

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS55098-LR-31 (02/10)

Short Title: City/County Planning Clarification.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND MAKE TECHNICAL CHANGES TO CITY AND COUNTY PLANNING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-363 reads as rewritten:

"§ 160A-363. Supplemental powers.

(a) A city or its designated planning board may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning board with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning board for technical planning assistance.

(c) Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning board that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

1 (d) A city may elect to combine any of the ordinances authorized by law into a
2 unified ordinance. Unless expressly provided otherwise, a city may apply any of the
3 definitions and procedures authorized by law to any or all aspects of the unified
4 ordinance and may employ any organizational structure, board, commission, or staffing
5 arrangement authorized by law to any or all aspects of the ordinance."

6 **SECTION 2.** G.S. 153A-322 reads as rewritten:

7 **"§ 153A-322. Supplemental powers.**

8 (a) A county or its designated planning board may accept, receive, and disburse
9 in furtherance of its functions funds, grants, and services made available by the federal
10 government or its agencies, the State government or its agencies, any local government
11 or its agencies, and private or civic sources. A county, or its designated planning board
12 with the concurrence of the board of commissioners, may enter into and carry out
13 contracts with the State or federal governments or any agencies of either under which
14 financial or other planning assistance is made available to the county and may agree to
15 and comply with any reasonable conditions that are imposed upon the assistance.

16 (b) A county, or its designated planning board with the concurrence of the board
17 of commissioners, may enter into and carry out contracts with any other county, city,
18 regional council, or planning agency under which it agrees to furnish technical planning
19 assistance to the other local government or planning agency. A county, or its designated
20 planning board with the concurrence of the board of commissioners, may enter into and
21 carry out contracts with any other county, city, regional council, or planning board
22 under which it agrees to pay the other local government or planning board for technical
23 planning assistance.

24 (c) A county may make any appropriations that may be necessary to carry out an
25 activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A,
26 Article 19 or to support, and compensate members of, any planning agency that it may
27 create or designate pursuant to this Article.

28 (d) A county may elect to combine any of the ordinances authorized by law into a
29 unified ordinance. Unless expressly provided otherwise, a county may apply any of the
30 definitions and procedures authorized by law to any or all aspects of the unified
31 ordinance and may employ any organizational structure, board, commission, or staffing
32 arrangement authorized by law to any or all aspects of the ordinance."

33 **SECTION 3.** G.S. 160A-371 reads as rewritten:

34 **"§ 160A-371. Subdivision regulation.**

35 A city may by ordinance regulate the subdivision of land within its territorial
36 jurisdiction. In addition to final plat approval, the ordinance may include provisions for
37 review and approval of sketch plans and preliminary plats. The ordinance may provide
38 for different review procedures for differing classes of subdivisions. The ordinance may
39 be adopted as part of a unified development ordinance or as a separate subdivision
40 ordinance."

41 **SECTION 4.** G.S. 160A-373 reads as rewritten:

42 **"§ 160A-373. Ordinance to contain procedure for plat approval; approval**
43 **prerequisite to plat recordation; statement by owner.**

1 Any subdivision ordinance adopted pursuant to this Part shall contain provisions
2 setting forth the procedures to be followed in granting or denying approval of a
3 subdivision plat prior to its registration.

4 The ordinance may provide that final ~~approval of each individual subdivision plat is~~
5 ~~to be given by~~ decisions on preliminary plats and final plats are to be made by:

- 6 (1) The city council,
- 7 (2) The city council on recommendation of a ~~planning agency,~~ designated
8 body, or
- 9 (3) A designated ~~planning agency board,~~ technical review committee, or
10 other designated body or staff person.

11 From and after the effective date of a subdivision ordinance that is adopted by the
12 city, no subdivision plat of land within the city's jurisdiction shall be filed or recorded
13 until it shall have been submitted to and approved by the council or appropriate agency,
14 as specified in the subdivision ordinance, and until this approval shall have been entered
15 on the face of the plat in writing by an authorized representative of the city. The Review
16 Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located
17 within the territorial jurisdiction of a city that has not been approved in accordance with
18 these provisions, nor shall the clerk of superior court order or direct the recording of a
19 plat if the recording would be in conflict with this section."

