

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

4

HOUSE BILL 507*
Committee Substitute Favorable 4/19/17
Third Edition Engrossed 4/20/17
Senate Commerce and Insurance Committee Substitute Adopted 6/13/18

Short Title: Land-Use Regulatory Changes.

(Public)

Sponsors:

Referred to:

March 29, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-755 reads as rewritten:

"§ 143-755. **Permit choice.**

(a) If a development permit applicant submits a permit application for any type of development and a rule or ordinance changes is amended, including an amendment to any applicable land development regulation, between the time the development permit application was submitted and a development permit decision is made, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit.

(b) This section applies to all development permits issued by the State and by local governments.

(c) Repealed by Session Laws 2015 246, s. 5(a), effective September 23, 2015.

(d) Any person aggrieved by the failure of a State agency or local government to comply with this section or G.S. 160A-360.1 or G.S. 153A-320.1 may apply to the appropriate division of the General Court of Justice for an order compelling compliance by the offending agency or local government, and the court shall have jurisdiction to issue that order. Actions brought pursuant to any of these sections shall be set down for immediate hearing and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts.

(e) For purposes of this section, the following definitions shall apply:

(1) Development. – Without altering the scope of any regulatory authority granted by statute or local act, any of the following:

a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.

b. Excavation, grading, filling, clearing, or alteration of land.

c. The subdivision of land as defined in G.S. 153A-335 or G.S. 160A-376.



- 1 d. The initiation of substantial change in the use of land or the intensity
- 2 of the use of land.
- 3 (2) Development permit. – An administrative or quasi-judicial approval that is
- 4 written and that is required prior to commencing development or undertaking
- 5 a specific activity, project, or development proposal, including any of the
- 6 following:
- 7 a. Zoning permits.
- 8 b. Site plan approvals.
- 9 c. Special use permits.
- 10 d. Variances.
- 11 e. Certificates of appropriateness.
- 12 f. Plat approvals.
- 13 g. Development agreements.
- 14 h. Building permits.
- 15 i. Subdivision of land.
- 16 j. State agency permits for development.
- 17 k. Driveway permits.
- 18 l. Erosion and sedimentation control permits.
- 19 m. Sign permit.
- 20 (3) Land development regulation. – Any State statute, rule, or regulation, or local
- 21 ordinance affecting the development or use of real property, including any of
- 22 the following:
- 23 a. Unified development ordinance.
- 24 b. Zoning regulation, including zoning maps.
- 25 c. Subdivision regulation.
- 26 d. Erosion and sedimentation control regulation.
- 27 e. Floodplain or flood damage prevention regulation.
- 28 f. Mountain ridge protection regulation.
- 29 g. Stormwater control regulation.
- 30 h. Wireless telecommunication facility regulation.
- 31 i. Historic preservation or landmark regulation.
- 32 j. Housing code."

SECTION 2.(a) G.S. 160A-360.1 reads as rewritten:

"§ 160A-360.1. Permit choice.

- 35 (a) If a rule or ~~ordinance~~ordinance, including an amendment to any applicable land
- 36 development regulation, changes between the time a development permit application is submitted
- 37 and a development permit decision is made, then G.S. 143-755 shall apply.
- 38 (b) For purposes of this section, the definitions in G.S. 143-755 shall apply."

SECTION 2.(b) G.S. 153A-320.1 reads as rewritten:

"§ 153A-320.1. Permit choice.

- 41 (a) If a rule or ~~ordinance~~ordinance, including an amendment to any applicable land
- 42 development regulation, changes between the time a development permit application is submitted
- 43 and a development permit decision is made, then G.S. 143-755 shall apply.
- 44 (b) For purposes of this section, the definitions in G.S. 143-755 shall apply."

SECTION 3.(a) G.S. 160A-385(c) is recodified as G.S. 160A-385(b)(5).

SECTION 3.(b) G.S. 160A-385, as amended by this section, reads as rewritten:

"§ 160A-385. ~~Changes.~~Changes to land development regulations.

