

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 854
Senate Judiciary Committee Substitute Adopted 9/8/21
Third Edition Engrossed 10/6/21

Short Title: Land Use Clarifications.

(Public)

Sponsors:

Referred to:

May 5, 2021

A BILL TO BE ENTITLED
AN ACT TO PROVIDE REFORMS TO LOCAL GOVERNMENT ZONING AUTHORITY TO
INCREASE HOUSING OPPORTUNITIES AND TO MAKE VARIOUS CHANGES AND
CLARIFICATIONS TO THE ZONING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160D-108 reads as rewritten:
"§ 160D-108. Permit choice and vested rights.

...

(d) Duration of Vesting. – Upon issuance of a development permit, the statutory vesting granted by subsection (c) of this section for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by this section or other statute, local development permits expire one year after issuance unless work authorized by the permit has substantially commenced. A local land development regulation may provide for a longer permit expiration period. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive.

Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this section, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.

(e) Multiple Permits for Development Project. – Subject to subsection (d) of this section, where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision-subsection is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. This subsection does not limit or affect the duration of any vested right established under subsection



(d) of this section. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

(j) ~~Definitions.~~ Definitions. – As used in this section, the following definitions apply:

(1) Development. – As defined in G.S. 143-755(e)(1).

(2) Development permit. – As defined in G.S. 143-755(e)(2).

(3) Land development regulation. – As defined in G.S. 143-755(e)(3).

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

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

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

SECTION 1.(b) This section is effective when it becomes law, clarifies and restates the intent of existing law, and applies to permit applications filed and appeals filed before, on, and after the effective date.

SECTION 2.(a) G.S. 160D-706 reads as rewritten:

"§ 160D-706. Zoning conflicts with other development standards.

(a) ~~When~~ Unless otherwise prohibited by G.S. 160A-174(b) with respect to cities, when regulations made under authority of this Article require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of this Article govern. ~~When~~ Unless otherwise prohibited by G.S. 160A-174(b) with respect to cities, when the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Article, the provisions of that statute or local ordinance or regulation govern.

(b) When adopting regulations under this Article, a local government may not use a definition of building, dwelling, dwelling unit, bedroom, or sleeping unit that is inconsistent with any definition of those terms in another statute or in a rule adopted by a State agency, including the State Building Code Council."

SECTION 2.(b) This section is effective when it becomes law, clarifies and restates the intent of existing law, and applies to permit applications filed and appeals filed before, on, and after the effective date.

SECTION 3.(a) G.S. 160D-406(k) reads as rewritten:

"(k) Judicial Review. – Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). The governing board of the local government that is a party to the judicial review of the quasi-judicial decision shall have the authority to settle the litigation, subject to Article 33C of Chapter 143 of the General Statutes."

SECTION 3.(b) This section is effective when it becomes law and applies to permit applications filed and appeals filed on and after the effective date.

SECTION 4. G.S. 160D-1402 reads as rewritten:

"§ 160D-1402. Appeals in the nature of certiorari.

...

(i) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. The court shall allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the petition raises any of the following

issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil Procedure apply to the supplementation of the record of these issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160D-109 or locally adopted conflict rules, the decision-making ~~body~~ board was not sufficiently impartial to comply with due process principles. A failure to object at a hearing by a person with standing under subsection (c) of this section shall not constitute a waiver of a right to assert impermissible conflict involving a member of the decision-making board.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

...

(1) Effect of Appeal of Quasi-Judicial Relief. – If a special use permit is issued by the applicable decision-making board after remand from an order of the court of competent jurisdiction and no injunction prevents the issuance of a special use permit, any appeal of the court's remand order or the subsequently issued special use permit is rendered moot.

...."

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.