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SENATE BILL DRS45298-TQ-20

Short Title: Local Government Land Use Reform. (Public)

Sponsors: Senator Jarvis (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND LOCAL GOVERNMENT PLANNING AND DEVELOPMENT LAWS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.(a)** G.S. 160D-101 reads as rewritten:

5 **"§ 160D-101. Application.**

6 (a) The provisions of this Article shall apply to all development regulations and programs
7 adopted pursuant to this Chapter or applicable or related local acts. To the extent there are
8 contrary provisions in local charters or acts, G.S. 160D-111 is applicable unless this Chapter
9 expressly provides otherwise. The provisions of this Article also apply to any other local
10 ordinance that substantially affects land use and development.

11 (b) The provisions of this Article are supplemental to specific provisions included in
12 other Articles of this Chapter. To the extent there are conflicts between the provisions of this
13 Article and the provisions of other Articles of this Chapter, the more specific provisions shall
14 control.

15 (c) Local governments may also apply any of the definitions and procedures authorized
16 by this Chapter to any ordinance that does not substantially affect land use and development
17 adopted under the general police power of cities and counties, Article 8 of Chapter 160A of the
18 General Statutes and Article 6 of Chapter 153A of the General Statutes respectively, and may
19 employ any organizational structure, board, commission, or staffing arrangement authorized by
20 this Chapter to any or all aspects of those ordinances.

21 ~~(d) This Chapter does not expand, diminish, or alter the scope of authority for planning~~
22 ~~and development regulation authorized by other Chapters of the General Statutes.~~

23 (e) A local government may not exercise planning, zoning, or development regulation
24 authority except as expressly authorized by statute."

25 **SECTION 1.(b)** This section becomes effective January 1, 2026. Any local
26 government ordinance in effect on, or adopted subsequent to, that date that is inconsistent with
27 this section is void and unenforceable.

28 **SECTION 2.(a)** G.S. 160D-702 reads as rewritten:

29 **"§ 160D-702. (Effective January 1, 2025) Grant of power.**

30 (a) A local government may adopt zoning regulations. Except as provided in subsections
31 (b) and (c) of this section, a zoning regulation may regulate and restrict the height, number of
32 stories, and size of buildings and other structures; the percentage of lots that may be occupied;
33 the size of yards, courts, and other open spaces; the density of population; the location and use
34 of buildings, structures, and land. A local government may regulate development, including
35 floating homes, over estuarine waters and over lands covered by navigable waters owned by the
36 State pursuant to G.S. 146-12. A zoning regulation shall provide density credits or severable



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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 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 Except as expressly provided in G.S. 160D-703(b), 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, district nor may any such the 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.

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 or other development regulation shall not do any of the following:

- (1) Set a minimum width, length, or square footage of any structures subject to regulation under the North Carolina Residential Code.
- (2) ~~Require a parking space to be larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking.~~ Set parking or parking space requirements or allocations except as required by the Americans with Disabilities Act.
- (3) Require additional fire apparatus access roads into developments of one- or two-family dwellings that are not in compliance with the required number of fire apparatus access roads into developments of one- or two-family dwellings set forth in the Fire Code of the North Carolina Residential Code for One- and Two-Family Dwellings.

(4) Except as provided under G.S. 136-18(29) and G.S. 160A-307, set a minimum width, length, or square footage for driveways within a development unless the driveway abuts a public road. A "public road" means any road, street, highway, thoroughfare, or other way of passage that is owned and maintained by a city or the Department of Transportation.

(5) Set design standards for roads within a development in excess of those required by the Department of Transportation, unless the city agrees to accept ownership and maintenance responsibility for the road prior to or in conjunction with site plan approval. Confirmation of conformity of the improvements consistent with local government design specifications, regulations, or ordinances under this section shall be conducted consistent with G.S. 160D-804.1(1c). Upon confirmation that the improvements have been made consistent with G.S. 160D-804.1(1c), the city shall record with the register of deeds a plat evincing ownership of the road by the city.

(d) A zoning regulation or other development regulation adopted by a city with a population of 150,000 or more shall permit by right or by special use the siting of no fewer than five dwellings subject to regulation under the North Carolina Residential Code per acre in areas zoned for residential use.

(e) A zoning regulation or other development regulation adopted by a city with a population of 149,999 or less shall permit by right or by special use the siting of no fewer than four dwellings subject to regulation under the North Carolina Residential Code per acre in areas zoned for residential use.

