GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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

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HOUSE BILL DRH10179-MQ-32B

Short Title: Increase Housing Opportunities. (Public)

Sponsors: Representative D. Hall.

Referred to:

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:

PART I. AFFORDABLE HOUSING OPTIONS

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

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

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

(1) A duplex.
(2) A triplex.
(3) A quadplex.
(4) A townhouse.

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

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

(1) A local government water system.
(2) A local government sewer system.
(3) A public water system.
(4) A wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which

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

SECTION 1.1.(b) G.S. 160D-102 is amended by adding a new subdivision to read:

"(28a) Single-family dwelling. – The term shall include all of the types of middle housing as defined in G.S. 160D-707(a)."

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

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

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

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

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

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

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

(2) Minimum parking requirements or other parking restrictions.

(3) Conditional use zoning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART II. VARIOUS CHANGES AND CLARIFICATIONS TO THE ZONING STATUTES FOR MORE HOUSING OPPORTUNITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

(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,~~ section or common law vesting, 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 or common law vesting 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~~ Except as provided in subsection (f) of this section, this provision is not applicable ~~only~~ for those subsequent development permit applications filed ~~within~~ after 18 months of the latter of (i) the date ~~following the approval of an initial~~ of cessation of work related to the uncompleted development project or (ii) the date of issuance of the immediately preceding local development permit. 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.

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

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

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

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

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

(j) 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 2.2. G.S. 160D-702 reads as rewritten:

"**§ 160D-702. Grant of power.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 160D-703. Zoning districts.**

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

(1) Conventional districts, in which a variety of uses are allowed as permitted uses or uses by right and that may also include uses permitted only with a special use permit.

(2) Conditional districts, in which site plans or individualized development conditions are imposed.

(3) Form-based districts, or development form controls, that address the physical form, mass, and density of structures, public spaces, and streetscapes.

(4) Overlay districts, in which different requirements are imposed on certain properties within one or more underlying conventional, conditional, or form-based districts.

(5) Districts allowed by charter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Commercial.

(2) Governmental.

(3) Industrial.

(4) Institutional.

(5) Residential."

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

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

(a) 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~~ unoccupied than are required in any other statute or local ordinance or regulation, the regulations made under authority of this Article govern. 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~~ unoccupied 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.

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

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

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

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

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

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

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth allegations sufficient to give the court and parties notice of the grounds upon which the petitioner contends that an error was made.

(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of an impermissible conflict as described in G.S. 160D-109, or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(4) Set forth the relief the petitioner seeks.

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

(1) Any person possessing any of the following criteria:

a. An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. An option or contract to purchase the property that is the subject of the decision being appealed.

c. An applicant before the decision-making board whose decision is being appealed.

(2) Any other person who will suffer special damages as the result of the decision being appealed.

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

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

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

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

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

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

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

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

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

person would have had standing to challenge the decision being appealed in accordance with subdivisions (2) through (4) of subsection (c) of this section.

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

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

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

(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~~ an 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 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 any member of the quasi-judicial decision-making body.

(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.

(j) Scope of Review. –

(1) When reviewing the decision under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the local government, including preemption, or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by competent, material, and substantial evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the court is one set forth in sub-subdivisions a. through d. of subdivision (1) of this subsection, including whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate. Whether the record contains competent, material, and substantial evidence is a conclusion of law, reviewable de novo.

(3) The term "competent evidence," as used in this subsection, does not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) except for the items noted in sub-subdivisions a., b., and c. of this subdivision that are conclusively incompetent, the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall, regardless of the lack of a timely objection, not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way affects the value of other property.

b. The increase in vehicular traffic resulting from a proposed development poses a danger to the public safety. <u>An approval by the North Carolina Department of Transportation of a traffic impact analysis for a development project shall be conclusive evidence that the traffic related to the project will not pose a danger to the public safety and will otherwise preclude using traffic as a basis for denying a development permit.</u>

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(j1) Action Not Rendered Moot by Loss of Property. – Subject to the limitations in the State and federal constitutions and State and federal case law, an action filed under this section is not rendered moot, if during the pendency of the action, the aggrieved person loses the applicable property interest as a result of the local government action being challenged and exhaustion of an appeal described herein is required for purposes of preserving a claim for damages under G.S. 160D-1403.1.

(k) Decision of the Court. – Following its review of the decision-making board in accordance with subsection (j) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall determine what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact

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

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

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

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

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

(*l*) Effect of Appeal ~~and Ancillary Injunctive Relief.~~ of Administrative Decision on a Permitted Use. –

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

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

(*l*1) Effect of Appeal of Quasi-Judicial Relief. –

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

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

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

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

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

PART III. LOCAL GOVERNMENT REPORTING ON GROWTH HAMPERING DENIALS

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

(1) The number of development permit applications received.

(2) The number of development permit applications denied and the reason for denial.

(3) The number of down-zoning ordinances enacted.

PART IV. EFFECTIVE DATE

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