



2019 Legal Update

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Outline

- Chapter 160D
- Zoning Regulations and Decisions
- Certain Uses
- Subdivision Regulations
- Permit Choice, Vested Rights, and Appeals
- Two Cases
- Related Development Regulations
- Pending Legislation

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Chapter 160D

- Effective 1/1/21
- Consolidates, reorganizes, modernizes planning and development regulation statutes
 - Comprehensive Plan required
 - Decision processes streamlined
 - Administration authority clarified
 - Conflicts of interest standards strengthened
 - And more



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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



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ZONING REGS AND DECISIONS



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No Third Party Down-Zoning

- Neighbor cannot request down-zoning without owner consent
- Local government may still initiate
- Down-zoning defined to be reduction in density or permitted uses
- Applies to zoning applications submitted on or after July 11, 2019

G.S. 153A-343 & 160A-384; S.L. 2019-111 (S.B. 355), Pt I.



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Conditional Approvals

S.L. 2019-111 (S.B. 355), Part I

- | | |
|--|---|
| Conditional Zoning | Special Use Permit |
| <ul style="list-style-type: none">• Conditions for plan conformance• Conditions to address impacts• Conditions consented to by owner (flexibility) | <ul style="list-style-type: none">• “reasonable and appropriate conditions”• But only if authorized (less flexibility) |

effective immediately and “clarify and restate the intent of existing law and apply to ordinances adopted before, on, and after the effective date.”



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Definitions

- Not inconsistent with state definitions of
 - building, dwelling, dwelling unit, bedroom, sleeping unit
- To be aligned in 160D
 - Development, Development Permit, and Land-Development Regulation



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CERTAIN USES



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Small Houses

- Zoning may not set minimum house size
- Applies to any structure built to one- and two-family building code
- Private restrictive covenants not affected

G.S. 160A-381, 153A-340, S.L. 2019-174



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Short Term Rentals

- Short term rentals are subject to some limitations on inspections and permitting, but basic zoning authority remains



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Short Term Rentals: Housing Code Inspections Limits

- Inspections only when
 - Reasonable cause, for fire prevention code, or within limited blighted areas
- Limitations on rental registration and permitting
- No taxes or fees unless levied against other commercial and residential properties
- No inspection before utility service



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**Short Term Rentals:
Zoning Remains**

- Define the land use
- Establish locational and development standards
- Require a permit to establish the land use



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SUBDIVISION REGULATIONS



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**Subdivision
Performance Guarantees**


- Scope
 - Completion, not Maintenance
 - Parties with Rights
 - Multiple Guarantees
- S.L. 2019-79 (S.B. 313) amends G.S. 160A-372 and 153A-331



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**Subdivision
Performance Guarantees**


- Money
 - Type of Financial Instrument (surety bond, letter of credit, equivalent)
 - Amount (125%)



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**Subdivision
Performance Guarantees**

- Timing
 - At plat recordation or later
 - Duration
 - Extension
 - Release



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**PERMIT CHOICE, VESTED
RIGHTS, AND APPEALS**



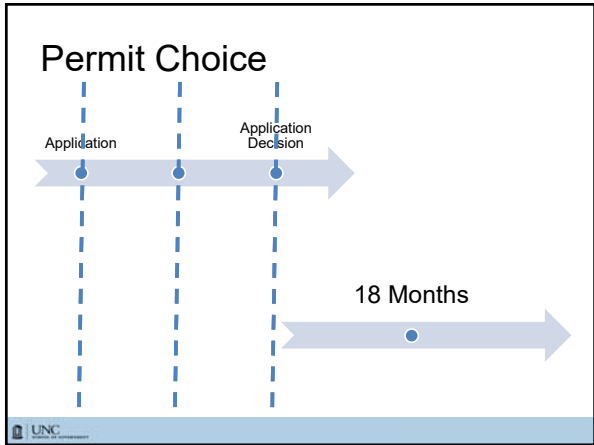
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Permit Choice and Vested Rights

- S.L. 2019-111 (S.B. 355), Part I.




