

Dealing with NCGS 160D-601(d) Downzoning Prohibitions

October 2025 – version 3

These slides are prepared to assist local governments in maintaining compliance with NCGS§160D-601(d) (as it existed on 12.21.24) during and after government-initiated zoning text and zoning map amendments



NCGS§160D-601(d)

- This slide shows a portion of the current statutory language in NCGS§160D-601

- Paragraph (d) includes the downzoning language added by the General Assembly on 12.21.24
(the subject of this material)

Article 6.

Development Regulation.

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

(a) Hearing with Published Notice. – Before adopting, amending, or repealing any ordinance or development regulation authorized by this Chapter, the governing board shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) Notice to Military Bases. – If the adoption or modification would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the hearing. If the commander of the military base provides comments or analysis regarding the compatibility of the proposed development regulation or amendment with military operations at the base, the governing board of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance.

(c) Ordinance Required. – A development regulation adopted pursuant to this Chapter shall be adopted by ordinance.

(d) Down-Zoning. – No amendment to zoning regulations or a zoning map that down-zones property shall be initiated, enacted, or enforced without the written consent of all property owners whose property is the subject of the down-zoning amendment. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

- (1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.
- (2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.
- (3) By creating any type of nonconformity on land not in a residential zoning district, including a nonconforming use, nonconforming lot, nonconforming structure, nonconforming improvement, or nonconforming site element. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 12, 50(a), 51(a), (b), (d); 2024-57, s. 3K.1(a).)



INTRODUCTION

- This information is prepared for local governments who are considering *government-initiated* zoning text amendments or zoning map amendments, particularly as part of larger code re-writes.
- The recent changes to NCGS160D-601(d) **do not** bar a local government from preparing, adopting, or enforcing zoning text or zoning map amendments.
- The recent changes **do** require a local government to secure prior consent from all affected landowners before adoption of a proposed zoning text or zoning map amendment that will:
 1. **Lower the allowable residential density of land;**
 2. **Reduce the range of permitted uses in a zoning district; or**
 3. **Create a nonconforming situation on developed land in a non-residential zoning district.**
- Government-initiated zoning text or zoning map amendments that avoid all three above conditions **do not** require prior consent from landowners.
- These suggestions make a distinction between the initiation and adoption of zoning text or zoning map amendments and the rules that apply to the redevelopment or alteration of existing development after amendment adoption (see Part V for more details).

TOPIC AREAS

I. Amendments that Affect Density

II. Amendments that Affect Allowable Uses

III. Amendments that Create Nonconformities

IV. Managing Consent

V. Post-Amendment Redevelopment or Alteration

Information is organized into one of five topic areas shown on the left

Topic areas I-III list a range of potential zoning text or map amendments and if prior landowner consent is required

Topic area V establishes a strategy for interpreting the requirements **after** a potential zoning text or map amendment is adopted



I. DENSITY AMENDMENT SCENARIOS

Part I sets out the issues for consideration for local government-initiated zoning text or map amendments that result one of the following 4 density change scenarios:

1.

Amendment
Changes
Density in
Existing
Zoning
District(s)*

2.

Amendment
Creates a
New Zoning
District(s)

3.

Amendment
Consolidates
Two or More
Existing
Districts

4.

Amendment
Changes
Dimensional
Standards

* As applied to gross or net density. There may be additional flexibility for changes that impact effective density in a zoning district.

Gross Density: The total number of dwelling units divided by the gross land area of a site.

Net Density: The total number of dwelling units divided by the net developable land area of a site (excluding required rights-of-way, open space, floodplains, steep slopes, land reservations, and similar unbuildable areas).

Effective Density: The actual or functional number of dwelling units that may be developed upon a certain lot or site after accounting for unbuildable lands, applicable dimensional requirements, automatic incentives, allowances for preferred use types, or other provisions that indirectly impact total development potential.

I.1 DENSITY AMENDMENT SCENARIOS

1. Amendment Changes Density in Existing Zoning District(s)

- a. Any zoning text or map amendment that *increases* the allowable density within an existing base or overlay zoning district **does not** require prior landowner consent.
- b. Any zoning text or map amendment that *lowers or removes* the allowable density (whether gross or net density*) within an existing base or overlay zoning district **does** require prior landowner consent.
- c. Any zoning text or map amendment that lowers the allowable density within an existing *but unmapped* base or overlay zoning district **does not** require prior landowner consent.

* Gross Density: The total number of dwelling units divided by the gross land area of a site.