20 **SECTION 5.** G.S. 153A-330 reads as rewritten:

21 "**§ 153A-330. Subdivision regulation.**

22 A county may by ordinance regulate the subdivision of land within its territorial
23 jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance
24 that applies only to one or more designated portions of its territorial jurisdiction, it may
25 adopt subdivision regulations that apply only within the areas so zoned and need not
26 regulate the subdivision of land in the rest of its jurisdiction. In addition to final plat
27 approval, the ordinance may include provisions for review and approval of sketch plans
28 and preliminary plats. The ordinance may provide for different review procedures for
29 differing classes of subdivisions. The ordinance may be adopted as part of a unified
30 development ordinance or as a separate subdivision ordinance."

31 **SECTION 6.** G.S. 153A-332 reads as rewritten:

32 "**§ 153A-332. Ordinance to contain procedure for plat approval; approval**
33 **prerequisite to plat recordation; statement by owner.**

34 A subdivision ordinance adopted pursuant to this Part shall contain provisions
35 setting forth the procedures to be followed in granting or denying approval of a
36 subdivision plat before its registration.

37 The ordinance shall provide that the following agencies be given an opportunity to
38 make recommendations concerning an individual subdivision plat before the plat is
39 approved:

- 40 (1) The district highway engineer as to proposed State streets, State
41 highways, and related drainage systems;
- 42 (2) The county health director or local public utility, as appropriate, as to
43 proposed water or sewerage systems;

- 1 (3) Any other agency or official designated by the board of
2 commissioners.

3 The ordinance may provide that final approval of each individual subdivision plat is
4 ~~to be given by:~~ decisions on preliminary plats and final plats are to be made by:

- 5 (1) The board of commissioners,
6 (2) The board of commissioners on recommendation of a planning agency,
7 designated body, or
8 (3) A designated planning agency board, technical review committee, or
9 other designated body or staff person.

10 From the effective date of a subdivision ordinance that is adopted by the county, no
11 subdivision plat of land within the county's jurisdiction may be filed or recorded until it
12 has been submitted to and approved by the appropriate board or agency, as specified in
13 the subdivision ordinance, and until this approval is entered in writing on the face of the
14 plat by an authorized representative of the county. The Review Officer, pursuant to
15 G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the
16 territorial jurisdiction of the county that has not been approved in accordance with these
17 provisions, and the clerk of superior court may not order or direct the recording of a plat
18 if the recording would be in conflict with this section."

19 **SECTION 7.** G.S. 160A-384 reads as rewritten:

20 "**§ 160A-384. Method of procedure.**

21 (a) The city council shall provide for the manner in which zoning regulations and
22 restrictions and the boundaries of zoning districts shall be determined, established and
23 enforced, and from time to time amended, supplemented or changed, in accordance with
24 the provisions of this Article. The procedures adopted pursuant to this section shall
25 provide that whenever there is a zoning map amendment, the owner of that parcel of
26 land as shown on the county tax listing, and the owners of all parcels of land abutting
27 that parcel of land as shown on the county tax listing, shall be mailed a notice of a
28 public hearing on the proposed amendment by first class mail at the last addresses listed
29 for such owners on the county tax abstracts. This notice must be deposited in the mail at
30 least 10 but not more than 25 days prior to the date of the public hearing. The person or
31 persons mailing such notices shall certify to the City Council that fact, and such
32 certificate shall be deemed conclusive in the absence of fraud.

33 (b) The first class mail notice required under subsection (a) of this section shall
34 not be required if the zoning map amendment directly affects more than 50 properties,
35 owned by a total of at least 50 different property owners, and the city elects to use the
36 expanded published notice provided for in this subsection. In this instance, a city may
37 elect to either make the mailed notice provided for in subsection (a) of this section or
38 may as an alternative elect to publish ~~once a week for four successive calendar weeks in~~
39 ~~a newspaper having general circulation in the area an advertisement of the public~~
40 ~~hearing that shows the boundaries of the area affected by the proposed zoning map~~
41 ~~amendment and explains the nature of the proposed change. The final two~~
42 ~~advertisements shall comply with and be deemed to satisfy the provisions of~~
43 ~~G.S. 160A-364. The advertisement notice of the hearing as required by G.S. 160A-364,~~
44 but provided that each advertisement shall not be less than one-half of a newspaper page

