

**SANFORD-BROADWAY-LEE COUNTY
UNIFIED DEVELOPMENT ORDINANCE**

ARTICLE 12. NONCONFORMITIES AND VESTED RIGHTS

Summary: This Article defines legal nonconforming uses of land, nonconforming structures and lots. Further, it addresses the extent to which nonconforming situations may continue, the scope of permissible nonconformities, and permitted changes and extensions. This Article also includes the procedures necessary to obtain a vested right for a site specific development as well as rules regarding the expiration of time limits for development approvals.

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12.1 PURPOSE

12.1.1 The purpose of this Article is to address the continuation of nonconforming situations and to protect vested rights. Its purpose is to protect private landowners by protecting their right to continue uses or planned projects, while protecting the public from speculative projects which do not conform to modern planning and design principles. A nonconforming situation typically addresses a condition that legally existed when this Ordinance was adopted, but which is not now permitted by the Ordinance. By contrast, a vested right occurs where a property owner has proceeded to a given stage in the approval process, but does not require that the use already be in existence.

12.2 LEGAL NONCONFORMING SITUATIONS CONTINUED

12.2.1 Unless otherwise specifically provided in this Article and subject to the restrictions and qualifications set forth in this Article 12, nonconforming situations that legally existed prior to the effective date of this Article may be continued. Legal nonconforming situations shall include all lots, uses and/or structures that were considered substandard, but legally allowed to continue on or before the effective date of this Ordinance.

12.3 UNDEVELOPED NONCONFORMING LOTS

nonconforming lots be reassembled in as much as possible to create conforming lots.

12.3.1 APPLICABILITY

This section applies only to undeveloped lots that are considered nonconforming or substandard with respect to their dimensional standards in relation to the current zoning. A lot is considered undeveloped if it has no substantial structures on it.

12.3.2 NONCONFORMITIES AS TO LOT SIZE

12.3.2.1 When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimums set forth in § 4.7, then the lot may be used as proposed subject to the standards set forth in this Section 12.3. However, no use (e.g., a two-family residence) that requires a greater lot size than the established minimum lot size for a particular zone is permissible on a nonconforming lot.

12.3.2.2 Permits may be granted for structures to be built on a nonconforming lot, except that such structure shall conform to all setbacks as required in Table 4.7-1 and as set forth in § 4.7. If the proposed structure cannot comply with the building setbacks, the Administrator may allow a reduction not to exceed twenty-five percent (25%) in the dimension of any required setback yard. Approval shall depend upon a written finding that such reduction is reasonably necessary for practical use of the lot and will not have substantial adverse effects on adjacent property.

12.3.3 MERGER OF NONCONFORMING LOTS

If a property owners desires to develop an undeveloped nonconforming lot which adjoins and has continuous frontage with one or more other undeveloped lots (conforming or nonconforming) under the same ownership, the lots must be combined or merged prior to the issuance of any development permits. The intent of this requirement is to require that

12.4 NONCONFORMING USES OF LAND

12.4.1 PURPOSE

The purpose of this Section 12.4 is to address standards for the expansion, alteration, and/or discontinuance of nonconforming uses of land.

12.4.2 DISCONTINUANCE

12.4.2.1 When a nonconforming use is (i) discontinued for a consecutive period of 180 days, or (ii) discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.

12.4.2.2 For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

12.4.2.3 When a structure or operation made nonconforming by this Article is vacant or discontinued at the effective date of this Article, the 180-day period for purposes of this section begins to run on the effective date of this Article.

12.4.3 CHANGE OF USE

12.4.3.1 A Nonconforming Use shall not be changed to another Nonconforming Use.

12.4.3.2 A Nonconforming Use may be changed to a principal use that is permissible in the district where the property is located, provided compliance can be achieved with the

Change of Use standards in Section 3.2.4.2 of this Ordinance.

12.4.4 EXPANSION OF USE

12.4.4.1 A nonconforming use may be extended throughout any portion of a completed, enclosed building that already houses or contains the same legal nonconforming uses. Open areas such as storage yards, loading docks, carports, etc. shall not be eligible for this expansion provision.

12.4.4.2 A nonconforming use of open land that involves the removal of natural materials from the lot (e.g., a sand pit) may be expanded to the boundaries of the lot where the use was established.

12.4.5 REPLACEMENT OF MANUFACTURED HOMES ON INDIVIDUAL LOTS

12.4.5.1 LEE COUNTY & CITY OF SANFORD. In any zoning district, an existing, nonconforming manufactured home on an individual lot may be replaced with a Class A or Class B manufactured home (see definition of Manufactured Home in Appendix A) provided the replacement home is placed on the site within 180 days of the removal of the previous home.

