

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 401
Mar 24, 2021
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10179-MQ-32B

Short Title: Increase Housing Opportunities.

(Public)

Sponsors: Representative D. Hall.

Referred to:

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

5 The General Assembly of North Carolina enacts:

6
7 **PART I. AFFORDABLE HOUSING OPTIONS**

8 **SECTION 1.1.(a)** Article 7 of Chapter 160D of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 160D-707. Middle housing use in residential zones.**

11 (a) Definitions. – As used in this section, the term "middle housing" means a residential
12 dwelling that is one of the following, as defined by the North Carolina Building Code Council:

13 (1) A duplex.

14 (2) A triplex.

15 (3) A quadplex.

16 (4) A townhouse.

17 (b) Middle Housing in Residential Zones. – A local government shall allow all middle
18 housing types in areas zoned for residential use, including those that allow for the development
19 of detached single-family dwellings.

20 (c) Regulation and Scope. – A local government may regulate middle housing pursuant
21 to the provisions of this Chapter, provided that the regulations do not act to discourage
22 development of middle housing types through unreasonable costs or delay. In permitting middle
23 housing types, nothing in this section shall be construed to prohibit a local government from
24 permitting single-family dwellings in areas zoned to allow for single-family dwellings. Nothing
25 in this section affects the validity or enforceability of private covenants or other contractual
26 agreements among property owners relating to dwelling type restrictions. Any regulation adopted
27 pursuant to this section shall not apply to an area designated as a local historic district (i) pursuant
28 to Part 4 of Article 9 of this Chapter or (ii) on the National Register of Historic Places. This
29 section shall only apply to areas that are served, or through extension may be served, by one or
30 more of the following:

31 (1) A local government water system.

32 (2) A local government sewer system.

33 (3) A public water system.

34 (4) A wastewater collection or treatment works, the operation of which is
35 primarily to collect or treat municipal or domestic wastewater and for which



1 a permit is issued under Part 1 of Article 21 of Chapter 143 of the General
2 Statutes."

3 **SECTION 1.1.(b)** G.S. 160D-102 is amended by adding a new subdivision to read:
4 "(28a) Single-family dwelling. – The term shall include all of the types of middle
5 housing as defined in G.S. 160D-707(a)."

6 **SECTION 1.1.(c)** This section becomes effective October 1, 2021.

7 **SECTION 1.2.** The North Carolina Building Code Council (Council) shall adopt
8 amendments to the North Carolina Residential Code for One- and Two-Family Dwellings (Code)
9 to define and include regulation of triplex dwelling units and quadplex dwelling units in order to
10 facilitate regulation of those units in areas zoned for residential use, including those that allow
11 for the development of detached single-family dwellings. Upon adoption of the amendments, the
12 Council and local governments enforcing the Code shall regulate triplex dwelling units and
13 quadplex dwelling units being sited pursuant to G.S. 160D-707, as enacted in this act, under the
14 new amendments to the Code.

15 **SECTION 1.3.(a)** Part 1 of Article 9 of Chapter 160D of the General Statutes is
16 amended by adding a new section to read:

17 "**§ 160D-917. Accessory dwelling units.**

18 (a) A local government shall allow the development of at least one accessory dwelling
19 unit which conforms to the North Carolina Residential Code for One- and Two-Family
20 Dwellings, including applicable provisions from State fire prevention code, for each detached
21 single-family dwelling in areas zoned for residential use that allow for development of detached
22 single-family dwellings. For the purposes of this section, the term "accessory dwelling unit"
23 means an attached or detached residential structure that is used in connection with or that is
24 accessory to a single-family dwelling.

25 (b) Development and permitting of an accessory dwelling unit shall not be subject to any
26 of the following requirements:

27 (1) Owner-occupancy of any dwelling unit, including an accessory unit.

28 (2) Minimum parking requirements or other parking restrictions.

29 (3) Conditional use zoning.

30 (c) In permitting accessory dwelling units under this section, a local government shall
31 not do any of the following:

32 (1) Prohibit the connection of the accessory dwelling unit to existing utilities
33 serving the primary dwelling unit.

34 (2) Charge any fee other than a building permit that does not exceed the amount
35 charged for any single-family dwelling unit similar in nature.

36 (3) Establish development setbacks that differ from the development setbacks
37 applicable for a similarly situated lot in the same zoning classification."

38 **SECTION 1.3.(b)** This section becomes effective October 1, 2021.