1 in size. The advertisement shall only be effective for property owners who reside in the
2 area of general circulation of the newspaper which publishes the notice. Property
3 owners who reside outside of the newspaper circulation area, according to the address
4 listed on the most recent property tax listing for the affected property, shall be notified
5 ~~by first class mail pursuant to~~ according to the provisions of subsection (a) of this
6 ~~section. The person or persons mailing the notices shall certify to the city council that~~
7 ~~fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition~~
8 ~~to the published notice, a city shall post one or more prominent signs on or immediately~~
9 ~~adjacent to the subject area reasonably calculated to give public notice of the proposed~~
10 ~~rezoning.~~

11 (c) The provisions of this section shall not be applicable to any zoning map
12 adoption that initially zones property added to the territorial coverage of the ordinance."

13 **SECTION 8.** G.S. 160A-385 reads as rewritten:

14 **"§ 160A-385. Changes.**

15 (a) Qualified Protests.

16 (1) Zoning regulations and restrictions and zone boundaries ordinances
17 may from time to time be amended, supplemented, changed, modified
18 or repealed. In case, however, of a qualified protest against such
19 change, signed by the owners of twenty percent (20%) or more either
20 of the area of the lots included in a proposed change, or of those
21 immediately adjacent thereto either in the rear thereof or on either side
22 thereof, extending 100 feet therefrom, or of those directly opposite
23 thereto extending 100 feet from the street frontage of the opposite lots,
24 an amendment a zoning map amendment, that amendment shall not
25 become effective except by favorable vote of three-fourths of all the
26 members of the city council. For the purposes of this subsection,
27 vacant positions on the council and members who are excused from
28 voting shall not be considered 'members of the council' for calculation
29 of the requisite supermajority.

30 (2) To qualify as a protest under this section, the petition must be signed
31 by the owners of either (i) twenty percent (20%) or more of the area
32 included in the proposed change or (ii) five percent (5%) of a
33 100-foot-wide buffer extending along the entire boundary of each
34 discrete or separate area proposed to be rezoned. Street rights-of-way
35 shall not be considered in computing the 100-foot buffer area. When
36 less than an entire parcel of land is subject to the proposed zoning map
37 amendment, the 100-foot buffer shall be measured from the property
38 line of that parcel. For the purposes of this section, the 'owners' are
39 those listed on the county tax listing.

40 (3) The foregoing provisions concerning protests shall not be applicable to
41 any amendment which initially zones property added to the territorial
42 coverage of the ordinance as a result of annexation or otherwise, or to
43 an amendment to an adopted (i) special use district or district, (ii)
44 conditional use district or district, or (iii) conditional district if the

1 amendment does not change the types of uses that are permitted within
2 the district or increase the approved density for residential
3 development, or increase the total approved size of nonresidential
4 development, or reduce the size of any buffers or screening approved
5 for the special use or use district, conditional use district, or
6 conditional district.

7 (b) ~~Amendments, modifications, supplements, repeal or other changes in zoning~~
8 ~~regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances
9 shall not be applicable or enforceable without consent of the owner with regard to
10 buildings and uses for which either (i) building permits have been issued pursuant to
11 G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so
12 long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and
13 unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established
14 pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired
15 pursuant to G.S. 160A-385.1."

16 **SECTION 9.** G.S. 160A-386 reads as rewritten:

17 "**§ 160A-386. Protest petition; form; requirements; time for filing.**

18 No protest against any change in or amendment to a zoning ordinance or zoning map
19 shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of
20 a written petition actually bearing the signatures of the requisite number of property
21 owners and stating that the signers do protest the proposed change or amendment, and
22 unless it shall have been received by the city clerk in sufficient time to allow the city at
23 least two normal work days, excluding Saturdays, Sundays and legal holidays, before
24 the date established for a public hearing on the proposed change or amendment to
25 determine the sufficiency and accuracy of the petition. The city council may by
26 ordinance require that all protest petitions be on a form prescribed and furnished by the
27 city, and such form may prescribe any reasonable information deemed necessary to
28 permit the city to determine the sufficiency and accuracy of the petition. Unless
29 specifically provided otherwise within the ordinance, a person who has signed a protest
30 petition may withdraw his or her name from the petition at any time prior to the vote on
31 the proposed zoning amendment. Only those protest petitions that meet the qualifying
32 standards set forth in G.S. 160A-385 at the time of the vote on the zoning amendment
33 shall trigger the supermajority voting requirement."

