

Article 80.

Permit Choice.

§ 143-755. Permit choice.

(a) If a development permit applicant submits a permit application for any type of development and a rule or ordinance is amended, including an amendment to any applicable land development regulation, between the time the development permit application was submitted and a development permit decision is made, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. If an applicable rule or ordinance is amended after the development permit is wrongfully denied or after an illegal condition is imposed, as determined in a proceeding challenging the permit denial or the condition imposed, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application. Provided, however, any provision of the development permit applicant's chosen version of the rule or ordinance that is determined to be illegal for any reason shall not be enforced upon the applicant without the written consent of the applicant.

(b) This section applies to all development permits issued by the State and by local governments.

(b1) If a permit application is placed on hold at the request of the applicant for a period of six consecutive months or more, or the applicant fails to respond to comments or provide additional information reasonably requested by the local or State government for a period of six consecutive months or more, the application review is discontinued and the development regulations in effect at the time permit processing is resumed apply to the application.

(c) Repealed by Session Laws 2015-246, s. 5(a), effective September 23, 2015.

(d) Any person aggrieved by the failure of a State agency or local government to comply with this section or G.S. 160D-108(b) may apply to the appropriate division of the General Court of Justice for an order compelling compliance by the offending agency or local government, and the court may issue that order. Actions brought pursuant to any of these sections shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts.

(e) For purposes of this section, the following definitions apply:

(1) Development. – Without altering the scope of any regulatory authority granted by statute or local act, any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. Excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S. 160D-802.
- d. The initiation of substantial change in the use of land or the intensity of the use of land.

(2) Development permit. – An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a

specific activity, project, or development proposal, including any of the following:

- a. Zoning permits.
- b. Site plan approvals.
- c. Special use permits.
- d. Variances.
- e. Certificates of appropriateness.
- f. Plat approvals.
- g. Development agreements.
- h. Building permits.
- i. Subdivision of land.
- j. State agency permits for development.
- k. Driveway permits.
- l. Erosion and sedimentation control permits.
- m. Sign permit.

(3) Land development regulation. – Any State statute, rule, or regulation, or local ordinance affecting the development or use of real property, including any of the following:

- a. Unified development ordinance.
- b. Zoning regulation, including zoning maps.
- c. Subdivision regulation.
- d. Erosion and sedimentation control regulation.
- e. Floodplain or flood damage prevention regulation.
- f. Mountain ridge protection regulation.
- g. Stormwater control regulation.
- h. Wireless telecommunication facility regulation.
- i. Historic preservation or landmark regulation.
- j. Housing code. (2014-120, s. 16(a); 2015-246, s. 5(a); 2019-111, s. 1.1; 2020-25, s. 2.)

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