39 **SECTION 1.4.(a)** G.S. 42A-3 reads as rewritten:

40 "**§ 42A-3. Application; exemptions.**

41 (a) The provisions of this Chapter shall apply to any person, partnership, corporation,
42 limited liability company, association, or other business entity who acts as a landlord or real
43 estate broker engaged in the rental or management of residential property for vacation rental as
44 defined in this Chapter. The provisions of G.S. 160A-424 and G.S. 153A-364 shall apply to
45 properties covered under this Chapter.

46 (b) The provisions of this Chapter shall not apply to:

47 (1) Lodging provided by hotels, motels, tourist camps, and other places subject to
48 regulation under Chapter 72 of the General Statutes.

49 (2) Rentals to persons temporarily renting a dwelling unit when traveling away
50 from their primary residence for business or employment purposes.

51 (3) Rentals to persons having no other place of primary residence.

1 (4) Rentals for which no more than nominal consideration is given.

2 (5) Accessory dwelling units permitted pursuant to G.S. 160D-917."

3 **SECTION 1.4.(b)** This section becomes effective October 1, 2021.

4 **SECTION 1.5.** Local governments shall adopt land use ordinances and regulations
5 or amend their comprehensive plans to implement the provisions in this Part no later than October
6 1, 2021.

7 **SECTION 1.6.** Except as otherwise provided, this Part is effective when it becomes
8 law.

9
10 **PART II. VARIOUS CHANGES AND CLARIFICATIONS TO THE ZONING**
11 **STATUTES FOR MORE HOUSING OPPORTUNITIES**

12 **SECTION 2.1.** G.S. 160D-108 reads as rewritten:

13 "**§ 160D-108. Permit choice and vested rights.**

14 (a) Findings. – The General Assembly recognizes that local government approval of
15 development typically follows significant investment in site evaluation, planning, development
16 costs, consultant fees, and related expenses. The General Assembly finds that it is necessary and
17 desirable to provide for the establishment of certain vested rights in order to ensure reasonable
18 certainty, stability, and fairness in the development regulation process, to secure the reasonable
19 expectations of landowners, and to foster cooperation between the public and private sectors in
20 land-use planning and development regulation. The provisions of this section and
21 G.S. 160D-108.1 strike an appropriate balance between private expectations and the public
22 interest.

23 (b) Permit Choice. – If a land development regulation is amended between the time a
24 development permit application was submitted and a development permit decision is made or if
25 a land development regulation is amended after a development permit decision has been
26 challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

27 (b1) Substantial Compliance. – A development permit application that substantially
28 complies with the provision of information required by ordinance or regulation shall be sufficient
29 to accept and process a request for a local or State development permit. Minor omissions in the
30 application shall not be a sufficient basis to make an application ineligible for vesting. A local
31 development regulation shall not condition the acceptance or processing of a development permit
32 application upon the application for or issuance of a State permit, nor shall a State development
33 regulation condition the acceptance or processing of a development permit application upon a
34 local permit, unless specifically authorized by statute.

35 (c) Vested Rights. – Amendments in land development regulations are not applicable or
36 enforceable without the written consent of the owner with regard to any of the following:

37 (1) Buildings or uses of buildings or land for which a development permit
38 application has been submitted and subsequently issued in accordance with
39 G.S. 143-755.

40 (2) Subdivisions of land for which a development permit application authorizing
41 the subdivision has been submitted and subsequently issued in accordance
42 with G.S. 143-755.

43 (3) A site-specific vesting plan pursuant to G.S. 160D-108.1.

44 (4) A multi-phased development pursuant to subsection (f) of this section.

45 (5) A vested right established by the terms of a development agreement
46 authorized by Article 10 of this Chapter.

47 The establishment of a vested right under any subdivision of this subsection does not preclude
48 vesting under one or more other subdivisions of this subsection or vesting by application of
49 common law principles. A vested right, once established as provided for in this section or by
50 common law, precludes any action by a local government that would change, alter, impair,
51 prevent, diminish, or otherwise delay the development or use of the property allowed by the

1 applicable land development regulation or regulations, except where a change in State or federal
2 law mandating local government enforcement occurs after the development application is
3 submitted that has a fundamental and retroactive effect on the development or use.

