


Chapter 160D
A New Land Use Law for North Carolina


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North Carolina Planning Conference
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www.sog.unc.edu

1

Where are you from? (Turn your phone for larger map.)

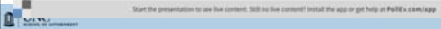


Start the presentation to see live content. See live content! Install the app or get help at PaoliE.com/app

2

With regard to Chapter 160D, what specific question do you have?

Top




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3

Resources on the Way!


- Website: nc160D.sog.unc.edu
- Explanatory Book
- Annotated Bill
- Checklist for Ordinance Update
- Cross-Over Chart
- FAQs
- On-Demand Training
- Regional Workshops



4



Outline

- 1) Context for Chapter 160D
- 2) Jurisdiction, Boards, and Administration
- 3) Substance of Development Regulations
- 4) Planning
- 5) Legislative Decisions
- 6) Quasi-Judicial Decisions
- 7) Administrative Decisions
- 8) Vested Rights and Permit Choice
- 9) Judicial Review



5


Context for Chapter 160D



6

Origin of Proposal

- Developed as “good government” clarification, simplification, modernization by the NC Bar Association’s Zoning, Planning, and Land Use Section
- Multi-year review and comment by local governments, development community, land use lawyers




7

Adoption

Introduced in 2015, passed House
Introduced in 2017, passed Senate
Introduced in 2019, as S.B. 448, H.B. 422


Enacted as Part II of S.L. 2019-111 (S.B. 355)



8

Overview

- 1) Consolidate city and county planning and development regulation statutes and related statutes as new Chapter 160D with uniform procedures
- 2) Reorganize statutes into more user-friendly framework
- 3) Consensus reforms to clarify and modernize provisions



9


Chapter 160D Organization	
Art. 1. General Provisions	Art. 8. Subdivision
Art. 2. Jurisdiction	Art. 9. Particular Uses, Areas
Art. 3. Boards, Organization	Art. 10. Development Agreements
Art. 4. Administration, Enforcement, Appeals	Art. 11. Building Code and Building Condition
Art. 5. Planning	Art. 12. Housing Codes
Art. 6. Process to Adopt and Amend Regulations	Art. 13. Miscellaneous Additional Authority
Art. 7. Zoning	Art. 14. Judicial Review

10

Numbering Convention

Chapter-Article-Section

160D-7-3




11

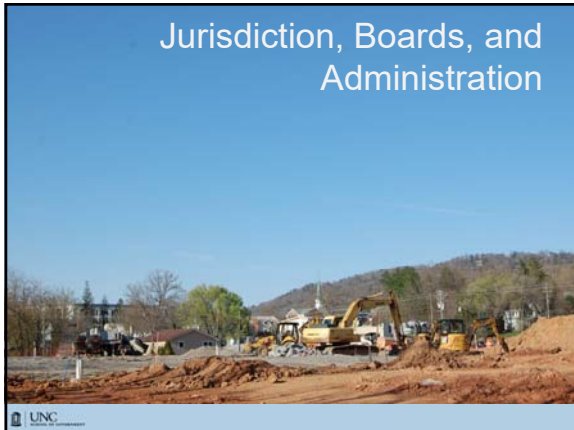
Delayed Effective Date

Effective 1/1/21

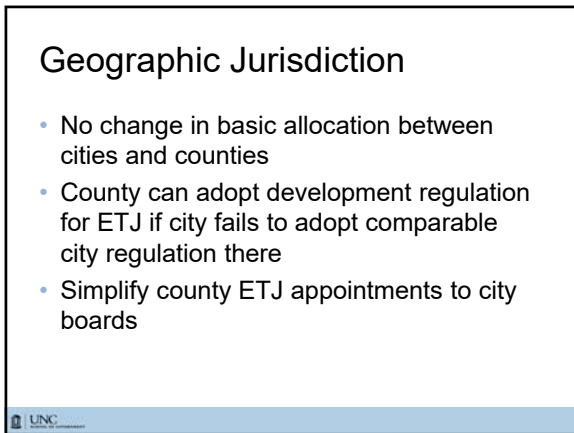
Amendments made in 2019 to statutes included in Ch. 160D to be integrated in 2020



12



13




14



15

Boards


- Must have board to make recommendations on zoning amendments
- Simplify calculation of number of ETJ members needed
- Allow rules of procedure for each board
- Require oath of office for all board members
- Clarify appointment process



16

General Administrative Authority


- Chapter 160D, Article 4
- General rules applicable across development regulations