12.4.5.2 TOWN OF BROADWAY.

12.4.5.2.1 In any zoning district except as set forth in 12.4.5.2.2 below, an existing, nonconforming manufactured home may be replaced with a Class A or Class B manufactured home (see definition of Manufactured Home in Appendix A) provided the replacement home is placed on the site within 180 days of the removal of the previous home and provided that the replacement unit is not more than ten (10) year old.

12.4.5.2.2 Within the Town's R-20 zoning district, existing nonconforming manufactured homes on individual lots may be replaced only with a "Class A" ("double-wide") manufactured home subject to the following additional conditions:

- The pitch of the roof of the home shall have a minimum vertical rise of five feet for each 12 feet of horizontal run

- (5' in 12') and the roof shall be finished with shingles.
- The exterior siding shall consist predominately of vinyl or aluminum lap siding, wood or hardboard.
 - A continuous, permanent foundation (unpierced except for typical ventilation) shall be required.
 - The tongue, axles, transporting lights, and any other removable towing apparatus shall be removed upon final placement on the site.
 - A minimum of 1,200 square feet of interior space shall be required.

12.5 NONCONFORMING STRUCTURES

12.5.1 EXPANSION OF NONCONFORMING STRUCTURES

12.5.1.1 Except as stated below, no person may engage in the physical alteration of A nonconforming structure if such activity results in:

- An increase in the total amount of space devoted to a nonconforming use, or
- Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements or other requirements such as parking requirements.

12.5.1.2 EXCEPTION FOR SINGLE-FAMILY RESIDENTIAL.

Any structure used for single-family residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setbacks and parking requirements. This paragraph is subject to the limitations stated in § 12.4.2 (discontinuance of nonconforming uses).

12.5.2 REPAIRS AND RENOVATION

12.5.2.1 Where a non-conforming building or other non-conforming structure is damaged or destroyed as a result of fire or other natural/uncontrollable factor, such building or structure may be reconstructed provided that any such reconstruction does not increase the degree of any nonconformance with respect to building setbacks, and only upon receipt of a Zoning Clearance Permit. Except, however, the non-conforming single-wide manufactured homes that are destroyed as a result of fire or other natural disaster event, such home may be replaced subject to meeting the standards of Section 12.4.5 of this Ordinance.

12.5.2.2 If a nonconforming structure is voluntarily altered or expanded, such structure and site shall be subject to all applicable design standards of this Ordinance.

12.5.2.3 Routine maintenance and general repair of an existing nonconforming structure shall be permitted provided such repair work does not constitute an expansion or enlargement.

12.6 VESTED RIGHTS.

12.6.1 PURPOSE AND INTENT.

The purpose and intent of this Section is:

- (1) To provide detailed administrative rules, regulations and procedures in order to guide officials in the administration, interpretation and implementation of the Unified Development Ordinance, and/or any other ordinances, regulations and or administrative rules adopted by the County of Lee in order to implement a comprehensive plan for development.
- (2) To establish predictability and fairness for affected landowners;
- (3) To recognize that development projects for which vested rights have been obtained must be accounted for in the Sanford/Lee County 2020 Land Use Plan, the Unified Development Ordinance, capital improvements programs, and other land development regulations.
- (4) To provide a method for determining and quantifying the number of projects, development projects, and land uses, which do not now comply with this Ordinance, or which may in the future fail to comply with this Ordinance due to subsequent amendments to this Ordinance but which are vested, so that such projects, development projects and land uses can be accounted for in the existing and future general plans and this Ordinance.
- (5) To establish uniform and non-burdensome procedures and specific criteria for the determination of vested rights and claims of equitable estoppel in order to aid in the accomplishment of sound and orderly planning;
- (6) To define the scope of vested rights that have been obtained by virtue of prior development approvals, including the expiration of development permits;
- (7) To protect legitimate investment-backed expectations;

- (8) To protect the planning and implementation process;
- (9) Settle potential disputes and to minimize protracted and costly litigation;
- (10) To facilitate implementation of the goals, objectives and policies set forth in the Comprehensive Plan;
- (11) To ensure that all applicable legal standards and criteria are utilized in the determinations to be made hereunder; and
- (12) To implement the provisions of NCGS § 160A-385.1 Vested Rights.

