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SENATE BILL DRS35222-ST-17

Short Title: Clarify Nonconforming Uses. (Public)

Sponsors: Senators Lazzara and Sawrey (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY NONCONFORMITIES IN LAND DEVELOPMENT
3 REGULATIONS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 160D-102 is amended by adding a new subdivision to read:

6 "(23m) Nonconformity. – Any of the following that was lawfully operated,
7 established, or commenced in accordance with applicable development
8 regulations in effect at the time the nonconformity became nonconforming so
9 long as the nonconformity is not extended, expanded, enlarged, increased, or
10 intensified:

- 11 a. A lot, parcel, or tract of land that fails to meet all current development
12 regulation requirements.
13 b. A structure that no longer complies with all current development
14 regulation requirements applicable to that structure.
15 c. The use of a property for a purpose or activity, or in a manner, made
16 unlawful by a current development regulation.
17 d. Any dwelling, accessory building, accessory structure, outdoor
18 lighting, fence, wall, sign, off-street parking, vehicular surface area, or
19 private access point."

20 **SECTION 2.** Article 1 of Chapter 160D of the General Statutes is amended by
21 adding a new section to read:

22 **"§ 160D-108.2. Nonconformities.**

23 (a) Amendments in land development regulations are not applicable or enforceable
24 without the written consent of the owner with regard to a nonconformity. All of the following
25 shall apply to vested rights in a nonconformity established under this section:

- 26 (1) The establishment of a vested right under this section does not preclude
27 vesting under one or more other provisions of law or vesting by application of
28 common law principles.
29 (2) A vested right, once established as provided for in this section or by common
30 law, precludes any action by a local government that would change, alter,
31 impair, prevent, diminish, or otherwise delay the development or use of the
32 property allowed by applicable development regulations, except where a
33 change in State or federal law mandating local government enforcement
34 occurs after the nonconformity was established that has a fundamental and
35 retroactive effect on the development or use.
36 (3) G.S. 160D-108(h) shall apply to the claiming of nonconformities.



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(4) Unless otherwise specified by this section or another statute, a nonconformity may continue until intentionally and voluntarily discontinued.

(b) The statutory vesting period granted by this section for a nonconformity expires if the nonconformity is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period shall be automatically tolled during any of the following events:

(1) The pendency of any board of adjustment proceeding or civil action in a State or federal court regarding the validity of the use of the property or the existence of the statutory vesting period granted by this section.

(2) The pendency of any litigation involving use of the property that is the subject of the vesting.

(3) The duration of any emergency declaration issued under G.S. 166A-19.20 or G.S. 166A-19.22 for which the defined emergency area includes the property, in whole or in part.

(c) Reconstruction, re-establishment, repair, and maintenance of a nonconformity shall be allowed by right provided the nonconforming is not extended, expanded, enlarged, increased, or intensified by the reconstruction, re-establishment, repair, or maintenance.

(d) This section shall not apply to G.S. 160D-912 and G.S. 160D-912.1."

SECTION 3. G.S. 160D-108 reads as rewritten:

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

...

(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, 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 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 any of the following:

(1) ~~the~~ 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.

(2) ~~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.~~

(3) The duration of any emergency declaration issued under G.S. 166A-19.20 or G.S. 166A-19.22 for which the defined emergency area includes the property, in whole or in part.

...

(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

1 appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de
2 novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a
3 person claiming a vested right may bring an original civil action as provided by
4 G.S. 160D-1403.1. This subsection shall apply to the claiming of vested rights in a
5 nonconformity under G.S. 160D-108.2.

6"

7 **SECTION 4.** G.S. 160D-108.1(f)(3) reads as rewritten:

8 "(3) Notwithstanding any provision of this section, the establishment of a vested
9 right does not preclude, change, or impair the authority of a local government
10 to adopt and enforce development regulations governing ~~nonconforming~~
11 ~~situations or uses-nonconformities.~~"

12 **SECTION 5.** G.S. 63-31(e) reads as rewritten:

13 "(e) All airport zoning regulations adopted under this Article shall be reasonable, and none
14 shall require the removal, lowering, or other change or alteration of any structure or tree not
15 conforming to the regulations when adopted or amended, or otherwise interfere with the
16 continuance of any ~~nonconforming use, nonconformity as defined in G.S. 160D-102~~ except as
17 provided in G.S. 63-32, subsection (a)."