34 **SECTION 10.** G.S. 160A-387 reads as rewritten:

35 "**§ 160A-387. Planning agency; zoning plan; certification to city council.**

36 In order to initially exercise the powers conferred by this Part, a city council shall
37 create or designate a planning agency board under the provisions of this Article or of a
38 special act of the General Assembly. The planning agency board shall ~~prepare~~ review
39 and comment upon a proposed zoning ordinance, including both the full text of such
40 ordinance and maps showing proposed district boundaries. The planning agency board
41 may hold public hearings in the course of preparing the ordinance. Upon completion,
42 the planning agency board shall ~~certify~~ make a written recommendation regarding
43 adoption of the ordinance to the city council. The city council shall not hold its required
44 public hearing or take action until it has received a ~~certified~~ recommendation regarding

1 ordinance from the planning ~~agency-board~~. Following its required public hearing, the
2 city council may refer the ordinance back to the planning ~~agency-board~~ for any further
3 recommendations that the ~~agency-board~~ may wish to make prior to final action by the
4 city council in adopting, modifying and adopting, or rejecting the ordinance.

5 Subsequent to initial adoption of a zoning ordinance, all proposed amendments to
6 the zoning ordinance or zoning map shall be submitted to the planning board for review
7 and comment, including amendments proposed by the planning board, city council, city
8 staff, landowners, or any other person. The planning board shall consider whether the
9 proposed amendment is consistent with the comprehensive plan and any other officially
10 adopted plans that are applicable. The planning board shall provide a written
11 recommendation to the governing board that addresses plan consistency and other
12 matters as deemed appropriate by the planning board. If no written report is received
13 from the planning board within 30 days of referral of the amendment to that board, the
14 governing board may proceed in its consideration of the amendment without the
15 planning board report."

16 **SECTION 11.** G.S. 160A-388 reads as rewritten:

17 **"§ 160A-388. Board of adjustment.**

18 (a) The city council may provide for the appointment and compensation of a
19 board of adjustment consisting of five or more members, each to be appointed for three
20 years. In appointing the original members of such board, or in the filling of vacancies
21 caused by the expiration of the terms of existing members, the council may appoint
22 certain members for less than three years to the end that thereafter the terms of all
23 members shall not expire at the same time. The council may, in its discretion, appoint
24 and provide compensation for alternate members to serve on the board in the absence or
25 temporary disqualification of any regular ~~member~~ member or to fill a vacancy pending
26 appointment of a member. Alternate members shall be appointed for the same term, at
27 the same time, and in the same manner as regular members. Each alternate member,
28 while attending any regular or special meeting of the board and serving ~~in the absence~~
29 on behalf of any regular member, shall have and may exercise all the powers and duties
30 of a regular member. A city may designate a planning ~~agency-board~~ or governing board
31 to perform any or all of the duties of a board of adjustment in addition to its other
32 duties.

33 (b) The board of adjustment shall hear and decide appeals from and review any
34 order, requirement, decision, or determination made by an administrative official
35 charged with the enforcement of any ordinance adopted pursuant to this Part. An appeal
36 may be taken by any person aggrieved or by an officer, department, board, or bureau of
37 the city. Appeals shall be taken within times prescribed by the board of adjustment by
38 general rule, by filing with the officer from whom the appeal is taken and with the board
39 of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom
40 the appeal is taken shall forthwith transmit to the board all the papers constituting the
41 record upon which the action appealed from was taken. An appeal stays all proceedings
42 in furtherance of the action appealed from, unless the officer from whom the appeal is
43 taken certifies to the board of adjustment, after notice of appeal has been filed with him,
44 that because of facts stated in the certificate a stay would, in his opinion, cause

1 imminent peril to life or property or that because the violation charged is transitory in
2 nature a stay would seriously interfere with enforcement of the ordinance. In that case
3 proceedings shall not be stayed except by a restraining order, which may be granted by
4 the board of adjustment or by a court of record on application, on notice to the officer
5 from whom the appeal is taken and on due cause shown. The board of adjustment shall
6 fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties,
7 and decide it within a reasonable time. The board of adjustment may reverse or affirm,
8 wholly or partly, or may modify the order, requirement, decision, or determination
9 appealed from, and shall make any order, requirement, decision, or determination that in
10 its opinion ought to be made in the premises. To this end the board shall have all the
11 powers of the officer from whom the appeal is taken.

