

# MEMO



**To: McDowell County Board of Commissioners**

**From: Ronald Harmon**

**Subject: Chapter 160 D**

**Date: June 1, 2021**

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In 2019 the General Assembly adopted the complete reorganization of the states planning and development regulations. The new Chapter 160 D consolidates the previous city and county enabling statute into a single unified chapter. This recodification effort comes with required changes to land use development ordinances. Many of the county ordinances only require that the reference to the enabling statute is changed to reflect 160D. In those instances, none of the actual development criteria are changed, thus a public hearing is not required.

The Zoning and Historic Preservation Ordinances do have changes to wording, and thus require a public hearing to adopt those changes.

The Historic Preservation Ordinance has three minor wording changes, they are as follows:

- Section 4 Item A: change the wording from special use permit to conditional use permit.
- Section 11 Item A & B: Strike the word guidelines.

The Zoning Ordinance has several significant changes as required with the 160D update, those changes are as follow:

- Reference to enabling statute have been changed to 160D throughout the entire document.
- Staff must maintain paper and digital copies of zoning maps. This item is complete.
- Conditional Use permits are now known as special Use permits. All references to Conditional Use have been changed to Special Use in the document.
- Zoning permit application has been changed to reflect needed changes for 160D.
- **1402.02 Approval Procedures:** Item 5 was added reading "Applicants will not be required to wait for final action on the proposed changes before proceeding if the applicant elected determination under prior rules. (There is no pending zoning determinations under the prior rules at this time)
- **1402.03 Duration of Vested Rights** Item 1: A right that has been vested as provided in this Section shall remain vested for a period of two years *to five years. Multi-phase developments, long term projects of at least 25 acres, have vesting rights for up to 7 years, except for specified exceptions.*
- **1402.03 Duration of Vested Rights** Item 2: Upon issuance of a building permit, *which is*

*valid for 6 months*, the expiration provisions of G.S. 133A - 358 and the revocation provisions of G.S. 133A - 362 shall apply; except that a building permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

- **Section 1501.01 Conflict of Interest Standards: 1501.01 Conflict of Interest Standards.** *No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a city local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.*
  
- **1503 Application Procedure:** In order for an applicant to obtain permission to commence construction or alterations on a proposed development activity, he shall seek a compliance permit in accordance with this section, except those exempt uses listed in Section 70 herein. An applicant seeking a compliance permit in any use district shall be required to adhere to the application procedures prescribed herein. *A local government must be a party to a development agreement. A water and sewer authority may enter an agreement as a party, but not independently.*
  
- **1506 Issuance of Compliance Permit:** The Planning Administrator shall issue a compliance permit *either electronically that has been protected from further editing or via print*, in conjunction with a building permit, if necessary, for any approved use or structural alteration, provided such proposed use of land or structure, or structural alteration, is in compliance with the provisions set forth herein. • The compliance permit shall indicate the terms of compliance and shall be conspicuously posted and displayed on the premises during the period of construction or reconstruction. A compliance permit must be obtained from the Planning Administrator prior to the issuance of a building permit by the building inspector. The compliance permit shall be issued only after all appropriate federal, state, and local permit or license requirements are met. *All permits must be made by a person with a interest in the property or a contract to purchase the property. During inspections, the Planning Administrator will enter the premises during reasonable hours and upon presenting credentials, consent of the premise's owner or an administrative search warrant will be acquired to inspect areas that are not open to the public.*

- **1602.03** The Board of Adjustment shall consider the proposed request after notice and a public hearing and shall take action on the proposed request within sixty (60) days from the date of the public hearing. This hearing may be combined with the Planning Board public hearing. *Written public notices for the hearing will be sent to immediate neighbors and properties separate from the subject property by street, railroad, or other transportation corridors. The public notices will be posted during the time running from twenty-five days before the hearing until ten days before the hearing.*
- **1602.07** *When adopting a variance, members must also adopt a brief statement describing whether the action is consistent or inconsistent with approved plans (G.S. 160D-605(a)). Members must also note on the future land use map when a variance is approved that is not consistent with the map; the future land use map is deemed amended when an inconsistent rezoning is approved.*

### **Section 1603 Appeals Procedure:**

- The Board of Adjustment shall fix a reasonable time for the hearing of appeals referred to it and shall consider appeals after notice and a public hearing and decide the same within thirty (30) days from the date of such public hearing.
- The Planning Administrator (or his or her successor) who made the decision being appealed will be required to appear as a witness in the appeal.
- All enforcement actions, including fines, related to the specific appeal will be paused during the appeal process

### Section 1702 Board of Adjustments

#### **10. Conflict-of-Interest.**

- Governing board. A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.*
- Appointed boards. Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily*

*identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.*

- c. *Quasi-judicial decisions. A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.*
  - d. *Resolution of Objection. If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.*
  - e. *Familial relationship. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.*
11. *Members will be required to take an oath of office prior to joining the Board of Adjustment. (Currently in practice)*

**1702.03 Duties and Powers. The Board of Adjustment:**

*The Board of Adjustment hearings will be evidentiary hearings intended to gather competent material and substantial evidence to establish the facts of the case. The evidentiary hearing must have testimony under oath and must establish written findings of fact and conclusions of law.*

*The Board of Adjustment will allow parties withstanding to participate fully in the evidentiary hearing; including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments. They may allow non-parties to present competent material and substantial evidence that is not repetitive.*

**Section 1703 The Planning Board**

The Planning Board shall serve in the advisory capacity to the Board of Commissioners and the Board of Adjustment in the administration of this ordinance. Specifically, the Planning Board will have the following responsibilities:

1703.01 Review applications for any amendments to this ordinance and make recommendations to the Board of Commissioners as necessary and in accordance with Section 1601 herein.

1703.02 Review and make comments and/or recommendations on special matters referred to the Planning Board by the Board of Commissioners or the Board of Adjustment as required in this ordinance or for the purpose of carrying out the intent of this ordinance.

1703.03 Consider any plan adopted according to G.S. 160D-501 when commenting on plan consistency.

### **1803 Violations**

1803.04 Procedures Upon Discovery of Violation. Upon the determination that any provision of this ordinance is being violated, the Planning Administrator shall send, within five (5) working days, *a written notice of violation to the permittee and landowner if different and/or the occupant or person undertaking the activity. The notice of violation will be delivered either by registered mail, by hand, email, or posted onsite. The violation will indicate the nature of the violation and ordering the action necessary to correct it.* Additional written notices may be sent at the Planning Administrator's discretion.

If you have any questions regarding the changes, please do not hesitate to contact me.