Net Density: The total number of dwelling units divided by the net developable land area of a site (excluding required rights-of-way, open space, floodplains, steep slopes, land reservations, and similar unbuildable areas).

I.2 DENSITY AMENDMENT SCENARIOS

2. Amendment Creates a New Zoning District(s)

- a. Any zoning text or map amendment creating a new zoning district that is simply made available for a landowner to request rather being *proactively applied* to any land **does not** require prior landowner consent.
- b. Conditional zoning districts approved with a condition allowing a local government to initiate a *reversion* of the approval (and thereby lower the district's allowable density) may be initiated **without** additional landowner consent.*

* Zoning text or map amendments of this nature (“reversion amendments”) are commonly used when two or more years have lapsed since initial approval of a conditional rezoning application and no substantial progress on subsequent required permits or on completing the anticipated development has been made.

I.3 DENSITY AMENDMENT SCENARIOS

3. Amendment Consolidates Two or More Existing Districts

- a. Any zoning text or map amendment that consolidates two or more existing base or overlay zoning districts into a single zoning district with the *same or higher* allowable density than each of the prior districts **does not** require prior landowner consent.
- b. Any zoning text or map amendment that consolidates two or more existing base or overlay districts into a single zoning district with a *lower* allowable density (whether gross or net) than existed in any of the prior districts **does** require prior consent from the landowners whose density is reduced.
- c. While untested, it may be possible to adopt a zoning text or map amendment that consolidates two or more existing base or overlay zoning districts into a single zoning district with a *lower* allowable gross density **without** obtaining prior consent from landowners if the amendment also includes a means for the affected landowners to automatically obtain a *higher effective* density in the new district.*

* Effective density could be automatically increased through the landowner's voluntary provision of preferred dwelling unit types, like affordably-priced dwelling units. If this approach is explored, suggest ensuring gross density reductions are minimal (less than 10%) and effective density increases surpass allowable gross or net densities that were in place prior to the amendment by at least 10%.

I.4 DENSITY AMENDMENT SCENARIOS

4. Amendment Changes Dimensional Standards

- a. Any zoning text or map amendment that changes required dimensional standards in ways that *increase* the allowable density (whether gross, net, or effective) in a base or overlay zoning district **does not** require prior landowner consent.
- b. Any zoning text or map amendment that changes required dimensional standards in ways that *lower* the allowable density (whether gross or net) in a base or overlay zoning district **does** require prior landowner consent.
- c. Any zoning text or map amendment that changes dimensional standards in ways that lower the allowable density within an existing *but unmapped* base or overlay zoning district **does not** require prior landowner consent.
- d. Any zoning text or map amendment that changes dimensional standards in ways that *do not affect* allowable density (whether gross or net) in a base or overlay zoning district **does not** require prior landowner consent.*

* Local governments should be mindful that such changes could create nonconformities, and when nonconformities result on lots in a non-residential district with existing or approved development, prior landowner consent is required

II. USE AMENDMENT SCENARIOS

Part II sets out the issues for consideration for local government-initiated zoning text or map amendments that result one of the following 5 use change scenarios:

1.
Existing
Use*
Removed

2.
New Use
Added

3.
Use Review
Procedure
Changed

4.
Existing
Uses
Combined
into a Single
New Use

5.
Existing
Single Use
Divided into
Two or More
New Uses

* Land uses may take the form of a principal, accessory (“secondary”), or temporary use. The limitations in NCGS§160D-601(d) apply to all use types, including accessory and temporary uses.

Principal Use: The primary or dominant activity or purpose for which a lot or structure is designed, arranged, intended, or occupied.

Accessory Use: A use or activity that is incidental to, subordinate to, and customarily associated with the principal use or structure on the same lot.

Temporary Use: A short-term use, activity, or structure permitted for a limited time that does not result in permanent structures or improvements.

II.1 USE AMENDMENT SCENARIOS

1. Existing Use Removed

- a. Any zoning text or map amendment that removes an existing allowable land use from a base or overlay zoning district **does** require prior consent from all landowners in the affected zoning district(s).*
- b. Conditional zoning districts approved with a condition allowing a local government to initiate a *removal* of an otherwise allowable land use may be initiated **without** additional landowner consent.
- c. While untested, prior landowner consent is **not required** for a zoning text or map amendment that removes an existing allowable land use from a base or overlay district in response to changes in *State or federal* laws.**

* Consent is required even if the land use in question is not physically present in the local government's jurisdiction at the time of the amendment.