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

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

24 (e) Multiple Permits for Development Project. – Subject to subsection (d) of this section,
25 where multiple ~~local~~ development permits are required to complete a development project, the
26 development permit applicant may choose the version of each of the ~~local~~ land development
27 regulations applicable to the project upon submittal of the application for the initial development
28 permit. ~~This~~ Except as provided in subsection (f) of this section, this provision is not applicable
29 ~~only~~ for those subsequent development permit applications filed ~~within~~ after 18 months of the
30 latter of (i) the date following the approval of an initial ~~of cessation of work related to the~~
31 uncompleted development project or (ii) the date of issuance of the immediately preceding local
32 development permit. For purposes of the vesting protections of this subsection, an erosion and
33 sedimentation control permit or a sign permit is not an initial development permit.

34 (f) Multi-Phased Development. – A multi-phased development is vested for the entire
35 development with the land development regulations then in place at the time a site plan approval
36 is granted for the initial phase of the multi-phased development. A right which has been vested
37 as provided for in this subsection remains vested for a period of seven years from the time a site
38 plan approval is granted for the initial phase of the multi-phased development.

39 (g) Continuing Review. – Following issuance of a development permit, a local
40 government may make subsequent inspections and reviews to ensure compliance with the
41 applicable land development regulations in effect at the time of the original application.

42 (h) Process to Claim Vested Right. – A person claiming a statutory or common law vested
43 right may submit information to substantiate that claim to the zoning administrator or other
44 officer designated by a land development regulation, who shall make an initial determination as
45 to the existence of the vested right. The decision of the zoning administrator or officer may be
46 appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de
47 novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a
48 person claiming a vested right may bring an original civil action as provided by
49 G.S. 160D-1403.1.

50 (i) Miscellaneous Provisions. – The vested rights granted by this section run with the
51 land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and

1 G.S. 136-131.2 in which case the rights granted by this section run with the owner of a permit
2 issued by the North Carolina Department of Transportation. Nothing in this section precludes
3 judicial determination, based on common law principles or other statutory provisions, that a
4 vested right exists in a particular case or that a compensable taking has occurred. Except as
5 expressly provided in this section, nothing in this section shall be construed to alter the existing
6 common law.

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

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

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

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

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

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

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

17 **SECTION 2.2.** G.S. 160D-702 reads as rewritten:

18 **"§ 160D-702. Grant of power.**

19 (a) A local government may adopt zoning regulations. Except as provided in subsections
20 (b) ~~and (c)~~ through (e) of this section, a zoning regulation may regulate and restrict the height,
21 number of stories, and size of buildings and other structures; the percentage of lots that may be
22 occupied; the size of yards, courts, and other open spaces; the density of population; the location
23 and use of buildings, structures, and land. A local government may regulate development,
24 including floating homes, over estuarine waters and over lands covered by navigable waters
25 owned by the State pursuant to G.S. 146-12. A zoning regulation shall provide density credits or
26 severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or
27 G.S. 136-66.11. Where appropriate, a zoning regulation may include requirements that street and
28 utility rights-of-way be dedicated to the public, that provision be made of recreational space and
29 facilities, and that performance guarantees be provided, all to the same extent and with the same
30 limitations as provided for in G.S. 160D-804 and G.S. 160D-804.1.

31 (b) Any regulation relating to building design elements adopted under this Chapter may
32 not be applied to any structures subject to regulation under the North Carolina Residential Code
33 for One- and Two-Family Dwellings except under one or more of the following circumstances:

34 (1) The structures are located in an area designated as a local historic district
35 pursuant to Part 4 of Article 9 of this Chapter.

36 (2) The structures are located in an area designated as a historic district on the
37 National Register of Historic Places.

38 (3) The structures are individually designated as local, State, or national historic
39 landmarks.

40 (4) The regulations are directly and substantially related to the requirements of
41 applicable safety codes adopted under G.S. 143-138.

42 (5) Where the regulations are applied to manufactured housing in a manner
43 consistent with G.S. 160D-908 and federal law.

44 (6) Where the regulations are adopted as a condition of participation in the
45 National Flood Insurance Program.

46 Regulations prohibited by this subsection may not be applied, directly or indirectly, in any
47 zoning district or conditional district unless voluntarily consented to by the owners of all the
48 property to which those regulations may be applied as part of and in the course of the process of
49 seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval,
50 nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160D-604

1 or G.S. 160D-605 of any proposed zoning amendment for consistency with an adopted
2 comprehensive plan or other applicable officially adopted plan.