17

New Staff Conflicts of Interest

- Not make a decision if
 - the outcome would have a direct, substantial, and readily identifiable financial impact on the staff person
 - the staff person has a close familial, business, or other associational relationship with the applicant or other person subject to the decision
- Prior standard is preserved
 - No financial or employment interest in development in the jurisdiction
 - No work inconsistent with duties to local government



18

Enforcement

- Inspections
- Stop Work Orders
- Certificates of Occupancy
- Notice of Violation
- Revocation of Development Approvals
- General Enforcement (penalties, fines, court order)
- Historic Preservation Enforcement

19

Substance of Development Regulations



20

Exactions

Exactions and performance guarantees generally allowed for zoning regulations to the same extent and limitations as with subdivision regulation

21

Maps

- Official maps may be incorporated by reference (specific map or most recent)
- Clerk or other specified office must maintain for public inspection
 - Current and past zoning maps
 - Current maps incorporated by reference
- Paper or digital format is allowed

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22

Eliminate CUD/SUD

Can have conditional zoning and special use permits, but no longer as a combined process

- Cannot have district with only special uses
- Cannot do concurrent rezoning and special use permit
- Any former CUD/SUD becomes conditional zone

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23

Form-Based Code

May use form-based code or districts

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24

Other Legislation

- Already effective
- No third-party initiated down-zoning petitions
- Petitioner needs to consent in writing to conditions in conditional zoning
- Pending – temporary uses

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25

Subdivision

- Revised performance guarantee requirements (SL 2019-79)

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26

Particular Land Uses

- Simplify city regulation of agricultural uses in ETJ – same as county zoning exemption
- No set age limit for manufactured homes
- Historic preservation
 - Same quasi-judicial process as others
 - Appeal of COA to BOA prior to judicial review optional rather than mandatory

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27

Development Agreements


- Legislative hearing, same notice as zoning map amendment
- May combine with conditional zoning
- Must list any exactions beyond those that could be mandated
- Enforcement by either party, including injunctions and penalties



28

Building and Housing Codes

- Move periodic inspection limits from building code to housing code Article
- Uniform process for abandonment of intent to repair
- Apply standard 160D procedures for specialized regulations



29

Planning




30

Planning Requirement
Chapter 160D, Article 5

Comprehensive plan will be required as condition of having zoning regulations


Grace period until July 1, 2022



31

Plan process and updates


- No need to re-adopt existing plan
- Adoption process for future plans: same as legislative zoning decision
- “reasonably maintained”
- Still advisory
- May be coordinated with other plans (CAMA, functional plans, regional plans)



32

Plan Contents May Include . . .

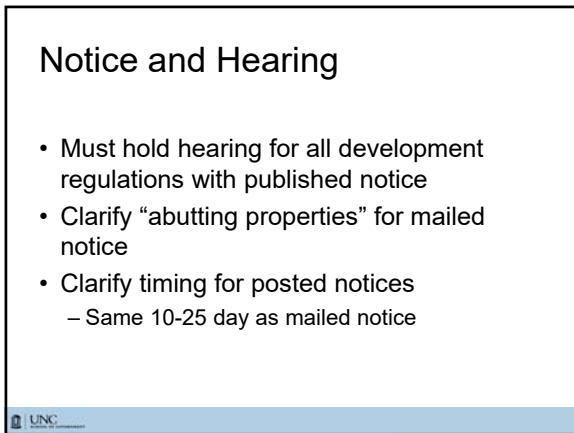
- Issues and opportunities facing the local government
- Pattern of desired growth and development and civic design
- Economic development and community development
- Acceptable levels of public services and infrastructure
- Housing with a range of types and affordability
- Recreation and open spaces.
- Mitigation of natural hazards
- Protection of the environment and natural resources
- Protection of significant architectural, scenic, cultural, historical, or archaeological resources
- Analysis and evaluation of implementation measures



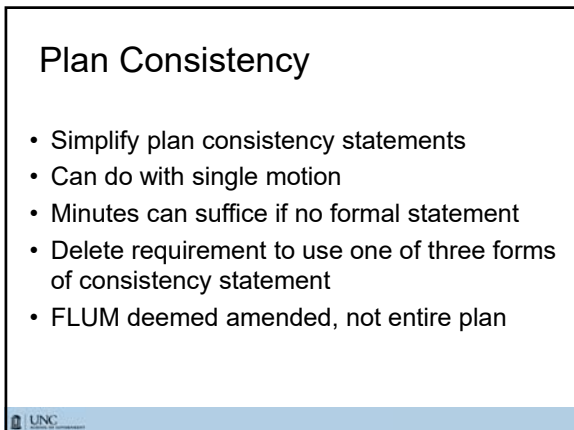
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34