12.6.2 APPLICABILITY.

This Section shall apply to any person(s) desiring to obtain a right to develop land beyond the time limitations as set forth in other sections of this Ordinance.

12.6.3 AUTHORIZATION

The provisions of this section 12.6 are authorized by NCGS § 160A-385.1 Vested Rights.

12.6.4 ESTABLISHMENT OF VESTED RIGHTS.

12.6.4.1 A Vested Right shall be deemed established for any property upon the approval (with or without conditions) of a Site Specific Development Plan or a Phased Development Plan by the appropriate decision-maker in accordance with the provisions of this section.

12.6.4.2 Any Site Specific Development Plan that will require a Variance be obtained in order to conform to this Ordinance shall obtain said Variance prior to the establishment of any Vested Rights.

12.6.4.3 An amendment or modification of a Site Specific Development Plan or Phased Development Plan shall not extend the Vested Rights period unless the approval shall specifically provide for such extension.

12.6.4.4 A Building Permit which is issued for a development for which Vested Rights have been established shall not expire or be revoked because of the time limitations on validity of permits under NCGS §§ 153A-358

and 160A-418 prior to the expiration of the Vested Rights period.

12.6.4.5 Where a Variance is required as a condition of the approval of a Site Specific Development Plan, the effective date of the approval which commenced the period for development shall be the date on which the Variance is granted.

12.6.4.6 A right to develop a Building or Structure or Use which has been vested as provided in this section shall terminate at the end of the applicable vesting period for all Buildings or Structures and Uses for which no valid application for a Building Permit has been filed.

12.6.4.7 VOLUNTARY ANNEXATION.

12.6.4.7.1 In accordance with NCGS § 160A-31(h) and 160A-58.1(d), petitioners filing for voluntary annexation shall also submit a statement declaring whether or not vested rights with respect to the properties subject to the petition have been established. Whenever the County of Lee acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights under a permit, certificate, or other evidence of compliance issued by the local government surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The County of Lee may take any action regarding such a permit, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its ordinances and regulations.

12.6.5 PROCEDURE FOR APPROVAL OF A VESTED RIGHT.

12.6.5.1 The procedures for approval of a Site Specific Development Plan are set forth in § 12.6.7. The procedures for approval of a Phased Development Plan are set forth in § 12.6.7.

12.6.5.2 Upon approval of a Site Specific Development Plan or a Phased Development Plan, each and every map, plat, site plan or other document prepared or used for the Development shall contain the following notation:

- “Approval of this Site Specific Development Plan establishes a Vested Right under North Carolina General Statutes [§ 160A-385.1 within the incorporated area of the County or ETJ] [§ 153A-344.1 within the unincorporated areas of Lee County]. Unless terminated at an earlier date, the Vested Right shall be valid until [date approved by Jurisdiction].”

12.6.6 SCOPE OF VESTED RIGHTS.

12.6.6.1 Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the County of Lee to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the County of Lee from revoking the Zoning Clearance Permit for failure to comply with applicable terms and conditions of the approval or this Ordinance as set forth in Section 1.6.

12.6.6.2 A vested right, once established as provided for in this section, precludes any zoning action by the County of Lee which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan or an approved phased development plan, except:

- (a) With the written consent of the affected landowner;
- (b) Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan or the phased development plan;
- (c) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and

other consultant's fees incurred after approval by the County of Lee, together with interest thereon at the legal rate until paid.

Compensation shall not include any diminution in the value of the property which is caused by such action;

(d) Upon findings, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the County of Lee of the site specific development plan or the phased development plan; or

(e) Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site specific development plan or the phased development plan, in which case the County of Lee may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

(f) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land-use regulation by the County of Lee, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.

(g) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of the County of Lee to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses. (See Article 13 of this Ordinance).

12.6.6.3 A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan or a phased development plan, all successors to the

original landowner shall be entitled to exercise such rights.

12.6.6.4 Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

12.6.7 SITE-SPECIFIC DEVELOPMENT PLANS (SSDPs).

12.6.7.1 GENERAL.

The appropriate Governing Body may, but under no circumstances is it required, to approve a Site-Specific Development Plan (SSDP). The SSDP shall bind the applicant and the County of Lee (the "parties") and shall contain those terms and conditions agreed to by the parties and those required by this Section. The Department of Community Development and the Attorney for the City, Town or County, or their designees, are authorized to negotiate SSDPs.