- 48 (a) Citizen Comments. –
- 49 (1) ~~Zoning~~Subject to the limitations in this Chapter, zoning ordinances may from
- 50 time to time be amended, supplemented, changed, modified or repealed. If any
- 51 resident or property owner in the city submits a written statement regarding a

1 proposed amendment, modification, or repeal to a zoning ordinance, ~~ordinance~~
2 including a zoning map or text, that has been properly initiated as provided in
3 G.S. 160A-384, to the clerk to the board at least two business days prior to the
4 proposed vote on such change, the clerk to the board shall deliver such written
5 statement to the city council. If the proposed change is the subject of a
6 quasi-judicial proceeding under G.S. 160A-388, or any other statute, the clerk
7 shall provide only the names and addresses of the individuals providing
8 written comment, and the provision of such names and addresses to all
9 members of the board shall not disqualify any member of the board from
10 voting.

11 (2) (3) Repealed by Session Laws 2015-160, s. 1, effective August 1, 2015, and
12 applicable to zoning ordinance changes initiated on or after that date.

13 (b) Amendments in ~~zoning ordinances~~ land development regulations, shall not be
14 applicable or enforceable without the written consent of the owner with regard to buildings and
15 uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to
16 the enactment of the ordinance making the change or changes so long as the permits remain valid
17 and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) any
18 of the following:

19 (1) Uses of buildings or land, or subdivisions of land, for which a development
20 permit has been issued that authorizes the use or subdivision of land, in
21 accordance with G.S. 143-755.

22 (2) Buildings, or uses thereof, for which a building permit has been issued
23 pursuant to this Chapter, in accordance with G.S. 143-755.

24 (3) a ~~A~~ vested right has been established pursuant to G.S. 160A-385.1 and such
25 vested right remains valid and unexpired pursuant to G.S. 160A-385.1.

26 (4) A vested right established by the terms of a development agreement
27 authorized by Part 3D of this Article.

28 (5) ~~Amendments in zoning ordinances, subdivision ordinances, and unified~~
29 ~~development ordinances shall not be applicable or enforceable without the~~
30 ~~written consent of the owner with regard to a~~ A multi-phased development as
31 defined in G.S. 160A-385.1(b)(7), provided for in this subdivision, in
32 accordance with G.S. 143-755. A multi-phased development shall be vested
33 for the entire development with the ~~zoning ordinances, subdivision~~
34 ~~ordinances, and unified development ordinances~~ land development regulations
35 then in place at the time a site plan approval is granted for the initial phase of
36 the multi-phased development. A right which has been vested as provided for
37 in this ~~subsection~~ subdivision shall remain vested for a period of seven years
38 from the time a site plan approval is granted for the initial phase of the
39 multi-phased development.

40 (c) Recodified.

41 (d) Upon issuance of a development permit, the statutory vesting granted by this section
42 shall be effective so long as the permit remains valid and unexpired pursuant to law. Unless
43 otherwise specified by statute, local development permits expire one year after issuance unless
44 work authorized by such permit has substantially commenced.

45 (e) The establishment of a vested right under any subdivision of subsection (b) of this
46 section does not preclude vesting under one or more other subdivisions of subsection (b) of this
47 section or vesting by application of common law principles. A vested right, once established as
48 provided for in this section, precludes any action by a city that would change, alter, impair,
49 prevent, diminish, or otherwise delay the development or use of the property as set forth in the
50 development approval, except where a change in State or federal law mandating local

1 government enforcement occurs after the development approval that has a fundamental and
2 retroactive effect on such development or use.

3 (f) As used in this section, the following terms mean:

4 (1) Development permit. – Shall mean as defined in G.S. 143-755(e)(2).

5 (2) Land development regulation. – Shall mean as defined in G.S. 143-755(e)(3).

6 (3) Multi-phased development. – A development containing 25 acres or more that
7 is both of the following:

8 a. Submitted for development permit approval to occur in more than one
9 phase.

10 b. Subject to a master development plan with committed elements
11 showing the type and intensity of use of each phase."

12 SECTION 3.(c) G.S. 160A-385.1 reads as rewritten:

13 "§ 160A-385.1. Vested rights.

14 ...
15 (b) Definitions. –

16 ...
17 (7) ~~"Multi-phased development" means a development containing 100 acres or~~
18 ~~more that (i) is submitted for site plan approval for construction to occur in~~
19 ~~more than one phase and (ii) is subject to a master development plan with~~
20 ~~committed elements, including a requirement to offer land for public use as a~~
21 ~~condition of its master development plan approval.~~

22"

23 SECTION 3.(d) G.S. 153A-344(b1) is recodified as G.S. 153A-344(b)(5).

24 SECTION 3.(e) G.S. 153A-344 reads as rewritten:

25 "§ 153A-344. Planning board; zoning plan; certification to board of commissioners.

