been delegated authority to grant a Statutory Vested Right by Sec. 78.622 of the Buncombe County Zoning Ordinance (attached).</p> <p>Application, attached.</p> |
| <p><i>(c)(3) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application on a form to be provided by the county, that a zoning vested right is being sought.</i></p>  | <p>This vested rights application cannot be decided upon by the Board, unless it has previously approved ZPH2020-00026.</p> <p>Application, attached.</p>                                      |
| <p><i>(c)(4) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G.S. 153A-344.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date).</i></p>  | <p>Site Plan, attached.</p>  |
| <p><i>(c)(5) Following approval or conditional approval of a site specific development plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.</i></p>   | <p>No comment.</p>   |
| <p><i>(c)(6) Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this article.</i></p>  | <p>No comment.</p>   |
| <p><i>(d)(1) A zoning vested right that has been vested as provided in this section shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (2) below. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the board of adjustment at the time the amendment or modification is approved.</i></p>   | <p>Not applicable.</p>   |
| <p><i>(d)(2) Notwithstanding the provisions in subsection (1) above, the board of adjustment may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the board of adjustment at the time the site specific development plan is approved.</i></p>  | <p>Applicant requests 5 year vested right.</p>   |
| <p><i>(d)(3) Upon issuance of a building permit, the expiration provisions of G.S. 153A-358 and the revocation provisions of G.S. 153A-362 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.</i></p>   | <p>No comment.</p>   |

#### **H. ADDITIONAL DOCUMENTATION SUBMITTED**

- Statutory Vested Rights Application
- Site-Specific Development Plan

#### **I. SUMMARY OF STAFF COMMENTS AND SUGGESTED CONDITIONS OF APPROVAL**

The Board should note the following:

*the board of adjustment may [grant a vested right when] warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the board of adjustment at the time the site specific development plan is approved.*

The Board's decision should reference conditions similar to those provided above, as part of a decision to approve the proposed statutory vested right.

#### **J. BOARD OPTIONS**

- a) Approval as presented. *Note: An approval decision must be substantiated in the Board's findings of fact.*
- b) Denial as presented. *Note: A denial decision must be substantiated in the Board's findings of fact.*
- c) Continuance to a date certain. *Note: A continuance should serve a specific purpose, such as to provide a party of standing (the Applicant, the County, an adjacent property owner, etc.) sufficient time to gather and provide additional documentation or information.*

#### **K. ADDITIONAL INFORMATION**

Refer to the attachments in this packet, including:

- Application
- Site Plan
- Motion Worksheet