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Permit Choice

- Applicant not required to wait for new rule to be approve
- If applicant wins court challenge, may be able to choose original rules
- Applicant must be actively pursuing the approval; six-month delay waives rights



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Vested Rights

- Development Permit (1 year)
- Site Specific Development Plan (2-5 years)
- Development Agreement (per agreement)
- Multi-Phased Development (7 year)

- Once work is commenced, vesting is valid for twenty-four months of discontinuation of development or use (unless longer by statute)



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Appeals of Vested Rights

- May go straight to court
- Applicant gets attorneys' fees if they win



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Judicial Review


S.L. 2019-111 (S.B. 355), Part I

- Fines stayed during appeal
- Applicants can skip board of adjustment for some challenges
- Challenges to conditions—get written consent
- Appeals of Quasi-Judicial Decisions
- Attorneys Fees
 - don't violate unambiguous limits
 - don't lose on vested rights



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TWO CASES



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Ashe Co. v. Ashe Co. Planning Bd.




829 S.E.2d 224 (N.C. Ct. App. 2019)



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Ashe Co. v. Ashe Co. Planning Bd.

- Application made for an asphalt plant
- State air quality permit also required but not obtained when local application made
- County adopts moratorium, adjusts rules
- Planning Director denies; Planning Board overrules on appeal
- Bd. of Co. Commrs appeals to court



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Permit Choice Rule

Application is “submitted” when accepted by county and fee deposited, even if project is subject to later state regulatory approvals, so permit choice rule triggered

Moratorium delays permit decision, but when moratorium expires, applicant can choose to have prior rules apply



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Is Letter from Planning Director a Binding Determination?

Letter says site plan meets local buffer requirement, but no local permit can be issued until state permit secured.

Binding?



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Is Letter from Planning Director a Binding Determination?

No as to eventual approval of local permit once state approval secured

BUT

Yes as to compliance with local buffer requirement

Takeaway – Be careful with written conclusions, even when it is not your final

overall answer

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Dellinger v. Lincoln County

Solar farm proposed




832 S.E.2d 172 (N.C. Ct. App. 2019)

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Dellinger v. Lincoln County

Neighbors object



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Dellinger v. Lincoln County

Can vocal opponent of a solar farm SUP who is later elected to county board vote on SUP for facility if it comes before the board again?

No.
Member who has taken clear position on a specific project before taking office is not impartial

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RELATED DEVELOPMENT REGULATIONS



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Building Code


- Exempts movie, television, stage sets if one year or less life and have fire code inspection
- May issue temporary CO
- One- and two-family initial plan reviews must be complete in 15 days
- DOI to provide guidance paper on plan review and interpretation



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Environment

- EMC to develop standards for decommissioned wind and solar equipment
- Cites may not regulate off-site wastewater that has state approval
- New program for alternative on-site wastewater systems



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Housing

- Report by cities over 10k population
- Strategy for more affordable housing
- List measures taken for more moderate income housing, strategies employed



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Signs in the ROW

- For NCDOT highways, signs remaining for forty days after election is deemed abandoned property and may be removed and disposed of without penalty
- Cities must adopt comparable provision
- Effective December 1, 2019



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Transportation

- Map Act and authority for city corridor maps repealed
- NCDOT to update the *Subdivision Roads Minimum Construction Standards Manual* by July 1, 2020
- Driveway Permits: cannot require applicant to acquire ROW from third party, applicant can voluntarily do it



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PENDING LEGISLATION




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Temporary Event Venues

In pending regulatory reform bill (S. 553)

- “Temporary” = 72 hours or less
- Only one on a parcel at one time
- No more than 24 per calendar year




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Temporary Event Venues

Zoning options

- Can allow as accessory use in any district
- May not require SUP
- Permit not considered a rezoning
- Can allow as a permitted use



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Temporary Event Venues

If permitted, ordinance must:

- Specify which districts allow it
- Define types of events, duration, capacity limits, fees (capped at \$100, \$50 for renewal)
- Criteria for permits
- Site inspection, no building permit, but reasonable health/safety measures ok



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Outdoor Advertising PENDING

- Relocation Related to Condemnation
 - w/n 2 miles of site, similar zoning, < 50 ft.,
- Relocation in General
 - w/n 250 ft. of property, similar to criteria above
- Relocation of Nonconforming
 - On same site, same size and material, < 50 ft. tall
- Relocation for Sound Walls
- Relocation for View Corridors
 - allows replacement w/n corridor



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