3 For the purposes of this subsection, the phrase "building design elements" means exterior
4 building color; type or style of exterior cladding material; style or materials of roof structures or
5 porches; exterior nonstructural architectural ornamentation; location or architectural styling of
6 windows and doors, including garage doors; the number and types of rooms; and the interior
7 layout of rooms. The phrase "building design elements" does not include any of the following:
8 (i) the height, bulk, orientation, or location of a structure on a zoning lot, (ii) the use of buffering
9 or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect
10 the privacy of neighbors, or (iii) regulations adopted pursuant to this Article governing the
11 permitted uses of land or structures subject to the North Carolina Residential Code for One- and
12 Two-Family Dwellings.

13 Nothing in this subsection affects the validity or enforceability of private covenants or other
14 contractual agreements among property owners relating to building design elements.

15 (c) A zoning regulation shall not set a minimum square footage of any structures subject
16 to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.

17 (d) A local government shall not adopt or enforce an ordinance downzoning property, as
18 defined in G.S. 160D-601(d), that has access to public water or public sewer, unless the local
19 government can show a change in circumstances that substantially affects the public health,
20 safety, or welfare.

21 (e) A local government shall not adopt or enforce an ordinance that establishes a ban or
22 has the effect of establishing a ban on a use of land that is not an industrial use, a nuisance per
23 se, or that does not otherwise pose a serious threat to the public health, safety, or welfare.

24 (f) Nothing in this section shall be construed to limit the authority of a local government
25 to regulate adult establishments or other facilities as defined in Article 26A of Chapter 14 of the
26 General Statutes."

27 **SECTION 2.3.** G.S. 160D-703 reads as rewritten:

28 "**§ 160D-703. Zoning districts.**

29 (a) Types of Zoning Districts. – A local government may divide its territorial jurisdiction
30 into zoning districts of any number, shape, and area deemed best suited to carry out the purposes
31 of this Article. Within those districts, it may regulate and restrict the erection, construction,
32 reconstruction, alteration, repair, or use of buildings, structures, or land. Zoning districts may
33 include, but are not be limited to, the following:

- 34 (1) Conventional districts, in which a variety of uses are allowed as permitted uses
35 or uses by right and that may also include uses permitted only with a special
36 use permit.
- 37 (2) Conditional districts, in which site plans or individualized development
38 conditions are imposed.
- 39 (3) Form-based districts, or development form controls, that address the physical
40 form, mass, and density of structures, public spaces, and streetscapes.
- 41 (4) Overlay districts, in which different requirements are imposed on certain
42 properties within one or more underlying conventional, conditional, or
43 form-based districts.
- 44 (5) Districts allowed by charter.

45 (b) Conditional Districts. – Property may be placed in a conditional district only in
46 response to a petition by all owners of the property to be included. Specific conditions may be
47 proposed by the petitioner or the local government or its agencies, but only those conditions
48 approved by the local government and consented to by the petitioner in writing may be
49 incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the
50 exercise of the authority granted by this section, a local government may not require, enforce, or
51 incorporate into the zoning regulations any condition or requirement not authorized by otherwise

1 applicable law, including, without limitation, taxes, impact fees, building design elements within
2 the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in
3 G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or
4 use of land. Conditions and site-specific standards imposed in a conditional district shall be
5 limited to those that address the conformance of the development and use of the site to local
6 government ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably
7 expected to be generated by the development or use of the site. The zoning regulation may
8 provide that defined minor modifications in conditional district standards that do not involve a
9 change in uses permitted or the density of overall development permitted may be reviewed and
10 approved administratively. Any other modification of the conditions and standards in a
11 conditional district shall follow the same process for approval as are applicable to zoning map
12 amendments. If multiple parcels of land are subject to a conditional zoning, the owners of
13 individual parcels may apply for modification of the conditions so long as the modification would
14 not result in other properties failing to meet the terms of the conditions. Any modifications
15 approved apply only to those properties whose owners petition for the modification.

16 (c) **Uniformity Within Districts.** – Except as authorized by the foregoing, all regulations
17 shall be uniform for each class or kind of building throughout each district but the regulations in
18 one district may differ from those in other districts.

19 (d) **Standards Applicable Regardless of District.** – A zoning regulation or unified
20 development ordinance may also include development standards that apply uniformly
21 jurisdiction-wide rather than being applicable only in particular zoning districts.

22 (e) **Limitations.** – A local government shall not engage in any of the following practices:

23 (1) The adoption or enforcement of an ordinance that downzones property in
24 order to evade voluntary consent of landowners or petitioners or any other
25 requirements contained in subsection (b) of this section.

26 (2) Allow a particular land use only through conditional zoning.

27 (3) Establishing a threshold on square footage or the number of dwelling units,
28 where to exceed the threshold would require conditional zoning."