12.6.7.2 APPLICABILITY.

The applicable Governing Body may approve a SSDP pursuant to this Section only if the proposed development to which the SSDP pertains is in conformity with the then adopted Comprehensive Plan and capital improvements program, zoning regulations, and other applicable requirements of this Ordinance. The SSDP shall be used solely as a means to enforce compliance with the terms of this Ordinance, and shall not be considered an inducement for the approval of any application for development approval.

12.6.7.3 DURATION.

12.6.7.3.1 Upon approval of a Site Specific Development Plan, the right to develop such Development or Use shall continue for a period of two (2) years from the date of approval of such Site Specific Development Plan.

12.6.7.3.2 Notwithstanding the foregoing, the County of Lee, in its approval, may authorize a

Vested Rights development period of longer than two (2) years, but in no event longer than five (5) years, if, in the County of Lee's sole discretion, such longer period is necessary because of the size and phasing of the Development, the investment in the Development, the need for the Development, economic cycles, and such other conditions as the County of Lee may consider relevant.

12.6.7.4 APPLICATION.

12.6.7.4.1 An application for an SSDP may be made to the Department of Community Development in accordance with the procedures set forth herein. Application may be made by the landowner. If made by the holder of an equitable interest, the application shall be accompanied by a verified title report and by a notarized statement of consent to proceed with the proposed SSDP executed by the landowner. Application may be made by the Planning Board or the Governing Body. If made by the Planning Board or the Governing Body, the applicant shall obtain and attach a notarized statement of consent to proceed with the proposed SSDP executed by the owner of the subject property.

12.6.7.4.2 It is the intent of these regulations that the application for an SSDP will be made and considered simultaneously with the review of other necessary applications; including, but not limited to, land-use approval designation as may be utilized by the County of Lee. If combined with an application for rezoning, subdivision and plat approval, planned development or Special Use permit, the application for a SSDP shall be submitted with said application and shall be processed, to the maximum extent possible, jointly to avoid duplication of hearings and repetition of information. A SSDP is not a substitute for, nor an alternative to, any other required permit or approval, and the applicant must comply with all other required procedures for development approval.

12.6.7.4.3 The provisions of this Section supplement, but do not replace, any additional information required by Appendix B for any site plan, Planned Unit Development plan, a TND application, a subdivision plat, a Special Use permit, a Conditional Use District zoning plan, or any other application for development

approval required for the proposed development.

12.6.7.5 APPROVAL.

No SSDP shall become effective until approved by the Governing Body. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the document that triggers such vesting shall be so identified at the time of its approval. The Governing Body shall consider the proposed SSDP consistent with any procedures as may be established pursuant to NCGS §§ 153A-344.1 and 160A-385.1. The Governing Body, in approving an SSDP, shall expressly find that the agreement meets those criteria in this Ordinance for approval of the Applications for Development Approval. The Governing Body may:

- (a) Approve the SSDP;
- (b) Approve the SSDP with conditions; or
- (c) Reject the SSDP, in whole or in part, and take such further action as it deems to be in the public interest.

12.6.7.6 RECORDATION OF SSDP.

No later than ten (10) days after the Governing Body approves an SSDP, the Department of Community Development shall record a copy of the SSDP with the county register of deeds, and the recordation constitutes notice of the SSDP to all persons. The burdens of the SSDP are binding on, and the benefits of the SSDP inure to, the parties to the agreement and to all their successors in interest and assigns.

12.6.7.7 COVENANTS.

Unless otherwise provided in the SSDP, any covenant by the Governing Body contained in the SSDP to refrain from exercising any legislative, quasi-legislative, quasi-judicial or other discretionary power, including rezoning or the adoption of any rule or regulation that would affect the proposed subdivision, shall be limited to a period not exceeding that specified in NCGS §§ 153A-344.1(d)(1) and 160A-385.1(d)(1). The covenant shall also contain a proviso that the Governing Body may, without incurring any liability, engage in action that

otherwise would constitute a breach of the covenant if it makes a determination on the record that the action is necessary to avoid a substantial risk of injury to public health, safety and general welfare. The covenant shall contain the additional provision that the Governing Body may, without incurring any liability, engage in action that otherwise would constitute a breach of the covenant if the action is required by federal or state law.

12.6.7.8 NOTICE OF DECISION.

Within ten (10) days following a decision of an SSDP, the Department of Community Development shall give notice of such action to the applicant.

12.6.7.9 THIRD PARTY RIGHTS.

Except as otherwise expressly provided in the SSDP, the SSDP shall create no rights enforceable by any party who/which is not a party to the SSDP.

