

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 507\*  
Committee Substitute Favorable 4/19/17  
Third Edition Engrossed 4/20/17  
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Short Title: Land-Use Regulatory Changes.

(Public)

Sponsors:

Referred to:

March 29, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE  
3 STATE.

4 The General Assembly of North Carolina enacts:

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

6 "§ 143-755. Permit choice.

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

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

18 (c) Repealed by Session Laws 2015 246, s. 5(a), effective September 23, 2015.

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

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

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

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

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

32 c. The subdivision of land as defined in G.S. 153A-335 or  
33 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."

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

34       "**§ 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."

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

40       "**§ 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."

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

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

47       "**§ 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; and~~ 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.