29 **SECTION 2.4.** Article 7 of Chapter 160D of the General Statutes is amended by
30 adding a new section to read:

31 **"§ 160D-703.1. Remedies for violations.**

32 (a) If a court finds that a local government has acted in violation of G.S. 160D-702 or
33 G.S. 160D-703(e), the court shall award reasonable attorneys' fees and costs to the party who
34 successfully challenged the actions of the local government.

35 (b) In the event that a court invalidates a regulation pursuant to this section, a permit
36 applicant may choose which zoning designation will apply to the permit and use of the building,
37 structure, or land indicated on the permit application from the following options:

38 (1) The zoning development regulation that existed most recently prior to the
39 invalidated regulation.

40 (2) The least restrictive development standards contained within the zoning
41 designation for the jurisdiction that is the most similar zoning designation to
42 the class of property use identified in the permit application.

43 (c) For the purposes of this section, the term "class of property use" means one of the
44 following major land-use groups:

45 (1) Commercial.

46 (2) Governmental.

47 (3) Industrial.

48 (4) Institutional.

49 (5) Residential."

50 **SECTION 2.5.** G.S. 160D-706 reads as rewritten:

51 **"§ 160D-706. Zoning conflicts with other development standards.**

1 (a) When regulations made under authority of this Article require a greater width or size
2 of yards or courts, or require a lower height of a building or fewer number of stories, or require
3 a greater percentage of a lot to be left ~~unoccupied, or impose other higher standards~~ unoccupied
4 than are required in any other statute or local ordinance or regulation, the regulations made under
5 authority of this Article govern. When the provisions of any other statute or local ordinance or
6 regulation require a greater width or size of yards or courts, or require a lower height of a building
7 or a fewer number of stories, or require a greater percentage of a lot to be left ~~unoccupied, or~~
8 ~~impose other higher standards~~ unoccupied than are required by the regulations made under
9 authority of this Article, the provisions of that statute or local ordinance or regulation govern.

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

14 (c) Except as provided in subsection (a) of this section, a local government shall not adopt
15 or enforce development regulations that alter the principle that ambiguities in land development
16 regulations are to be construed in favor of the free use of land, including any development
17 regulations that assert that a more restrictive rule or regulation is controlling.

18 (d) Subject to the provisions of Article 33 of Chapter 143 of the General Statutes, a local
19 government, through its governing board, is authorized to settle any litigation related to the
20 enforcement of or compliance with development regulations for a development or a development
21 permit applicant, including any quasi-judicial development permit."

22 **SECTION 2.6.** G.S. 160D-1402 reads as rewritten:

23 **"§ 160D-1402. Appeals in the nature of certiorari.**

24 (a) Applicability. – This section applies to appeals of quasi-judicial decisions of
25 decision-making boards when that appeal is in the nature of certiorari as required by this Chapter.

26 (b) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing a
27 petition for writ of certiorari with the superior court. The petition shall do all of the following:

- 28 (1) State the facts that demonstrate that the petitioner has standing to seek review.
- 29 (2) Set forth allegations sufficient to give the court and parties notice of the
30 grounds upon which the petitioner contends that an error was made.
- 31 (3) Set forth with particularity the allegations and facts, if any, in support of
32 allegations that, as the result of an impermissible conflict as described in
33 G.S. 160D-109, or locally adopted conflict rules, the decision-making body
34 was not sufficiently impartial to comply with due process principles.
- 35 (4) Set forth the relief the petitioner seeks.

36 (c) Standing. – A petition may be filed under this section only by a petitioner who has
37 standing to challenge the decision being appealed. The following persons have standing to file a
38 petition under this section:

- 39 (1) Any person possessing any of the following criteria:
 - 40 a. An ownership interest in the property that is the subject of the decision
41 being appealed, a leasehold interest in the property that is the subject
42 of the decision being appealed, or an interest created by easement,
43 restriction, or covenant in the property that is the subject of the
44 decision being appealed.
 - 45 b. An option or contract to purchase the property that is the subject of the
46 decision being appealed.
 - 47 c. An applicant before the decision-making board whose decision is
48 being appealed.
- 49 (2) Any other person who will suffer special damages as the result of the decision
50 being appealed.

1 (3) An incorporated or unincorporated association to which owners or lessees of
2 property in a designated area belong by virtue of their owning or leasing
3 property in that area, or an association otherwise organized to protect and
4 foster the interest of the particular neighborhood or local area, so long as at
5 least one of the members of the association would have standing as an
6 individual to challenge the decision being appealed, and the association was
7 not created in response to the particular development or issue that is the
8 subject of the appeal.