** For example, it is not uncommon for changes in flood damage prevention or water supply watershed protection standards to prohibit uses like accessory dwelling units in the floodplain or waste-related uses in watersheds.

II.2 USE AMENDMENT SCENARIOS

2. New Use Added

- a. Any zoning text or map amendment that adds a new use type to an existing base or overlay zoning district **does not** require prior landowner consent.
- b. New uses may be configured as a principal, accessory, or temporary use type.

II.3 USE AMENDMENT SCENARIOS

3. Use Review Procedure Changed

- a. Any zoning text or map amendment that changes the review procedure required to establish a land use in a particular district from a special use permit or a special exception to a *by-right* approval **does not** require prior landowner consent.
- b. Any zoning text or map amendment that adds the ability to accommodate a particular established use through establishment of a parallel conditional zoning district in addition to other existing review procedures **does not** require prior landowner consent.
- c. While untested, it may be possible for a zoning text or map amendment to change the review procedure for an established use from a *by-right* use to one that requires approval of a *special use permit* **without** prior landowner consent (because the use type in question is still a permitted use).*

* In cases where the use in question already exists on a lot in a non-residential zoning district, it is necessary to allow such existing uses to continue operation without need of obtaining a special use permit after the amendment. The ability to operate without obtaining a special use permit is also suggested (but not mandatory) for existing uses on lots in residential zoning districts.

II.4 USE AMENDMENT SCENARIOS

4. Existing Uses Combined into a Single New Use

- a. Any zoning text or map amendment that combines two or more existing use types into a single new consolidated use and makes that use allowable in *all* the same existing base or overlay districts where the individual uses types were allowed **does not** require prior landowner consent.*
- b. Any zoning text or map amendment that combines two or more existing use types into a single new consolidated use but makes that use allowable in *fewer* existing base or overlay districts than when the use types were not consolidated **does** require prior consent from the landowners where the use is no longer allowed.

* While untested, it may be possible for a zoning text or map amendment to change the review procedure for an established use from a by-right use to one that requires approval of a special use permit without prior landowner consent (because the use type in question is still a permitted use).

II.5 USE AMENDMENT SCENARIOS

5. Existing Single Use Divided into Two or More New Uses

- a. Any zoning text or map amendment that divides an existing single use into two or more different use types that remain allowable in *all* existing base or overlay zoning districts where the prior use was allowed **does not** require prior landowner consent.*
- b. Any zoning text or map amendment that divides an existing single use into two or more different use types that are allowable in *fewer* existing base or overlay zoning districts where the prior consolidated use was allowed **does** require prior landowner consent in the districts where the uses are no longer allowed.*
- c. While untested, any zoning text or map amendment that converts an existing principal use into an accessory use that remains allowable in all existing *residential* base or overlay zoning districts where the prior principal use was allowed **does not** require prior landowner consent (because the use type in question is still a permitted use).**

* For example: A development code may include a use type called a “kennel” that becomes the subject of a text amendment to split the kennel use up into individual animal boarding, animal grooming, and animal day care use types.

** This provision constitutes a downzoning when applied to existing principal use conversions on lots in non-residential districts since accessory uses often have standards pertaining to reduced size or intensity as compared to the same use type serving as a principal use.

III. NONCONFORMITY SCENARIOS

Part III sets out the issues for consideration for local government-initiated zoning text or map amendments that result one of the following 3 nonconformity creation scenarios:*

1.
Changes to
Dimensional
Standards

2.
Changes to
Use
Standards

3.
Changes to
Development
Standards

* Nonconformities can include any of the following four situations:

Nonconforming Use: A land use that was permitted under prior regulations but is now prohibited in the zoning district (e.g., a commercial use in a non-residential zoning district that has since been rezoned to a residential district).

Nonconforming Structure: A building or structure that doesn't meet current dimensional standards (setbacks, height, lot coverage, etc.) but was lawful when built.

Nonconforming Lot: A parcel of land that was lawfully-established but that does not meet current dimensional requirements.

Nonconforming Site Feature: A site feature (parking, landscaping, signage, etc.) or building design feature that was lawfully-established, is not in violation, but is no longer consistent with current standards applied to new development or redevelopment.

