

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025**

S

2

**SENATE BILL 587
Second Edition Engrossed 5/7/25**

Short Title: Clarify Nonconforming Uses. (Public)

Sponsors: Senators Lazzara and Sawrey (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 26, 2025

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.



(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:

1 "(d) A city council which receives a petition for annexation under this section may by
2 ordinance require that the petitioners file a signed statement declaring whether or not vested
3 rights with respect to the properties subject to the petition have been established under
4 ~~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
5 the statement declares that such rights have been established, the city may require petitioners to
6 provide proof of such rights. A statement which declares that no vested rights have been
7 established under ~~G.S. 160D-108 or G.S. 160D-108.1.~~ G.S. 160D-108, G.S. 160D-108.1, or
8 G.S. 160D-108.2 shall be binding on the landowner and any such vested rights shall be
9 terminated."

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

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

21 **SECTION 10.(a)** G.S. 160D-601, as amended by Section 3K.1(a) of S.L. 2024-57
22 reads as rewritten:

23 "**§ 160D-601. Procedure for adopting, amending, or repealing development regulations.**

24 ...

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

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

- 32 (1) By decreasing the development density of the land to be less dense than was
33 allowed under its previous usage.
- 34 (2) By reducing the substantive permitted uses of the land that are specified in a
35 zoning ~~ordinance or land development~~ regulation to fewer uses than were
36 allowed under its previous usage.
- 37 (3) ~~By creating any type of nonconformity on land not in a residential zoning~~
38 ~~district, including a nonconforming use, nonconforming lot, nonconforming~~
39 ~~structure, nonconforming improvement, or nonconforming site element."~~

40 **SECTION 10.(b)** This section is effective when it becomes law and applies
41 retroactively to December 11, 2024. Any development ordinance affected by Section 3K.1 of
42 S.L. 2024-57 shall be treated as if it remained in effect from June 14, 2024, to December 11,
43 2024.

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