18 **SECTION 6.** G.S. 63-36 reads as rewritten:

19 **"§ 63-36. Acquisition of air rights.**

20 (a) In any case in which:

21 (1) It is desired to remove, lower, or otherwise terminate a ~~nonconforming use;~~
22 ~~nonconformity;~~ or

23 (2) The approach protection necessary cannot, because of constitutional
24 limitations, be provided by airport zoning regulations under this Article; or

25 (3) It appears advisable that the necessary approach protection be provided by
26 acquisition of property rights rather than by airport zoning regulations,

27 the political subdivision within which the property or ~~nonconforming use-nonconformity~~ is
28 located or the political subdivision owning the airport or served by it may acquire, in the manner
29 provided by the law under which municipalities are authorized to acquire real property for public
30 purposes, such an air right, easement, or other estate or interest in the property or ~~nonconforming~~
31 ~~use-nonconformity~~ in question as may be necessary to effectuate the purposes of this Article.

32 (b) If any political subdivision, or if any board or administrative agency appointed or
33 selected by a political subdivision, shall adopt, administer or enforce any airport zoning
34 regulations which results in the taking of, or in any other injury or damage to any existing
35 structure, such political subdivision shall be liable therefor in damages to the owner or owners of
36 any such property and the liability of the political subdivision shall include any expense which
37 the owners of such property are required to incur in complying with any such zoning regulations.

38 (c) For purposes of this section, "nonconformity" shall have the same meaning as in
39 G.S. 160D-102."

40 **SECTION 7.** G.S. 160A-31(h) reads as rewritten:

41 "(h) A city council which receives a petition for annexation under this section may by
42 ordinance require that the petitioners file a signed statement declaring whether or not vested
43 rights with respect to the properties subject to the petition have been established under
44 ~~G.S. 160D-108 or G.S. 160D-108.1.~~ G.S. 160D-108, G.S. 160D-108.1, or G.S. 160D-108.2. If
45 the statement declares that such rights have been established, the city may require petitioners to
46 provide proof of such rights. A statement which declares that no vested rights have been
47 established under ~~G.S. 160D-108 or G.S. 160D-108.1~~ G.S. 160D-108, G.S. 160D-108.1, or
48 G.S. 160D-108.2 shall be binding on the landowner and any such vested right shall be
49 terminated."

50 **SECTION 8.** G.S. 160A-58.1(d) reads as rewritten:

"(d) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under ~~G.S. 160D-108 or G.S. 160D-108.1~~ G.S. 160D-108, G.S. 160D-108.1, or G.S. 160D-108.2. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under ~~G.S. 160D-108 or G.S. 160D-108.1~~ G.S. 160D-108, G.S. 160D-108.1, or G.S. 160D-108.2 shall be binding on the landowner and any such vested rights shall be terminated."

SECTION 9. G.S. 160D-403(c) reads as rewritten:

"(c) Duration of Development Approval. – Unless a different period is specified by this Chapter or other specific applicable law, including for a development agreement, a development approval issued pursuant to this Chapter expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced. Local development regulations may provide for development approvals of shorter duration for temporary land uses, special events, temporary signs, and similar development. Local development regulations may also provide for development approvals of longer duration for specified types of development approvals. Nothing in this subsection limits any vested rights secured under ~~G.S. 160D-108 or G.S. 160D-108.1~~ G.S. 160D-108, G.S. 160D-108.1, or G.S. 160D-108.2."

SECTION 10.(a) G.S. 136-131.5(c) reads as rewritten:

"(c) A nonconforming sign ~~not conforming to State standards~~ shall not be relocated pursuant to this section unless the ~~nonconformity is removed~~ nonconforming sign is brought into conformity with State law, rules, and regulations as part of the relocation."