26 ...
27 (b) Amendments in ~~zoning ordinances~~ land development regulations, shall not be
28 applicable or enforceable without the written consent of the owner with regard to ~~buildings and~~
29 ~~uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to~~
30 ~~the enactment of the ordinance making the change or changes so long as the permits remain valid~~
31 ~~and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii)any~~
32 of the following:

33 (1) Uses of buildings or land, or subdivisions of land, for which a development
34 permit has been issued that authorizes the use or subdivision of land, in
35 accordance with G.S. 143-755.

36 (2) Buildings, or uses thereof, for which a building permit has been issued
37 pursuant to this Chapter, in accordance with G.S. 143-755.

38 (3) ~~a~~ A vested right has been established pursuant to G.S. 153A-344.1 and such
39 vested right remains valid and unexpired pursuant to G.S. 153A-385.1.

40 (4) A vested right established by the terms of a development agreement
41 authorized by Part 3D of this Article.

42 (5) ~~Amendments in zoning ordinances, subdivision ordinances, and unified~~
43 ~~development ordinances shall not be applicable or enforceable without the~~
44 ~~written consent of the owner with regard to a~~ A multi-phased development as
45 defined in G.S. 153AA-344.1(b)(7).provided for in this subdivision, in
46 accordance with G.S. 143-755. A multi-phased development shall be vested
47 for the entire development with the zoning ordinances, subdivision
48 ordinances, and unified development ordinances land development regulations
49 then in place at the time a site plan approval is granted for the initial phase of
50 the multi-phased development. A right which has been vested as provided for
51 in this subsection subdivision shall remain vested for a period of seven years

1 from the time a site plan approval is granted for the initial phase of the
 2 multi-phased development.

3 (b1) Recodified.

4 (c) Upon issuance of a development permit, the statutory vesting granted by this section
 5 shall be effective so long as the permit remains valid and unexpired pursuant to law. Unless
 6 otherwise specified by statute, local development permits expire one year after issuance unless
 7 work authorized by such permit has substantially commenced.

8 (d) The establishment of a vested right under any subdivision of subsection (b) of this
 9 section does not preclude vesting under one or more other subdivisions of subsection (b) of this
 10 section or vesting by application of common law principles. A vested right, once established as
 11 provided for in this section, precludes any action by a county that would change, alter, impair,
 12 prevent, diminish, or otherwise delay the development or use of the property as set forth in the
 13 development approval, except where a change in State or federal law mandating local
 14 government enforcement occurs after the development approval that has a fundamental and
 15 retroactive effect on such development or use.

16 (e) As used in this section, the following terms mean:

17 (1) Development permit. – Shall mean as defined in G.S. 143-755(e)(2).

18 (2) Land development regulation. – Shall mean as defined in G.S. 143-755(e)(3).

19 (3) Multi-phased development. – A development containing 25 acres or more that
 20 is both of the following:

21 a. Submitted for development permit approval to occur in more than one
 22 phase.

23 b. Subject to a master development plan with committed elements,
 24 showing the type and intensity of use of each phase."

25 **SECTION 3.(f)** G.S. 153A-344.1 reads as rewritten:

26 **"§ 153A-344.1. Vesting rights.**

27 ...
 28 (b) Definitions.

29 ...
 30 (7) ~~"Multi-phased development" means a development containing 100 acres or~~
 31 ~~more that (i) is submitted for site plan approval for construction to occur in~~
 32 ~~more than one phase and (ii) is subject to a master development plan with~~
 33 ~~committed elements, including a requirement to offer land for public use as a~~
 34 ~~condition of its master development plan approval.~~

35"

36 **SECTION 4.** Part 3 of Article 19 of Chapter 160A of the General Statutes is amended
 37 by adding a new section to read:

38 **"§ 160A-393.1 Civil action for declaratory relief, injunctive relief, other remedies; joinder**
 39 **of complaint and petition for writ of certiorari in certain cases.**

40 (a) Review of vested rights claim. – A person claiming a statutory or common law vested
 41 right may submit information to substantiate that claim to the zoning administrator or other
 42 officer designated by a land development regulation, who shall make an initial determination as
 43 to the existence of the vested right. The zoning administrator's or officer's determination may be
 44 appealed under G.S. 160A-388(b1). On appeal the question of law regarding the existence of a
 45 vested right shall be reviewed *de novo*. In lieu of an appeal under G.S. 160A-388(b1), a person
 46 claiming a vested right may bring an original civil action as provided by subsection (b) of this
 47 section.