9 (4) A local government whose decision-making board has made a decision that
10 the governing board believes improperly grants a variance from or is
11 otherwise inconsistent with the proper interpretation of a development
12 regulation adopted by the governing board.

13 (d) Respondent. – The respondent named in the petition shall be the local government
14 whose decision-making board made the decision that is being appealed, except that if the
15 petitioner is a local government that has filed a petition pursuant to subdivision (4) of subsection
16 (c) of this section, then the respondent shall be the decision-making board. If the petitioner is not
17 the applicant before the decision-making board whose decision is being appealed, the petitioner
18 shall also name that applicant as a respondent. Any petitioner may name as a respondent any
19 person with an ownership or leasehold interest in the property that is the subject of the decision
20 being appealed who participated in the hearing, or was an applicant, before the decision-making
21 board.

22 (e) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition
23 and a proposed writ of certiorari to the clerk of superior court of the county in which the matter
24 arose. The writ shall direct the respondent local government or the respondent decision-making
25 board, if the petitioner is a local government that has filed a petition pursuant to subdivision (4)
26 of subsection (c) of this section, to prepare and certify to the court the record of proceedings
27 below within a specified date. The writ shall also direct the petitioner to serve the petition and
28 the writ upon each respondent named therein in the manner provided for service of a complaint
29 under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a
30 decision-making board, the petition and the writ shall be served upon the chair of that
31 decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure applies in the event the
32 chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall
33 issue the writ without notice to the respondent or respondents if the petition has been properly
34 filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

35 Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution
36 or enforcement of the decision of the quasi-judicial board pending superior court review. The
37 court may grant a stay in its discretion and on conditions that properly provide for the security of
38 the adverse party. A stay granted in favor of a city or county shall not require a bond or other
39 security.

40 (f) Response to the Petition. – The respondent may, but need not, file a response to the
41 petition, except that, if the respondent contends for the first time that any petitioner lacks standing
42 to bring the appeal, that contention must be set forth in a response served on all petitioners at
43 least 30 days prior to the hearing on the petition. If it is not served within that time period, the
44 matter may be continued to allow the petitioners time to respond.

45 (g) Intervention. – Rule 24 of the Rules of Civil Procedure governs motions to intervene
46 as a petitioner or respondent in an action initiated under this section with the following
47 exceptions:

48 (1) Any person described in subdivision (1) of subsection (c) of this section has
49 standing to intervene and shall be allowed to intervene as a matter of right.

50 (2) Any person, other than one described in subdivision (1) of subsection (c) of
51 this section, who seeks to intervene as a petitioner must demonstrate that the

- 1 person would have had standing to challenge the decision being appealed in
2 accordance with subdivisions (2) through (4) of subsection (c) of this section.
3 (3) Any person, other than one described in subdivision (1) of subsection (c) of
4 this section, who seeks to intervene as a respondent must demonstrate that the
5 person would have had standing to file a petition in accordance with
6 subdivisions (2) through (4) of subsection (c) of this section if the
7 decision-making board had made a decision that is consistent with the relief
8 sought by the petitioner.

9 For intervention under subdivisions (2) and (3) of this subsection, a motion to intervene is
10 untimely and shall not be allowed if filed after the court has rendered a final judgment on the
11 underlying appeal.

12 (h) The Record. – The record shall consist of the decision and all documents and exhibits
13 submitted to the decision-making board whose decision is being appealed, together with the
14 minutes of the meeting or meetings at which the decision being appealed was considered. Upon
15 request of any party, the record shall also contain an audio or videotape of the meeting or
16 meetings at which the decision being appealed was considered if such a recording was made.
17 Any party may also include in the record a transcript of the proceedings, which shall be prepared
18 at the cost of the party choosing to include it. The parties may agree that matters unnecessary to
19 the court's decision be deleted from the record or that matters other than those specified herein
20 be included. The record shall be bound and paginated or otherwise organized for the convenience
21 of the parties and the court. A copy of the record shall be served by the local government
22 respondent, or the respondent decision-making board, upon all petitioners within three days after
23 it is filed with the court.