12 (c) The zoning ordinance may provide that the board of adjustment may permit
13 special exceptions to the zoning regulations in specified classes of cases or situations
14 ~~and such as minor modifications to dimensional and nonuse related regulations and that~~
15 ~~the board may issue special and conditional use permits, all to be in accordance with the~~
16 principles, conditions, safeguards, and procedures specified in the ordinance. The
17 ordinance may also authorize the board to interpret zoning maps and pass upon disputed
18 questions of lot lines or district boundary lines and similar questions as they arise in the
19 administration of the ordinance. The board shall hear and decide all matters referred to
20 it or upon which it is required to pass under any zoning ordinance.

21 (d) When practical difficulties or unnecessary hardships would result from
22 carrying out the strict letter of a zoning or other land development ordinance, the board
23 of adjustment shall have the ~~power, in passing upon appeals, power~~ to vary or modify
24 any of the regulations or provisions of the ordinance ~~relating to the use, construction or~~
25 ~~alteration of buildings or structures or the use of land~~, so that the spirit of the ordinance
26 shall be observed, public safety and welfare secured, and substantial justice done. No
27 change in permitted uses may be authorized by variance.

28 (e) The concurring vote of four-fifths of the members of the board shall be
29 necessary to reverse any order, requirement, decision, or determination of any
30 administrative official charged with the enforcement of an ordinance adopted pursuant
31 to this Part, or to decide in favor of the applicant any matter upon which it is required to
32 pass under any ordinance, or to grant a variance from the provisions of the ordinance.
33 For the purposes of this subsection, vacant positions on the board and members who are
34 disqualified from voting on a quasi-judicial matter shall not be considered 'members of
35 the board' for calculation of the requisite supermajority if there are no qualified
36 alternates available to take the place of such members. Appropriate conditions may be
37 imposed on any approval issued by the board where the condition is reasonably
38 necessary to secure compliance with the standards of the ordinance.

39 (e1) A member of the board or any other body exercising the functions of a board
40 of adjustment shall not participate in or vote on any quasi-judicial matter in a manner
41 that would violate affected persons' constitutional rights to an impartial decision maker.
42 Impermissible conflicts include, but are not limited to, a member having a fixed opinion
43 prior to hearing the matter that is not susceptible to change, undisclosed ex parte
44 communications, a close familial, business, or other associational relationship with an

1 affected person, or a financial interest in the outcome of the matter. If an objection is
2 raised to a member's participation and that member does not recuse himself or herself,
3 the remaining members of the board shall by majority vote rule on the objection.

4 (e2) Every decision of the board shall be subject to review by the superior court by
5 proceedings in the nature of certiorari. Any petition for review by the superior court
6 shall be filed with the clerk of superior court within 30 days after the decision of the
7 board is filed in such office as the ordinance specifies, or after a written copy thereof is
8 delivered to every aggrieved party who has filed a written request for such copy with
9 the secretary or chairman of the board at the time of its hearing of the case, whichever is
10 later. The decision of the board may be delivered to the aggrieved party either by
11 personal service or by registered mail or certified mail return receipt requested.

12 (f) The chairman of the board of adjustment or any member temporarily acting
13 as chairman, is authorized in his official capacity to administer oaths to witnesses in any
14 matter coming before the board.

15 (g) The board of adjustment may subpoena witnesses and compel the production
16 of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this
17 subsection, the board of adjustment may apply to the General Court of Justice for an
18 order requiring that its order be obeyed, and the court shall have jurisdiction to issue
19 these orders after notice to all proper parties. No testimony of any witness before the
20 board of adjustment pursuant to a subpoena issued in exercise of the power conferred by
21 this subsection may be used against the witness in the trial of any civil or criminal
22 action other than a prosecution for false swearing committed on the examination. Any
23 person who, while under oath during a proceeding before the board of adjustment,
24 willfully swears falsely, is guilty of a Class 1 misdemeanor."