(f) Subsections (d) and (e) of this section shall not apply to property used for a bona fide farm purpose as described in G.S. 160D-903 or an open space use as defined in G.S. 160D-1307.

(g) A local government shall follow quasi-judicial procedures in adopting a zoning or other development regulation authorized under this section."

SECTION 2.(b) This section becomes effective July 1, 2025. Any local government ordinance in effect on, or adopted subsequent to, that date that is inconsistent with this section is void and unenforceable.

SECTION 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

1 incorporated into the zoning regulations. ~~Unless consented to by the petitioner in~~
2 ~~writing, Notwithstanding any other provision of law,~~ in the exercise of the authority granted by
3 this section, a local government may not (i) require, enforce, or incorporate into the zoning
4 ~~regulations any condition or requirement not authorized by otherwise applicable law, regulations,~~
5 ~~or require as a condition of approval of any site plan, development agreement, conditional zoning~~
6 ~~permit, or any other instrument any condition, requirement, or deed restriction not specifically~~
7 ~~authorized by law, or any condition or requirement that the courts have held to be unenforceable~~
8 ~~if imposed directly by the local government, or (ii) accept any offer by the petitioner to consent~~
9 ~~to any condition not specifically authorized by law, including, without limitation, taxes, impact~~
10 fees, building design elements within the scope of G.S. 160D-702(b), driveway-related
11 improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other
12 unauthorized limitations on the development or use of land. Conditions and site-specific
13 standards imposed in a conditional district shall be limited to those that address the conformance
14 of the development and use of the site to local government ordinances, plans adopted pursuant
15 to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use
16 of the site. The zoning regulation may provide that defined minor modifications in conditional
17 district standards that do not involve a change in uses permitted or the density of overall
18 development permitted may be reviewed and approved administratively. Any other modification
19 of the conditions and standards in a conditional district shall follow the same process for approval
20 as are applicable to zoning map amendments. If multiple parcels of land are subject to a
21 conditional zoning, the owners of individual parcels may apply for modification of the conditions
22 so long as the modification would not result in other properties failing to meet the terms of the
23 conditions. Any modifications approved apply only to those properties whose owners petition
24 for the modification.

25 (b1) Limitations. – For parcels where multifamily structures are an allowable use, a local
26 government may not impose a harmony requirement for permit approval if the development
27 contains affordable housing units for families or individuals with incomes below eighty percent
28 (80%) of the area median income.

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

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

35 (e) A local government shall follow quasi-judicial procedures in adopting a zoning or
36 other development regulation authorized under this section."

37 **SECTION 4.** G.S. 160D-406 reads as rewritten:

38 **"§ 160D-406. Quasi-judicial procedure.**

39 (a) Process Required. – Boards shall follow quasi-judicial procedures in determining
40 appeals of administrative decisions, special use permits, conditional use permits, certificates of
41 appropriateness, variances, or any other quasi-judicial decision.

42"

43 **SECTION 5.** G.S. 6-21.7 reads as rewritten:

44 **"§ 6-21.7. Attorneys' fees; ~~cities or counties~~ cities, counties, or local elected officials acting**
45 **outside the scope of their authority.**

46 (a) In any action in which a city or county is a party, upon a finding by the court that the
47 city or county violated a statute or case law setting forth unambiguous limits on its
48 ~~authority, authority or that its action was arbitrary and capricious,~~ the court shall award reasonable
49 attorneys' fees and costs to the party who successfully challenged the city's or county's action. In
50 any action in which a city or county is a party, upon finding by the court that the city or county
51 took action inconsistent with, or in violation of, G.S. 160D-108(b) or G.S. 143-755, or that its

1 action was arbitrary and capricious, the court shall award reasonable attorneys' fees and costs to
2 the party who successfully challenged the local government's failure to comply with any of those
3 provisions. In all other matters, the court may award reasonable attorneys' fees and costs to the
4 prevailing private litigant. For purposes of this section, "unambiguous" means that the limits of
5 authority are not reasonably susceptible to multiple constructions.