48 (b) Civil Action. – A person with standing may bring a separate and original civil action,
 49 seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or
 50 equity, in superior court or federal court to challenge the enforceability or validity of a land

1 development regulation without filing an appeal under G.S. 160A-388(b1) for any of the
2 following claims:

3 (1) The ordinance, either on its face or as applied, is unconstitutional.

4 (2) The ordinance, either on its face or as applied, is ultra vires, preempted, or
5 otherwise in excess of statutory authority.

6 (c) Joinder. – An original civil action authorized by this section may, for convenience
7 and economy, be joined with a petition for writ of certiorari and decided in the same proceedings.
8 For the claims raised in the original civil action, the parties shall be governed by the Rules of
9 Civil Procedure. The record of proceedings in the appeal pursuant to G.S. 160A-393 may not be
10 supplemented by discovery from the civil action unless supplementation is otherwise allowed
11 under G.S. 160A-393(j). The standard of review in the original civil action shall be as established
12 for the cause or causes of action pled. The standard of review of the petition for writ of certiorari
13 shall be as established in G.S. 160A-393(k).

14 (d) For purposes of this section, the definitions in G.S. 143-755 shall apply."

15 **SECTION 5.** G.S. 160A-364.1 reads as rewritten:

16 **"§ 160A-364.1. Statute of limitations.**

17 ...

18 (c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an action
19 involving the enforcement of a zoning or unified development ordinance or in an action
20 authorized by G.S. 160A-393.1 from raising as a claim or defense to such enforcement action in
21 such proceedings the enforceability or the invalidity of the ordinance. Nothing in this section or
22 in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order,
23 requirement, decision, or determination made by an administrative official contending that such
24 party is in violation of a zoning or unified development ordinance from raising in the appeal the
25 invalidity of such ordinance as a defense to such order, requirement, decision, or determination.
26 A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the
27 basis of an alleged defect in the adoption process unless the defense is formally raised within
28 three years of the adoption of the challenged ordinance.

29"

30 **SECTION 6.(a)** G.S. 160A-372 reads as rewritten:

31 **"§ 160A-372. Contents and requirements of ordinance.**

32 ...

33 (c) The ordinance may provide for the more orderly development of subdivisions by
34 requiring the construction of community service facilities in accordance with municipal plans,
35 policies, and standards. To assure compliance with these and other ordinance requirements, the
36 ordinance may provide for performance guarantees to assure successful completion of required
37 improvements either at the time the plat is recorded as provided in subsection (b) of this
38 section; section or at a time subsequent to the recording of the plat. For any specific development,
39 the type and term of performance ~~guarantee~~ guarantee, or any extension of the performance
40 guarantee, shall be at the election of the ~~developer~~ developer, provided that any performance
41 guarantee or extension be available to assure the successful completion of improvements for
42 which the performance guarantee is required. The developer shall be allowed, without limitation,
43 to reduce the amount of the performance guarantee to reflect only the remaining incomplete
44 improvements for which the performance guarantee is required.

45 ...

46 (g) For purposes of this section, all of the following shall apply with respect to
47 performance guarantees:

48 (1) The term "performance guarantee" shall mean any of the following forms of
49 guarantee:

50 a. Surety bond issued by any company authorized to do business in this
51 State.