25 **SECTION 12.** G.S. 153A-343(b) reads as rewritten:

26 "(b) The first class mail notice required under subsection (a) of this section shall
27 not be required if the zoning map amendment directly affects more than 50 properties,
28 owned by a total of at least 50 different property owners, and the county elects to use
29 the expanded published notice provided for in this subsection. In this instance, a county
30 may elect to either make the mailed notice provided for in subsection (a) of this section
31 or may as an alternative elect to publish ~~once a week for four successive calendar weeks~~
32 ~~in a newspaper having general circulation in the area an advertisement of the public~~
33 ~~hearing that shows the boundaries of the area affected by the proposed zoning map~~
34 ~~amendment and explains the nature of the proposed change. The final two~~
35 ~~advertisements shall comply with and be deemed to satisfy the provisions of~~
36 ~~G.S. 153A-323. The advertisement notice of the hearings required by G.S. 153A-323,~~
37 but provided that each of the advertisements shall not be less than one-half of a
38 newspaper page in size. The advertisement shall only be effective for property owners
39 who reside in the area of general circulation of the newspaper which publishes the
40 notice. Property owners who reside outside of the newspaper circulation area, according
41 to the address listed on the most recent property tax listing for the affected property,
42 shall be notified by first class mail pursuant to according to the provisions of subsection
43 (a) of this section. The person or persons mailing the notices shall certify to the board of
44 commissioners that fact, and the certificates shall be deemed conclusive in the absence

1 of fraud. In addition to the published notice, a county shall post one or more prominent
2 signs on or immediately adjacent to the subject area reasonably calculated to give public
3 notice of the proposed rezoning."

4 **SECTION 13.** G.S. 153A-344 reads as rewritten:

5 "**§ 153A-344. Planning agency; zoning plan; certification to board of**
6 **~~commissioners; amendments.~~commissioners.**

7 (a) To initially exercise the powers conferred by this Part, a county shall create or
8 designate a planning agency board under the provisions of this Article or of a local act.
9 The planning agency board shall prepare review and comment upon a proposed zoning
10 ordinance, including both the full text of such ordinance and maps showing proposed
11 district boundaries. The planning agency board may hold public hearings in the course
12 of preparing the ordinance. Upon completion, the planning agency board shall certify
13 make a written recommendation regarding adoption of the ordinance to the board of
14 commissioners. The board of commissioners shall not hold the public hearing required
15 by G.S. 153A-323 or take action until it has received a certified recommendation
16 regarding the ordinance from the planning agency board. Following its required public
17 hearing, the board of commissioners may refer the ordinance back to the planning
18 agency board for any further recommendations that the agency board may wish to make
19 prior to final action by the board in adopting, modifying and adopting, or rejecting the
20 ordinance.

21 ~~Zoning regulations and restrictions and zone boundaries may from time to time be~~
22 ~~amended, supplemented, changed, modified, or repealed. Whenever territory is added to~~
23 ~~an existing designated zoning area, it shall be treated as an amendment to the zoning~~
24 ~~ordinance for that area. Before an amendment may be adopted, it must be referred to the~~
25 ~~planning agency for the agency's recommendation. The agency shall be given at least 30~~
26 ~~days in which to make a recommendation. Subsequent to initial adoption of a zoning~~
27 ~~ordinance, all proposed amendments to the zoning ordinance or zoning map shall be~~
28 ~~submitted to the planning board for review and comment, including amendments~~
29 ~~proposed by the planning board, the board of county commissioners, county staff,~~
30 ~~landowners, or any other person. The planning board shall consider whether the~~
31 ~~proposed amendment is consistent with the comprehensive plan and any other officially~~
32 ~~adopted plans that are applicable. The planning board shall provide a written~~
33 ~~recommendation to the board of county commissioners that addresses plan consistency~~
34 ~~and other matters as deemed appropriate by the planning board. If no written report is~~
35 ~~received from the planning board within 30 days of referral of the amendment to that~~
36 ~~board, the board of county commissioners may proceed in its consideration of the~~
37 ~~amendment without the planning board report. The board of commissioners is not~~
38 ~~bound by the recommendations, if any, of the planning agency board.~~

39 (b) ~~Amendments, modifications, supplements, repeal or other changes in zoning~~
40 ~~regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances
41 shall not be applicable or enforceable without consent of the owner with regard to
42 buildings and uses for which either (i) building permits have been issued pursuant to
43 G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so
44 long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and

1 unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established
2 pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired
3 pursuant to G.S. 153A-344.1."

