

Summary of NCGS 160D Updates to the Town of Boiling Springs Subdivision and Zoning Ordinances

Benchmark has completed our initial review of the Town's Zoning and Subdivision Ordinances to identify amendments to bring them into compliance with NCGS 160D, as required prior to July 1, 2021. A summary of the proposed amendments is listed below for each ordinance. In reviewing the ordinances, it was noted that there are relatively few required changes compared to other ordinances that we have reviewed in preparation for amendment to comply with 160D. In particular, the Subdivision Ordinance had very few needed changes.

Very few updates are needed for the Subdivision Ordinance, but there are several updates to take note of. First, an amendment is proposed to clarify that an appeal of the Planning Board's decision on a subdivision plat will go to Superior Court vs. being heard by the Board of Commissioners. The definition of a subdivision was updated to match statutory language and a new class of "expedited" minor subdivisions was added to conform to a relatively new statutory requirement. The other major updates in the subdivision ordinance focused primarily on several proposed changes to the way in which improvements are guaranteed. The terminology, the initial term of improvement guarantees, the amount of the guarantee, and the way in which warranties of installed improvements are handled were all updated.

The most obvious change to the Zoning Ordinance will be the transfer from the current Conditional Use District zoning procedure to legislative Conditional Zoning. All previously approved Conditional Use Districts will automatically translate into Conditional Districts, including the approved development and use conditions attached to each. If amendment of such previously approved district is requested in the future, such amendment would follow the legislative process for zoning map amendments.

Going forward, applications for new "conditional" zoning districts will also follow the general legislative zoning map amendment process without the requirement to simultaneously apply for and receive a Conditional Use Permit through a parallel quasi-judicial process. Overall, this should improve the ability of the Planning Board, Board of Commissioners, staff, and applicants to negotiate the terms of complex development projects without the concern of running afoul of the ex parte communication, due process, and evidentiary rules surrounding the quasi-judicial process.

Other major changes proposed in the zoning ordinance to comply with NCGS 160D mandates include a change in terminology from "Conditional Use Permit" to "Special Use Permit" as required by statute, several updates to definitions to match statutory and NC Building Code definitions, and setting the period of validity for a zoning permit to one year vs. the current 180 days. The definitions for mobile homes have been changed to remove reference to a specific year, which is no longer permitted. Extraneous language regarding protest petitions is removed since they are no longer authorized by statute. Changes were also made to the Board of Adjustment language to clarify voting requirements and required findings for variances.

The following is a more in-depth overview of the amendments that are proposed. We have provided the Town with separate documents that contain only the affected pages of the ordinances with amendments shown in redline updates, a document that contains the full ordinances with redline changes, and a clean copy of the updated ordinances incorporating the proposed amendments.

Subdivision Ordinance Updates

1. **Statutory References:** Updated all references to NCGS 160D sections from NCGS 160A that have been moved to the new GS Chapter.
2. **Subdivision Definition:** Updated to match the statutory language on what constitutes an exemption from subdivision regulation. 160D-802
3. **Expedited Plat:** Added in standards for an expedited review and approval of certain minor subdivision, as required by statute. 160D-802(c)
4. **Appeals:** Updated language to conform with statutory requirement for appeals of the Planning Board's decision on a subdivision plat to go to Superior Court vs. the Board of Commissioners. 160D-1403
5. **Standards for Utilities:** Amend language to conform to statutory language prohibiting the Town to require that existing electric utilities be placed underground if they existed above ground at the time of approval and are located outside of the boundary of the parcel containing the proposed subdivision. 160D-804
6. **Guarantee of Required Improvements (160D-804.1):** Updated various aspects of this section, including:
 - a. Changing nomenclature from "financial guarantee" to performance guarantee to conform to statutory terminology
 - b. Adding in additional language to describe the statutorily authorized forms of guarantee
 - c. Increasing the amount of the guarantee to the statutory maximum 125% of estimated cost
 - d. Changing the term of the initial guarantee to one year, as required in statute
 - e. Removing the maximum term of a guarantee to conform to statute
 - f. Modifying the warranty language to remove the requirement for posting a financial security, which likely runs afoul of the statutory requirement that performance guarantees may only be used for "completion" vs. "maintenance"

Zoning Ordinance Updates

1. **Statutory References:** Updated all references to NCGS 160D sections from NCGS 160A that have been moved to the new GS Chapter.
2. **Building Definition:** Amend to correspond to NC Building Code definition: *Any structure used or intended for sheltering any use or occupancy.* 160D-706
3. **Dwelling Unit Definition:** Amend to correspond to NC Building Code definition: *A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.* 160D-706
4. **Landowner Definition:** Amend to correspond to statutory definition: *The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.* 160D-102
5. **Mobile Home Definitions:** Amend to remove date references. 160D-910
6. **Conditional Use Definition:** Changed definition to Special Use
7. **Conditional Uses / Conditional Use Permits:** Changed all terminology to Special Uses / Special Use Permits.
8. **Underground Electric Utilities:** Add language clarifying that the Town cannot require the burying of above ground electric utilities that are in existence at the time of development approval and are located outside of the parcel(s) containing the proposed development. 160D-804
9. **Conditional Use Districts:** Amend procedures to follow legislative Conditional Zoning procedures, specify that all previously approved Conditional Use Districts will transition to legislative Conditional Zoning Districts on the effective date, and amend Conditional Use Districts to parallel Conditional Zoning Districts. 160D-703
10. **Official Zoning Map:** Amend to specify that prior versions of the map are maintained in the town's records. 160D-105
11. **Conditional Districts - Conditions:** Amend to provide that conditions must be agreed to by the applicant in writing.
12. **ETJ Representation:** Added in language requiring reapportionment after a decennial census. 160D-307

13. **Proceedings of the Board of Adjustment:** Amend to specify a 4/5 vote is required to grant a variance, while a simple majority is required to determine an appeal or any other matter that the Board of Adjustment is required to decide. 160D-406(i)
14. **Variances:** Updated variance standards to match statutory language per 160D-705(d)
15. **Down Zoning:** Add language specifying that a zoning map amendment that reduces the density or intensity of development may be initiated only by the Town OR the owner(s) of all property subject to such amendment. 160D-601
16. **Protest Petition:** Deleted provision which is no longer authorized by statute.
17. **Conflicts of Interest:** Added explicit ordinance language for the administrative staff to match the provisions of 160D-109.
18. **Vested Rights:** Changed the terminology from “site specific development plan” to site-specific vesting plan” to conform to statutory language. 160D-108.1
19. **Zoning Permit:** Amend to make zoning permits valid for a period of one year following their issuance. 160D-108(d)
20. **Table of Uses** – Amend the notation from a “c” to an “s” to indicate requirement for a Special Use Permit.