SECTION 10.(b) The catchline of G.S. 136-131 reads as rewritten:

"§ 136-131. Removal of certain existing nonconforming advertising signs."

SECTION 10.(c) G.S. 136-133.1(d) reads as rewritten:

"(d) Except as provided in subsection (e) of this section, trees existing at the time the outdoor advertising sign was erected may only be removed within the zone created in subsection (a) of this section if the applicant satisfies one of the following two options selected by the applicant: (i) reimbursement to the Department pursuant to G.S. 136-93.2 or (ii) trees that existed at the time of the erection of the outdoor advertising sign may be removed if the applicant agrees to remove two nonconforming ~~outdoor advertising~~ signs for each outdoor advertising sign at which removal of existing trees is requested. The surrendered nonconforming signs must be fully disassembled before any removal of existing trees is permitted and shall not be eligible for future outdoor advertising permits in perpetuity."

SECTION 10.(d) G.S. 160D-912 reads as rewritten:

"§ 160D-912. Outdoor advertising.

(a) As used in this section, the term "off-premises outdoor advertising" includes off-premises outdoor advertising sign visible from the main-traveled way of any road.

(b) A local government may require the removal of an off-premises outdoor advertising sign that is ~~nonconforming under a local ordinance not in compliance with a development regulation~~ and may regulate the use of off-premises outdoor advertising within its planning and development regulation jurisdiction in accordance with the applicable provisions of this Chapter and subject to G.S. 136-131.1 and G.S. 136-131.2.

(c) A local government shall give written notice of its intent to require removal of off-premises outdoor advertising not in compliance with a development regulation by sending a letter by certified mail to the last known address of the owner of the off-premises outdoor advertising and the owner of the property on which the off-premises outdoor advertising is located.

(d) No local government may enact or amend an ordinance of general applicability to require the removal of any ~~nonconforming~~, lawfully erected off-premises outdoor advertising sign that is not in compliance with a development regulation without the payment of monetary compensation to the owners of the off-premises outdoor advertising, except as provided below. The payment of monetary compensation is not required if:

- (1) The local government and the owner of the ~~nonconforming~~ off-premises outdoor advertising enter into a relocation agreement pursuant to subsection (g) of this section.
- (2) The local government and the owner of the ~~nonconforming~~ off-premises outdoor advertising enter into an agreement pursuant to subsection (k) of this section.
- (3) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace.
- (4) The removal is required for opening, widening, extending, or improving streets or sidewalks, or for establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311, and the local government allows the off-premises outdoor advertising to be relocated to a comparable location.
- (5) The off-premises outdoor advertising is subject to removal pursuant to statutes, ordinances, or regulations generally applicable to the demolition or removal of damaged structures.

(d1) This subsection Subsection (d) of this section shall be construed subject to and without any reduction in the rights afforded to owners of off-premises outdoor advertising signs along interstate and federal-aid primary highways in this State as provided in Article 13 of Chapter 136 of the General Statutes. Nothing in this section shall be construed to diminish the rights given to owners or operators of nonconformities as set forth in G.S. 160D-108 and G.S. 160D-108.2 or the rights of owners or operators of outdoor advertising signs in Article 11 of Chapter 136 of the General Statutes.

(e) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal. Monetary compensation shall be determined based on the following:

- (1) The factors listed in G.S. 105-317.1(a).
- (2) The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(f) If the parties are unable to reach an agreement under subsection (e) of this section on monetary compensation to be paid by the local government to the owner of the ~~nonconforming~~ off-premises outdoor advertising sign for its removal and the local government elects to proceed with the removal of the ~~sign, off-premises outdoor advertising~~, the local government may bring an action in superior court for a determination of the monetary compensation to be paid. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the ~~sign, off-premises outdoor advertising~~, the local government shall own the ~~sign, off-premises outdoor advertising~~.