4 **SECTION 14.** G.S. 153A-345 reads as rewritten:

5 **"§ 153A-345. Board of adjustment.**

6 (a) The board of commissioners may provide for the appointment and
7 compensation, if any, of a board of adjustment consisting of at least five members, each
8 to be appointed for three years. In appointing the original members of the board, or in
9 filling vacancies caused by the expiration of the terms of existing members, the board of
10 commissioners may appoint some members for less than three years to the end that
11 thereafter the terms of all members do not expire at the same time. The board of
12 commissioners may provide for the appointment and compensation, if any, of alternate
13 members to serve on the board in the absence or temporary disqualification of any
14 regular ~~member.~~ member or to fill a vacancy pending appointment of a member.
15 Alternate members shall be appointed for the same term, at the same time, and in the
16 same manner as regular members. Each alternate member, while attending any regular
17 or special meeting of the board and serving ~~in the absence~~ on behalf of a regular
18 member, has and may exercise all the powers and duties of a regular member. If the
19 board of commissioners does not zone the entire territorial jurisdiction of the county,
20 each designated zoning area shall have at least one resident as a member of the board of
21 adjustment.

22 A county may designate a planning ~~agency~~ board or the board of county
23 commissioners to perform any or all of the duties of a board of adjustment in addition to
24 its other duties.

25 (b) The board of adjustment shall hear and decide appeals from and review any
26 order, requirement, decision, or determination made by an administrative official
27 charged with enforcing an ordinance adopted pursuant to this Part. Any person
28 aggrieved or any officer, department, board, or bureau of the county may take an appeal.
29 Appeals shall be taken within times prescribed by the board of adjustment by general
30 rule, by filing with the officer from whom the appeal is taken and with the board of
31 adjustment a notice of appeal, specifying the grounds thereof. The officer from whom
32 the appeal is taken shall forthwith transmit to the board all the papers constituting the
33 record upon which action appealed from was taken. An appeal stays all proceedings in
34 furtherance of the action appealed from, unless the officer from whom the appeal is
35 taken certifies to the board of adjustment, after notice of appeal has been filed with him,
36 that because of facts stated in the certificate a stay would, in his opinion, cause
37 imminent peril to life or property or that because the violation charged is transitory in
38 nature a stay would seriously interfere with enforcement of the ordinance. In that case
39 proceedings may not be stayed except by a restraining order, which may be granted by
40 the board of adjustment or by a court of record on application, on notice to the officer
41 from whom the appeal is taken and on due cause shown. The board of adjustment shall
42 fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the
43 parties, and decide the appeal within a reasonable time. The board of adjustment may
44 reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or

1 determination appealed from, and shall make any order, requirement, decision, or
2 determination that in its opinion ought to be made in the circumstances. To this end the
3 board has all of the powers of the officer from whom the appeal is taken.

4 (c) The zoning ordinance may provide that the board of adjustment may permit
5 special exceptions to the zoning regulations in specified classes of cases or situations
6 ~~and such as minor modifications to dimensional and nonuse related regulations and that~~
7 the board may issue special and conditional use permits, all to be in accordance with the
8 principles, conditions, safeguards, and procedures specified in the ordinance. The
9 ordinance may also authorize the board to interpret zoning maps and pass upon disputed
10 questions of lot lines or district boundary lines and similar questions that may arise in
11 the administration of the ordinance. The board shall hear and decide all matters referred
12 to it or upon which it is required to pass under the zoning ordinance.