III.1 NONCONFORMITY SCENARIOS

1. Changes to Dimensional Standards

- a. Any zoning text or map amendment that changes dimensional standards applied to existing development or vacant lots in a *residential* base district **does not** require prior landowner consent even if the amendment creates nonconformities.*
- b. Any zoning text or map amendment that changes dimensional standards applied to vacant lots in a *non-residential* base district **does not** require prior landowner consent even if the amendment creates nonconformities.*
- c. Any zoning text or map amendment that changes existing dimensional standards in ways that increase development potential on lot in a residential or non-residential base district **does not** require prior landowner consent.**
- d. Any zoning text or map amendment that changes dimensional standards applied to pre-existing development on lots in a non-residential base district in ways that *create* nonconformities **does** require prior consent from affected landowners.

* Amendments to existing dimensional standards that lower allowable density (gross or net) **do** require prior landowner consent, regardless of whether the base zoning district is residential or non-residential.

** Residential districts typically include the word “residential” in the district name, are intended primarily for residential use types, and are intended to maintain residential character.

III.2 NONCONFORMITY SCENARIOS

2. Changes to Use Standards*

- a. Any zoning text or map amendment that increases use standards applied to existing development or vacant lots in a *residential* base district **does not** require prior consent from affected landowners even if the amendment creates nonconformities.**
- b. Any zoning text or map amendment that decreases use standards applied in *any* base zoning district **does not** require prior consent from affected landowners provided the amendment does create nonconformities for pre-existing development on lots in a non-residential base zoning district.**
- c. Any zoning text or map amendment that increases use standards applied to pre-existing development on lots in a *non-residential* base district **does** require prior consent from affected landowners.
- d. Any zoning text or map amendment that *reclassifies* an existing allowable principal use to an accessory or temporary use **does** require prior consent from affected landowners in zoning districts where the principal use was allowed.

* A use standard is a requirement applied to a specific use type regardless of the zoning district where it is located or the procedure used to establish it.

** Amendments to existing use standards that lower allowable density (gross or net) or that reduce the range of allowable principal uses **do** require prior consent from affected landowners.

III.3 NONCONFORMITY SCENARIOS

3. Changes to Development Standards

- a. Any zoning text or map amendment that *decreases* development standards applied to lots or development in any base zoning district **does not** require prior landowner consent.*
- b. Any zoning text or map amendment that *increases* development standards applied to *vacant lots* or *existing development* in an existing residential base zoning district **does not** require prior landowner consent.
- c. Any zoning text or map amendment that *increases* development standards applied to *vacant* lots in an existing non-residential base zoning district **does not** require prior landowner consent.
- d. Any zoning text or map amendment that *increases* development standards applied to pre-existing development on lots in an existing non-residential base zoning district **does** require prior landowner consent.

* A development standard is a set of regulations that govern the physical layout, design, and operation of land and development on the land, including structures, uses, and site configuration features like landscaping, parking areas, signage, open space, stormwater, access, and related site features. Development standards are typically applied to all identified forms of development regardless of use type or zoning district where located (though development standards may differ by type of use, time of establishment, or zoning district where established).

IV. MANAGING CONSENT

- The recent changes to NCGS§160D-601(d) require local governments to secure prior consent from all affected landowners before adoption of a government-initiated zoning text or map amendment that will:
 - 1. Lower the allowable residential density of land;**
 - 2. Reduce the range of permitted uses in a zoning district; or**
 - 3. Create a nonconforming situation on developed land in a non-residential zoning district.**
- Local governments should clarify, in their development regulations, that consent, when granted, runs with the land and may not be rescinded.
- Nonconformities that existed *prior to* 6-14-24 do not require consent, but nonconformities on a lot in a non-residential zoning district created after 6-14-24 do require prior landowner consent - local governments must now keep track of what nonconformities require consent, and which ones do not.

IV. MANAGING CONSENT (continued)

- All local governments should update their development applications to add statement indicating that “*signature by an applicant means they consent to abide by all applicable standards in the ordinance.*”
- Local governments with conditional rezoning or planned developments established through a rezoning process should begin including relevant conditions of approval that permit government-initiated reversion if the development is not commenced within two years from approval.
- Downzonings resulting from changes in State or federal law (e.g., flood damage prevention or water supply watershed rules) likely do not require prior consent based on the concept of supreme sovereignty.*

* While untested, it is possible that amendments necessary to implement a State-approved approved CAMA plan do not require consent even if they result in a downzoning since the amendments result from changes in State law (CAMA plans are State law).