6 (b) In any action in which any county commissioner, alderman, councilman, or other
7 local elected official is a party, upon a finding by the court that the commissioner, alderman,
8 councilman, or other local elected official's individual act was fraudulent, unlawful, arbitrary and
9 capricious, beyond the scope of his or her statutory authority, or malicious or corrupt, may be
10 held personally liable for an injury or damage resulting from the act and reasonable attorneys'
11 fees shall be awarded by the court to a party who successfully challenged the act of the
12 commissioner, alderman, councilman, or other local elected official. Where the court finds that
13 the commissioner, alderman, councilman, or other local elected official's act was fraudulent,
14 unlawful, arbitrary and capricious, beyond the scope of his or her statutory authority, or malicious
15 or corrupt, the defenses of public official immunity, legislative immunity and judicial immunity
16 are waived. A commissioner, alderman, councilman, or other local elected official shall not be
17 personally liable in damages or otherwise for an unlawful act of an officer or employee of the
18 city or county, unless the act is committed by the authority of the commissioner, alderman,
19 councilman, or other local elected official, or he or she has notice or knowledge thereof, or unless
20 the act is committed under circumstances which would cause, or would have caused, a reasonably
21 prudent person to have knowledge of the act."

22 **SECTION 6.** G.S. 160A-307 reads as rewritten:

23 **"§ 160A-307. Curb cut regulations.**

24 (a) ~~A-Except as expressly permitted by Chapter 160D of the General Statutes, a city may~~
25 ~~not regulate~~ by ordinance regulate the size, location, direction of traffic flow, and manner of
26 construction of driveway connections into any street or alley. ~~The~~ To the extent allowed by
27 Chapter 160D of the General Statutes, the ordinance may require the construction or
28 reimbursement of the cost of construction and public dedication of medians, acceleration and
29 deceleration lanes, and traffic storage lanes for driveway connections into any street or alley if
30 all of the following apply:

- 31 (1) The city has shown through substantial evidence the need for such the
32 improvements is reasonably attributable to the traffic using the driveway.
33 (2) The city has shown through substantial evidence the improvements serve the
34 traffic of the driveway.

35 (b) No street or alley under the control of the Department of Transportation may be
36 improved without the consent of the Department of Transportation. A city shall not require the
37 applicant to acquire right-of-way from property not owned by the applicant. However, an
38 applicant may voluntarily agree to acquire such right-of-way."

39 **SECTION 7.** G.S. 160D-1403.1 reads as rewritten:

40 **"§ 160D-1403.1. Civil action for declaratory relief, injunctive relief, other remedies; joinder**
41 **of complaint and petition for writ of certiorari in certain cases.**

42 (a) Civil Action. – Except as otherwise provided in this section for claims involving
43 questions of interpretation, in lieu of any remedies available under G.S. 160D-405 or
44 G.S. 160D-108(h), a person with standing, as defined in subsection (b) of this section, may bring
45 an original civil action seeking declaratory relief, injunctive relief, damages, or any other
46 remedies provided by law or equity, in superior court or federal court to challenge the
47 enforceability, validity, or effect of a local land development regulation for any of the following
48 claims:

- 49 (1) The ordinance, either on its face or as applied, is unconstitutional.
50 (2) The ordinance, either on its face or as applied, is ultra vires, preempted, or
51 otherwise in excess of statutory ~~authority~~ authority or jurisdiction.

- (3) The ordinance, either on its face or as applied, constitutes a taking of property.
- (4) The decision of a local government or local government official made pursuant to a local government's authority under G.S. 160D-702, G.S. 160D-703, or both, is ultra vires, preempted, in excess of its statutory authority or jurisdiction, made upon unlawful procedure, made in error of law, arbitrary and capricious, or an abuse of discretion.

If the decision being challenged is from an administrative official charged with enforcement of a local land development regulation, the party with standing must first bring any claim that the ordinance was erroneously interpreted to the applicable board of adjustment pursuant to G.S. 160D-405. An adverse ruling from the board of adjustment may then be challenged in an action brought pursuant to this subsection with the court hearing the matter de novo together with any of the claims listed in this subsection.

(b) Standing. – Any of the following criteria provide standing to bring an action under this section:

- (1) The person has an ownership, leasehold, or easement interest in, or possesses an option or contract to purchase the property that is the subject matter of a final and binding decision made by an administrative official charged with applying or enforcing a land development regulation.
- (2) The person was a development permit applicant before the decision-making board whose decision is being challenged.
- (3) The person was a development permit applicant who is aggrieved by a final and binding decision of an administrative official charged with applying or enforcing a land development regulation.
- (4) An association, organization, society, or entity whose membership is comprised of an individual or entity identified in subdivisions (1) through (3) of this subsection.

...."

SECTION 8. Article 14 of Chapter 160D of the General Statutes is amended by adding a new section to read:

"§ 160D-1403.3. Private remedies.

In addition to any other remedy otherwise provided by law, any person injured by a violation of this Chapter may bring a civil action and recover damages, costs, and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court."

SECTION 9. Except as otherwise provided, this act becomes effective January 1, 2026.