24 (i) Hearing on the Record. – The court shall hear and decide all issues raised by the
25 petition by reviewing the record submitted in accordance with subsection (h) of this section. The
26 court shall allow the record to be supplemented with affidavits, testimony of witnesses, or
27 documentary or other evidence if, and to the extent that, the petition raises any of the following
28 issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil
29 Procedure apply to the supplementation of the record of these issues:

- 30 (1) Whether ~~a petitioner or an~~ intervenor has standing.
31 (2) Whether, as a result of impermissible conflict as described in G.S. 160D-109
32 or locally adopted conflict rules, the decision-making body was not
33 sufficiently impartial to comply with due process principles. A failure to
34 object at a hearing by a person with standing under subsection (c) of this
35 section shall not constitute a waiver of a right to assert impermissible conflict
36 involving any member of the quasi-judicial decision-making body.
37 (3) Whether the decision-making body erred for the reasons set forth in
38 sub-subdivisions a. and b. of subdivision (1) of subsection (j) of this section.

39 (j) Scope of Review. –

- 40 (1) When reviewing the decision under the provisions of this section, the court
41 shall ensure that the rights of petitioners have not been prejudiced because the
42 decision-making body's findings, inferences, conclusions, or decisions were:
43 a. In violation of constitutional provisions, including those protecting
44 procedural due process rights.
45 b. In excess of the statutory authority conferred upon the local
46 government, including preemption, or the authority conferred upon the
47 decision-making board by ordinance.
48 c. Inconsistent with applicable procedures specified by statute or
49 ordinance.
50 d. Affected by other error of law.

- 1 e. Unsupported by competent, material, and substantial evidence in view
2 of the entire record.
- 3 f. Arbitrary or capricious.
- 4 (2) When the issue before the court is one set forth in sub-subdivisions a. through
5 d. of subdivision (1) of this subsection, including whether the decision-making
6 board erred in interpreting an ordinance, the court shall review that issue de
7 novo. The court shall consider the interpretation of the decision-making board,
8 but is not bound by that interpretation, and may freely substitute its judgment
9 as appropriate. Whether the record contains competent, material, and
10 substantial evidence is a conclusion of law, reviewable de novo.
- 11 (3) The term "competent evidence," as used in this subsection, does not preclude
12 reliance by the decision-making board on evidence that would not be
13 admissible under the rules of evidence as applied in the trial division of the
14 General Court of Justice if (i) except for the items noted in sub-subdivisions
15 a., b., and c. of this subdivision that are conclusively incompetent, the
16 evidence was admitted without objection or (ii) the evidence appears to be
17 sufficiently trustworthy and was admitted under such circumstances that it
18 was reasonable for the decision-making board to rely upon it. The term
19 "competent evidence," as used in this subsection, shall, regardless of the lack
20 of a timely objection, not be deemed to include the opinion testimony of lay
21 witnesses as to any of the following:
- 22 a. The use of property in a particular way affects the value of other
23 property.
- 24 b. The increase in vehicular traffic resulting from a proposed
25 development poses a danger to the public safety. An approval by the
26 North Carolina Department of Transportation of a traffic impact
27 analysis for a development project shall be conclusive evidence that
28 the traffic related to the project will not pose a danger to the public
29 safety and will otherwise preclude using traffic as a basis for denying
30 a development permit.
- 31 c. Matters about which only expert testimony would generally be
32 admissible under the rules of evidence.
- 33 (j1) Action Not Rendered Moot by Loss of Property. – Subject to the limitations in the
34 State and federal constitutions and State and federal case law, an action filed under this section
35 is not rendered moot, if during the pendency of the action, the aggrieved person loses the
36 applicable property interest as a result of the local government action being challenged and
37 exhaustion of an appeal described herein is required for purposes of preserving a claim for
38 damages under G.S. 160D-1403.1.
- 39 (k) Decision of the Court. – Following its review of the decision-making board in
40 accordance with subsection (j) of this section, the court may affirm the decision, reverse the
41 decision and remand the case with appropriate instructions, or remand the case for further
42 proceedings. If the court does not affirm the decision below in its entirety, then the court shall
43 determine what relief should be granted to the petitioners:
- 44 (1) If the court concludes that the error committed by the decision-making board
45 is procedural only, the court may remand the case for further proceedings to
46 correct the procedural error.
- 47 (2) If the court concludes that the decision-making board has erred by failing to
48 make findings of fact such that the court cannot properly perform its function,
49 then the court may remand the case with appropriate instructions so long as
50 the record contains substantial competent evidence that could support the
51 decision below with appropriate findings of fact. However, findings of fact

1 are not necessary when the record sufficiently reveals the basis for the
 2 decision below or when the material facts are undisputed and the case presents
 3 only an issue of law.