- 1 b. Letter of credit issued by any financial institution licensed to do
2 business in this State.
- 3 c. Other form of guarantee that provides equivalent security to a surety
4 bond or letter of credit.
- 5 (2) The performance guarantee shall be returned or released, as appropriate, in a
6 timely manner upon the acknowledgement by the city or county that the
7 improvements for which the performance guarantee is being required are
8 complete. If the improvements are not complete and the current performance
9 guarantee is expiring, the performance guarantee shall be extended, or a new
10 performance guarantee issued, for an additional period until such required
11 improvements are complete. A developer shall demonstrate reasonable, good
12 faith progress toward completion of the required improvements that are the
13 subject of the performance guarantee or any extension. The form of any
14 extension shall remain at the election of the developer.
- 15 (3) The amount of the performance guarantee shall not exceed one hundred
16 twenty-five percent (125%) of the reasonably estimated cost of completion at
17 the time the performance guarantee is issued. Any extension of the
18 performance guarantee necessary to complete required improvements shall
19 not exceed one hundred twenty-five percent (125%) of the reasonably
20 estimated cost of completion of the remaining incomplete improvements still
21 outstanding at the time the extension is obtained. At the election of the
22 developer, one hundred twenty-five percent (125%) of the reasonably
23 estimated cost of completion may be conclusively determined by a report
24 provided under seal by an architect licensed under Chapter 83A of the General
25 Statutes or an engineer registered under Chapter 89C of the General Statutes.
26 This report may contain unit pricing information provided by a general
27 contractor, licensed under Chapter 87 of the General Statutes, or any other
28 competent source that the architect or engineer certifies, under seal, as
29 accurate. The reasonably estimated cost of completion shall include all costs
30 of inflation and costs of administration and enforcement, no matter how such
31 related fees or charges or denominated.
- 32 (4) The performance guarantee shall only be used for completion of the required
33 improvements and not for repairs or maintenance after completion.
- 34 (5) No person shall have or may claim any rights under or to any performance
35 guarantee provided pursuant to this subsection or in the proceeds of any such
36 performance guarantee other than the following:
- 37 a. The local government to whom such performance guarantee is
38 provided.
- 39 b. The developer at whose request or for whose benefit such performance
40 guarantee is given.
- 41 c. The person or entity issuing or providing such performance guarantee
42 at the request of or for the benefit of the developer.
- 43 (6) The developer shall have the option to post one form of a performance
44 guarantee as provided for in subdivision (1) of this subsection, in lieu of
45 multiple bonds, letters of credit, or other equivalent security, for all
46 development matters related to the same project requiring performance
47 guarantees, including, without limitation, subdivision, erosion control, and
48 stormwater."

49 **SECTION 6.(b)** G.S. 153A-331(e) reads as rewritten:

- 50 "(e) The ordinance may provide for the more orderly development of subdivisions by
51 requiring the construction of community service facilities in accordance with county plans,

1 policies, and standards. To assure compliance with these and other ordinance requirements, the
2 ordinance may provide for performance guarantees to assure successful completion of required
3 improvements either at the time the plat is recorded as provided in subsection (b) of this
4 ~~section~~section, or at a time subsequent to the recording of the plat to assure successful
5 completion of required improvements. For any specific development, the type and term of
6 performance ~~guarantee~~guarantee, or any extension of the performance guarantee, from the range
7 specified by the county shall be at the election of the ~~developer~~developer, provided that any
8 performance guarantee or extension be available to assure the successful completion of
9 improvements for which the performance guarantee is required. The developer shall be allowed,
10 without limitation, to reduce the amount of the performance guarantee to reflect only the
11 remaining incomplete improvements for which the performance guarantee is required."

12 **SECTION 7.** G.S. 160A-307 reads as rewritten:

13 **"§ 160A-307. Curb cut regulations.**

14 (a) A city may by ordinance regulate the size, location, direction of traffic flow, and
15 manner of construction of driveway connections into any street or alley. The ordinance may
16 require the construction or reimbursement of the cost of construction and public dedication of
17 medians, acceleration and deceleration lanes, and traffic storage lanes for driveway connections
18 into any street or alley ~~if~~if both of the following apply:

19 (1) The need for such improvements is reasonably attributable to the traffic using
20 the ~~driveway~~driveway.

21 (2) The improvements serve the traffic of the driveway.

22 (b) No street or alley under the control of the Department of Transportation may be
23 improved without the consent of the Department of Transportation. However, if there is a conflict
24 between the written driveway regulations of the Department of Transportation and the related
25 driveway improvements required by the city, the more stringent requirement shall apply.

26 (c) A city shall not require an applicant to acquire right-of-way from property not in the
27 ownership of the applicant. An applicant may voluntarily agree to acquire such right-of-way."

28 **SECTION 8.** G.S. 160A-385(b)(5) and G.S. 153A-344(b)(5), as enacted by Section
29 3 of this act, are effective with respect to multi-phased development approvals that are valid and
30 unexpired on the effective date of this act. The remainder of this act is effective when it becomes
31 law and applies to permits previously issued that remain valid and unexpired on the date this act
32 becomes law and to permit actions filed, actions filed in court, and claims and defenses asserted
33 on or after that date.