V. POST-AMENDMENT REDEVELOPMENT

Part V of this material offers the following six observations for local governments initiating zoning text or map amendments:

1. Passage of SB382 means that local governments must distinguish between nonconformities existing prior to 6-14-24 and those created after 6-14-24. In addition, consent required for downzoning after 6-14-24 must also be tracked.
2. Securing consent from affected landowners could prove a very difficult endeavor, particularly in cases where an entire development ordinance is being re-drafted and consent for changes from a significant portion of the community becomes necessary.
3. Local governments may, for reasons of practicality, seek to avoid the need for obtaining consent. This strategy could lead local governments to avoid updating their development regulations or update their regulations in only minimal ways despite changes in societal or economic conditions.

V. POST-AMENDMENT REDEVELOPMENT

4. Or, as an alternative to only minimal regulatory updates, local governments may instead choose to adopt amendments that apply solely to new development.
5. Maintaining a strategy of limiting zoning text or map amendments solely to new development over a period of years could result in a situation where a local government has a series of different sets of rules that apply to the same zoning district, use type, or development standard where the differences between the sets of rules are based solely on when the development was proposed.
6. This situation is likely to create confusion for landowners, complicate ordinance administration, interfere with economic development, and may be contrary to the rules of due process and equal protection. It is unreasonable to expect a local government or the local development community to keep up with ever-expanding sets of development regulations that differ based upon the year development was proposed.

V. POST-AMENDMENT REDEVELOPMENT

To address these observations, we suggest the following approach for local governments initiating zoning text or map amendments going forward:

- A. Grant amnesty for existing nonconformities and abolish all nonconforming status in place on June 14, 2024, except for existing development that is not in compliance with State or federal law;
- B. Clarify that there are no more nonconformities except those relating to development that is out of compliance with State law, federal law, or that have granted consent to be nonconforming;
- C. Clarify that development that is existing at the time of zoning text or map amendment adoption may remain as it is in perpetuity, and may be rebuilt as it existed at the time of amendment adoption regardless of damage or destruction;

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V. POST-AMENDMENT REDEVELOPMENT

- D. Ensure that zoning text and map amendments to density and allowable uses that require prior landowner consent are avoided to the maximum possible extent;
- E. “Lean-in” to zoning text and map amendments that establish new zoning districts and permitted changes to allowable densities, dimensional standards, uses, and development standards in ways that do not require prior consent;
- F. Supplement purpose and intent statements to clarify that zoning text and map amendments are focused on protection of public health and safety, protection of all property values (including properties abutting proposed development), promoting reasonable compatibility between use types, and ensuring efficient governmental operations;

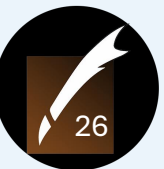
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V. POST-AMENDMENT REDEVELOPMENT

- G. Clarify that, following zoning text or map amendment adoption, if a landowner chooses to redevelop, expand, or alter existing development, the redevelopment, expansion, or alteration must come into compliance with all the rules in place at the time of the application;***
- H. If the existing redevelopment, expansion, or alteration can not reach compliance, then the remedy is to rezone, utilize the conditional zoning or planned development process, or obtain a variance;
- I. Continue to apply flexibility mechanisms and incentives to assist redevelopment or alterations with reaching compliance with the rules in place at the time of application where possible;

* conditional rezonings and planned developments would continue to comply with their master plans and conditions of approval

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V. POST-AMENDMENT REDEVELOPMENT

- J. The regulations will have to allow for development to take place on vacant lots of record that do not meet minimum lot area, lot width, or lot coverage requirements based on the zoning district where located (though necessary deviations in other dimensional standards may be subject to flexibility provisions or variance requirements); and
- K. There must be special provisions for the replacement of signage that allow existing signage to be replaced as it existed prior to the redevelopment, expansion, or alteration in accordance with NCGS§160D-912.1. In cases where an applicant seeks instead to follow the regulations for signage in place at the time of application for redevelopment, expansion, or alteration, they may do so, but in so doing, extinguish the rights to comply with the signage rules in place prior to the application submittal.

V. POST-AMENDMENT REDEVELOPMENT

Local governments who employ these strategies can avoid the need to seek compliance since downzoning is avoided by not changing densities or limiting allowable uses and avoiding applying changes in development standards in ways that create nonconformities.

The abolition of pre-existing nonconformities in place on 6/14/24 removes the need to have parallel sets nonconformities to track.

The allowance for pre-existing development to maintain its current form and configuration avoids creating nonconformities while the requirement for any redevelopment, alteration, or expansion to comply with the rules in place at the time of adoption avoids the need to maintain multiple sets of development standards over time.

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