4 (3) If the court concludes that the decision by the decision-making board is not
 5 supported by competent, material, and substantial evidence in the record or is
 6 based upon an error of law, then the court may remand the case with an order
 7 that directs the decision-making board to take whatever action should have
 8 been taken had the error not been committed or to take such other action as is
 9 necessary to correct the error. Specifically:

10 a. If the court concludes that a permit was wrongfully denied because the
 11 denial was not based on competent, material, and substantial evidence
 12 or was otherwise based on an error of law, the court shall remand with
 13 instructions that the permit be issued, subject to any conditions
 14 expressly consented to by the permit applicant as part of the
 15 application or during the board of adjustment appeal or writ of
 16 certiorari appeal.

17 b. If the court concludes that a permit was wrongfully issued because the
 18 issuance was not based on competent, material, and substantial
 19 evidence or was otherwise based on an error of law, the court may
 20 remand with instructions that the permit be revoked.

21 c. If the court concludes that a zoning board decision upholding a zoning
 22 enforcement action was not supported by substantial competent
 23 evidence or was otherwise based on an error of law, the court shall
 24 reverse the decision.

25 (l) ~~Effect of Appeal and Ancillary Injunctive Relief. —~~ Effect of Appeal of Administrative Decision on a
 26 Permitted Use. —

27 (1) ~~If a development approval is appealed, appealed on the basis of a use not being~~
 28 ~~permitted by a development regulation, the applicant shall have the right to~~
 29 ~~commence work while the appeal is pending. However, if the development~~
 30 ~~approval is reversed by a final decision of any court of competent jurisdiction,~~
 31 ~~jurisdiction determines that the use is not allowed, the applicant shall not be~~
 32 ~~deemed to have gained any vested rights on the basis of actions taken prior to~~
 33 ~~or during the pendency of the appeal and must proceed as if no development~~
 34 ~~approval had been granted.~~

35 (2) ~~Upon motion of a party to a proceeding under this section, and under~~
 36 ~~appropriate circumstances, the court may issue an injunctive order requiring~~
 37 ~~any other party to that proceeding to take certain action or refrain from taking~~
 38 ~~action that is consistent with the court's decision on the merits of the appeal.~~

39 (ll) Effect of Appeal of Quasi-Judicial Relief. —

40 (1) An appeal by a party with standing under subsection (c) of this section from
 41 the granting of a special use permit by a local board or other development
 42 permit issued pursuant to quasi-judicial proceedings shall be rendered moot if
 43 development authorized by the approved permit substantially commences
 44 prior to the issuance of an injunction by a court under subsection (o) of this
 45 section or under Rule 65 of the Rules of Civil Procedure with appropriate
 46 security.

47 (2) If a special use permit is issued by the applicable local board after remand
 48 from a decision of a court of competent jurisdiction and no injunction is
 49 otherwise in place to prevent the issuance of a permit, any appeal related to
 50 the subject matter of the permit is rendered moot.

1 (m) Joinder. – A declaratory judgment brought under G.S. 160D-1401 or other civil action
2 relating to the decision at issue may be joined with the petition for writ of certiorari and decided
3 in the same proceeding.

4 (n) Stays. – An appeal under this section is stayed as provided in G.S. 160D-405.

5 (o) Upon motion of a party to a proceeding under this section, and under appropriate
6 circumstances, the court may issue an injunctive order requiring any other party to that
7 proceeding to take certain action or refrain from taking action that is consistent with the court's
8 decision on the merits of the appeal. The court shall require the moving party to post an
9 appropriate bond set by the judge or clerk issuing the stay. A local government shall not be
10 required to post a bond under this subsection."

11 12 **PART III. LOCAL GOVERNMENT REPORTING ON GROWTH HAMPERING** 13 **DENIALS**

14 **SECTION 3.1.** Beginning October 1, 2021, every local government engaged in
15 development permitting review shall submit a semiannual report to the Joint Legislative
16 Committee on Local Government and the Fiscal Research Division. The report shall contain at
17 least all of the following:

- 18 (1) The number of development permit applications received.
- 19 (2) The number of development permit applications denied and the reason for
20 denial.
- 21 (3) The number of down-zoning ordinances enacted.

22 23 **PART IV. EFFECTIVE DATE**

24 **SECTION 4.1.** Except as otherwise provided, this act is effective when it becomes
25 law. Sections 2.1, 2.5, and 2.6 of this act clarify and restate the intent of existing law and apply
26 to permit applications filed and appeals taken before, on, and after the effective date.