(g) In lieu of paying monetary compensation, a local government may enter into an agreement with the owner of a ~~nonconforming~~ off-premises outdoor advertising sign to relocate and reconstruct the ~~sign, off-premises outdoor advertising~~. The agreement shall include the following:

- (1) Provision for relocation of the ~~sign, off-premises outdoor advertising~~ to a site reasonably comparable to or better than the existing location. In determining whether a location is comparable or better, the following factors shall be taken into consideration:

- a. The size and format of the ~~sign~~-off-premises outdoor advertising.
 - b. The characteristics of the proposed relocation site, including visibility, traffic count, area demographics, zoning, and any uncompensated differential in the ~~sign owner's~~ cost to the owner of the off-premises outdoor advertising to lease the replacement site.
 - c. The timing of the relocation.
- (2) Provision for payment by the local government of the reasonable costs of relocating and reconstructing the ~~sign~~-off-premises outdoor advertising including the following:
- a. The actual cost of removing the ~~sign~~-off-premises outdoor advertising.
 - b. The actual cost of any necessary repairs to the real property for damages caused in the removal of the ~~sign~~-off-premises outdoor advertising.
 - c. The actual cost of installing the ~~sign~~-off-premises outdoor advertising at the new location.
 - d. An amount of money equivalent to the income received from the lease of the ~~sign~~-off-premises outdoor advertising for a period of up to 30 days if income is lost during the relocation of the ~~sign~~-off-premises outdoor advertising.
- (h) For the purposes of relocating and reconstructing a ~~nonconforming~~-off-premises outdoor advertising ~~sign~~ pursuant to subsection (g) of this section, a local government, consistent with the welfare and safety of the community as a whole, may adopt a resolution or adopt or modify its ordinances to provide for the issuance of a permit or other approval, including conditions as appropriate, or to provide for dimensional, spacing, setback, or use variances as it deems appropriate.
- (i) If a local government has offered to enter into an agreement to relocate a ~~nonconforming~~-off-premises outdoor advertising ~~sign~~ pursuant to subsection (g) of this section and within 120 days after the initial notice by the local government the parties have not been able to agree that the site or sites offered by the local government for relocation of the ~~sign~~ off-premises outdoor advertising are reasonably comparable to or better than the existing site, the parties shall enter into binding arbitration to resolve their disagreements. Unless a different method of arbitration is agreed upon by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party shall select one arbitrator, and the two arbitrators chosen by the parties shall select the third member of the panel. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise.
- (j) If the arbitration results in a determination that the site or sites offered by the local government for relocation of the ~~nonconforming~~-~~sign~~ off-premises outdoor advertising are not comparable to or better than the existing site, and the local government elects to proceed with the removal of the ~~sign~~-off-premises outdoor advertising the parties shall determine the monetary compensation under subsection (e) of this section to be paid to the owner of the ~~sign~~-off-premises outdoor advertising. If the parties are unable to reach an agreement regarding monetary compensation within 30 days of the receipt of the arbitrators' determination and the local government elects to proceed with the removal of the ~~sign~~-off-premises outdoor advertising then the local government may bring an action in superior court for a determination of the monetary compensation to be paid by the local government to the owner for the removal of the ~~sign~~-off-premises outdoor advertising. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the ~~sign~~-off-premises outdoor advertising, the local government shall own the ~~sign~~-off-premises outdoor advertising.
- (k) Notwithstanding the provisions of this section, a local government and an off-premises outdoor advertising ~~sign~~-owner may enter into a voluntary agreement allowing for

the removal of the ~~sign-off-premises outdoor advertising~~ after a set period of time in lieu of monetary compensation. A local government may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(l) A local government has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected ~~property-off-premises outdoor advertising~~ remains in place until the compensation is paid.

(m) This section does not apply to any ordinance in effect on July 1, 2004. A local government may amend an ordinance in effect on July 1, 2004, to extend application of the ordinance to off-premises outdoor advertising located in territory acquired by annexation or located in the extraterritorial jurisdiction of the city. A local government may repeal or amend an ordinance in effect on July 1, 2004, so long as the amendment to the existing ordinance does not reduce the period of amortization in effect on June 19, 2020.