13 (d) When practical difficulties or unnecessary hardships would result from
14 carrying out the strict letter of a zoning or other land development ordinance, the board
15 of adjustment ~~may, in passing upon appeals, shall have the power to vary or modify any~~
16 regulation or provision of the ordinance ~~relating to the use, construction, or alteration of~~
17 ~~buildings or structures or the use of land,~~ so that the spirit of the ordinance is observed,
18 public safety and welfare secured, and substantial justice done. No change in permitted
19 uses may be authorized by variance.

20 (e) The board of adjustment, by a vote of four-fifths of its members, may reverse
21 any order, requirement, decision, or determination of an administrative officer charged
22 with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the
23 applicant a matter upon which the board is required to pass under the ordinance, or may
24 grant a variance from the provisions of the ordinance. For the purposes of this
25 subsection, vacant positions on the board and members who are disqualified from
26 voting on a quasi-judicial matter shall not be considered 'members of the board' for
27 calculation of the requisite supermajority if there are no qualified alternates available to
28 take the place of such members. Appropriate conditions may be imposed on any
29 approval issued by the board where the condition is reasonably necessary to secure
30 compliance with the standards of the ordinance.

31 (e1) A member of the board or any other body exercising the functions of a board
32 of adjustment shall not participate in or vote on any quasi-judicial matter in a manner
33 that would violate affected persons' constitutional rights to an impartial decision maker.
34 Impermissible conflicts include, but are not limited to, a member having a fixed opinion
35 prior to hearing the matter that is not susceptible to change, undisclosed ex parte
36 communications, a close familial, business, or other associational relationship with an
37 affected person, or a financial interest in the outcome of the matter. If an objection is
38 raised to a member's participation and that member does not recuse himself or herself,
39 the remaining members of the board shall by majority vote rule on the objection.

40 (e2) Each decision of the board is subject to review by the superior court by
41 proceedings in the nature of certiorari. Any petition for review by the superior court
42 shall be filed with the clerk of superior court within 30 days after the decision of the
43 board is filed in such office as the ordinance specifies, or after a written copy thereof is
44 delivered to every aggrieved party who has filed a written request for such copy with

1 the secretary or chairman of the board at the time of its hearing of the case, whichever is
2 later. The decision of the board may be delivered to the aggrieved party either by
3 personal service or by registered mail or certified mail return receipt requested.

4 (f) The chairman of the board of adjustment or any member temporarily acting
5 as chairman may in his official capacity administer oaths to witnesses in any matter
6 coming before the board.

7 (g) The board of adjustment may subpoena witnesses and compel the production
8 of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this
9 subsection, the board of adjustment may apply to the General Court of Justice for an
10 order requiring that its order be obeyed, and the court shall have jurisdiction to issue
11 these orders after notice to all proper parties. No testimony of any witness before the
12 board of adjustment pursuant to a subpoena issued in exercise of the power conferred by
13 this subsection may be used against the witness in the trial of any civil or criminal
14 action other than a prosecution for false swearing committed on the examination. Any
15 person who, while under oath during a proceeding before the board of adjustment,
16 willfully swears falsely, is guilty of a Class 1 misdemeanor."

17 **SECTION 15.** G.S. 136-44.50(d) reads as rewritten:

18 "(d) Within one year following the establishment of a transportation corridor
19 official map or amendment, work shall begin on an environmental impact statement or
20 preliminary engineering. The failure to begin work on the environmental impact
21 statement or preliminary engineering within the one-year period shall constitute an
22 abandonment of the corridor, and the provisions of this Article shall no longer apply to
23 properties or portions of properties embraced within the transportation corridor. A city
24 may prepare environmental impact studies and preliminary engineering work in
25 connection with the establishment of a transportation corridor official map or
26 amendments to a transportation corridor official map. When a city prepares a
27 transportation corridor official map for a street or highway that has been designated a
28 State responsibility pursuant to G.S. 136-66.2, the environmental impact study and
29 preliminary engineering work shall be reviewed and approved by the Department of
30 Transportation. An amendment to a corridor shall not extend the ~~two-year~~ one-year
31 period provided by this section unless it establishes a substantially different corridor in a
32 primarily new location."

33 **SECTION 16.** The provisions of this act shall not be deemed to amend or
34 affect the validity or enforceability of any local act or charter provision previously
35 enacted by the General Assembly.

36 **SECTION 17.** This act becomes effective September 1, 2005.