12.6.7.10 AMENDMENT OR CANCELLATION.

A SSDP may be amended, or cancelled in whole or in part, by mutual consent of the parties to the SSDP or by their successors in interest or assigns.

12.6.8 PHASED DEVELOPMENT PLANS (PDPs).

The procedures and requirements pertaining to Phased Development Plans (PDPs) shall be the same as those set forth for SSDPs in § 12.6.7, except as provided below:

12.6.8.1 DURATION.

The Governing Body may, but under no circumstances is it required, provide by ordinance that approval by the Governing Body of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years.

12.6.8.2 PROCEDURE.

The document that triggers such vesting shall be so identified at the time of its approval. The Governing Body still may require the landowner to submit a site specific development plan for approval by the County of Lee with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications.

12.6.8.3 DISCRETION.

Nothing in this section shall be construed to require the Governing Body to confer vested rights upon a proposed site specific development plan.

12.7 EXPIRATION OF DEVELOPMENT APPROVALS.

12.7.1 TIME LIMITS ON APPROVALS.

12.7.1.1 Unless otherwise specifically provided for in this Ordinance, development permits shall automatically expire and become null and void, and all activities taken pursuant to such development application shall cease and become null and void, and all activities pursuant to such approval thereafter shall be deemed in violation of this Ordinance, when:

- the applicant fails to satisfy any condition that was imposed as part of the original or revised approval of the application for development approval, or that was made pursuant to the terms of any development agreement, including the failure to abide by specified time limits established therein; or
- the applicant fails to present a subsequent development application as required by this title within the time so required or as may be required by Articles 4 and 5 of this Ordinance or North Carolina law.

12.7.1.2 If no time limit for satisfaction of conditions is specified in the original or revised approval of the development application, the time shall be presumed to be twelve (12) months from the date of approval.

12.7.1.3 DATE FROM WHICH TIME LIMIT IS MEASURED.

Each time period referenced in Articles 4 and 5 relating to the scope of a Development Permit shall run from the final action of the appropriate official, officer, board, commission or the governing body with valid and legal jurisdiction to take such action or to approve such plans or to issue such permits. Except as may be otherwise indicated herein, the date of final action shall be the date such action was taken or such approval was granted or such permit was issued, as set forth on such action, approval or permit.

12.7.1.4 ANNOTATION OF DATES.

In order to assure that all applicants for actions, approvals or permits are informed of the applicable time limit, the date of final action and the expiration date shall be shown on each such action, permit or approval; but provided, however, that the Department of Community Development's failure to include either the date of final action or the expiration date shall not be deemed to be a waiver of such dates nor shall it be the basis of any action by the applicant to challenge the applicable expiration date. The burden is on the applicant to know the date of issuance and the expiration date. If either or both of such dates are not shown, the applicant may request, and the Department of Community Development shall promptly supply such date or dates.

12.7.1.5 EXPIRATION OF PERMITS.

All actions, approvals or permits shall expire on the expiration date prescribed within the various sections of this Ordinance unless a valid extension has been granted on or before the expiration date as provided in § 12.7.1.7, below, or the specific section relating to such Development Permit.

12.7.1.6 EXTENSIONS OF TIME LIMITS.

Unless otherwise prohibited by North Carolina law or this Ordinance, the Department of Community Development may extend the time for expiration of a development permit or approval for a period not to exceed one (1) year from the date of the original decision granting approval, if the application for extension is made in writing within the original period of validity. Subsequent extensions may be made by the final approval body upon finding that conditions at the time of approval have not changed. There shall be no additional extensions of any time limits for actions, approvals or permits set forth herein, as of right. Any extensions must be expressly requested by the applicant, in writing, and approved by the appropriate official, officer, board, commission or the governing body which originally took the action, approved the plan or issued the permit. A request for an extension of an expiration date shall be made on a form provided by the Department of Community Development and shall include, but shall not necessarily be

limited to, the following: the current date of expiration; the extension period requested, which shall be no longer than the original period of time granted; and the reason(s) that the applicant has been unable to proceed within the period of the original expiration date. Before granting an extension, the official, officer, board, commission or the governing body shall determine whether any applicable changes in land use regulations have occurred which would impose new requirements with respect to such action, approval or permit, if an extension were denied, and the applicant were compelled to re-file for an original action, approval or permit. If changes have occurred, the official, officer, board, commission or the governing body shall balance the burden imposed on the applicant if required to re-file for an original action, approval or permit against the benefit accruing to the public by requiring the applicant to comply with the new regulation.