35



36

Reasonableness

- Only mandatory for zoning map amendments, optional for other amendments
- Factors set out
- Can combine plan consistency and reasonableness statements

37

Voting

- Simple majority vote on municipal first reading of development regulation amendments
- Defines prohibited “close family relationship” for legislative, quasi-judicial, and staff conflicts

38


Quasi-Judicial Decisions



39

Uniform Terminology

- All are to be called “special use permits”
- All former “conditional use permit” or “special exception” become a “SUP”



40


Uniform Procedures

- Same rules for all quasi-judicial by any board
- Continuation of hearing allowed
- Meeting packets allowed
- Administrative packet entered as evidence
- Anyone may be allowed to present relevant evidence, but only parties may cross-examine, object, etc.
- Advisory review allowed, but may not be used as evidence for decision

41

Conditions

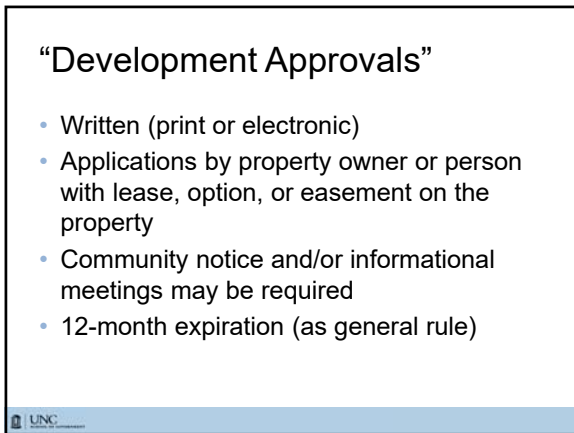
- Must not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose (Part I of S.L. 2019-111)



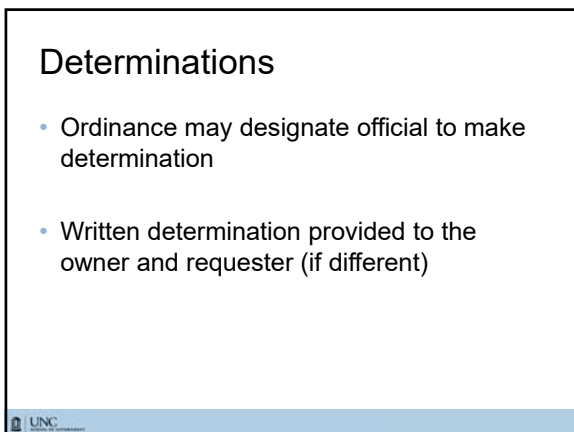
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43




44



45

Minor Modifications


- Staff authorized to make modifications to
 - Development Approvals
 - Special Use Permits
 - Conditional Zoning
- Defined in the ordinance; parameters for amount of change
- No change in permitted uses or the density
- Major modification goes through standard approval process



46

Appeals of Administrative Decisions

- Quasi-judicial process
- To board of adjustment (unless stated otherwise)
- Covers all dev. regs (state or local law may alter)
- Notice effective 3 days after the notice is mailed
- Staff decision-maker must be witness (or current office holder)
- Enforcement actions, including fines, are paused during appeal



47


Vested Rights and Permit Choice



48

G.S. 160D-1-8


- To be aligned with SL 2019-111, Part I



49

Process to Claim

- Seek administrative determination from authorized official
- Or, straight to court




50

Types and Terms

- Building Permit (6 months)
- Development Approval (1 year)
- Site-Specific Vesting Plan (2-5 years)
- Multi-Phase Development (7 years)
- Development Agreement (per agreement)


- Common Law Vested Rights (reasonable)



51

Continuing Review


- Local government may revoke the original approval for failure to comply with applicable terms, conditions, or development regulations



52

Exceptions from Site Specific and Multi-Phase Vested Rights

- Written consent of the affected landowner
- Upon findings that hazards would pose a serious threat
- Upon compensation
- Upon findings of intentional misinformation or misrepresentations to obtain the approval
- Upon findings that State or federal law precludes the development as approved



53


Judicial Review



54

Chapter 160D, Article 14


- To be aligned with SL 2019-111, Part I



55

Original Civil Action


- Challenge to validity of an ordinance may be brought



56

Vested Rights


- Applicant may seek administrative determination or may go straight to court



57

Quasi-Judicial

- Developer may proceed unless a party seeks a judicial stay; but no vesting if decision reversed
- Appeals of preservation decisions may go straight to court

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