(n) The provisions of this section shall not be used to interpret, construe, alter, or otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter 40A or Chapter 136 of the General Statutes.

(o) Nothing in this section shall limit a local government's authority to use amortization as a means of phasing out nonconforming uses other than off-premises outdoor advertising."

SECTION 10.(e) G.S. 160D-912.1 reads as rewritten:

"§ 160D-912.1. On-premises advertising.

(a) As used in this section, the following definitions apply:

- (1) Monetary compensation. – An amount equal to the sum of (i) the greater of the fair market value of the ~~nonconforming-on-premises advertising sign that is not in compliance with a development regulation~~ in place immediately prior to the removal or the diminution in value of the real estate resulting from the removal of the on-premises advertising sign and (ii) the cost of a new on-premises advertising sign that conforms to the local government's development regulations.
- (2) On-premises advertising sign. – A sign visible from any local or State road or highway that advertises activities conducted on the property upon which it is located or advertises the sale or lease of the property upon which it is located.
- (3) Reconstruction. – Erecting or constructing anew, including any new or modern instrumentalities, parts, or equipment that were allowed under the local development rules in place at the time the on-premises advertising sign was erected.

(b) Notwithstanding any local development regulation to the contrary, a lawfully erected on-premises advertising sign may be relocated or reconstructed within the same parcel so long as the square footage of the total advertising surface area is not increased, and the on-premises advertising sign complies with the local development ~~rules-regulations~~ in place at the time the on-premises advertising sign was erected. The construction work related to the relocation of the lawfully erected on-premises advertising sign shall commence within two years after the date of removal. The local government shall have the burden to prove that the on-premises advertising sign was not lawfully erected.

(c) A local government may require the removal of a lawfully erected on-premises advertising sign under a local development regulation only if the local government pays the owner of the sign monetary compensation for the removal. Upon payment of monetary compensation, the local government shall own the on-premises advertising sign and remove it in a timely manner.

(d) Nothing in this section shall be construed to diminish the rights given to owners or operators of ~~nonconforming uses, including nonconforming structures, nonconformities~~ as set

1 forth in ~~G.S. 160D-108~~ G.S. 160D-108 and G.S. 160D-108.2 or the rights of owners or operators
2 of outdoor advertising signs in Article 11 of Chapter 136. "

3 **SECTION 11.(a)** G.S. 160D-601, as amended by Section 3K.1(a) of S.L. 2024-57
4 reads as rewritten:

5 "**§ 160D-601. Procedure for adopting, amending, or repealing development regulations.**

6 ...

7 (d) Down-Zoning. – No amendment to ~~zoning regulations or a zoning map~~ a zoning
8 regulation that down-zones property shall be initiated, enacted, or enforced without the written
9 consent of all property owners whose property is the subject of the down-zoning
10 ~~amendment~~ amendment, unless the down-zoning amendment is initiated by the local
11 government.

12 (e) For purposes of this section, "down-zoning" or "down-zone" means a zoning
13 ~~ordinance~~ regulation that affects an area of land in one of the following ways:

- 14 (1) By decreasing the development density of the land to be less dense than was
15 allowed under its previous usage.
- 16 (2) By reducing the substantive permitted uses of the land that are specified in a
17 zoning ordinance ~~or land development regulation~~ to fewer uses than were
18 allowed under its previous usage.
- 19 (3) ~~By creating any type of nonconformity on land not in a residential zoning~~
20 ~~district, including a nonconforming use, nonconforming lot, nonconforming~~
21 ~~structure, nonconforming improvement, or nonconforming site element."~~

22 **SECTION 11.(b)** This section is effective when it becomes law and applies
23 retroactively to December 11, 2024. Any development ordinance affected by Section 3K.1 of
24 S.L. 2024-57 shall be treated as if it remained in effect from June 14, 2024, to December 11,
25 2024.

26 **SECTION 12.** Except as otherwise provided, this act is effective when it becomes
27 law and applies to any nonconformity existing on or after December 11, 2024.