

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 518
Judiciary I Committee Substitute Adopted 5/26/05

Short Title: City/County Planning Clarification.

(Public)

Sponsors:

Referred to:

March 15, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY AND MAKE TECHNICAL CHANGES TO CITY AND
3 COUNTY PLANNING STATUTES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** G.S. 160A-363 reads as rewritten:

6 "**§ 160A-363. Supplemental powers.**

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

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

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

27 (d) A city may elect to combine any of the ordinances authorized by this Article
28 into a unified ordinance. Unless expressly provided otherwise, a city may apply any of
29 the definitions and procedures authorized by law to any or all aspects of the unified

1 ordinance and may employ any organizational structure, board, commission, or staffing
2 arrangement authorized by law to any or all aspects of the ordinance."

3 **SECTION 1.(b)** G.S. 153A-322 reads as rewritten:

4 **"§ 153A-322. Supplemental powers.**

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

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

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

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

30 **SECTION 2.(a)** G.S. 160A-371 reads as rewritten:

31 **"§ 160A-371. Subdivision regulation.**

32 A city may by ordinance regulate the subdivision of land within its territorial
33 jurisdiction. In addition to final plat approval, the ordinance may include provisions for
34 review and approval of sketch plans and preliminary plats. The ordinance may provide
35 for different review procedures for differing classes of subdivisions. The ordinance may
36 be adopted as part of a unified development ordinance or as a separate subdivision
37 ordinance. Decisions on approval or denial of preliminary or final plats may be made
38 only on the basis of standards explicitly set forth in the subdivision or unified
39 development ordinance. Whenever the ordinance includes criteria for decision that
40 require application of judgment, those criteria must provide adequate guiding standards
41 for the entity charged with plat approval."

42 **SECTION 2.(b)** G.S. 153A-330 reads as rewritten:

43 **"§ 153A-330. Subdivision regulation.**

1 A county may by ordinance regulate the subdivision of land within its
2 territorial jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning
3 ordinance that applies only to one or more designated portions of its territorial
4 jurisdiction, it may adopt subdivision regulations that apply only within the areas so
5 zoned and need not regulate the subdivision of land in the rest of its jurisdiction. In
6 addition to final plat approval, the ordinance may include provisions for review and
7 approval of sketch plans and preliminary plats. The ordinance may provide for different
8 review procedures for differing classes of subdivisions. The ordinance may be adopted
9 as part of a unified development ordinance or as a separate subdivision ordinance.
10 Decisions on approval or denial of preliminary or final plats may be made only on the
11 basis of standards explicitly set forth in the subdivision or unified development
12 ordinance. Whenever the ordinance includes criteria for decision that require application
13 of judgment, those criteria must provide adequate guiding standards for the entity
14 charged with plat approval."

15 **SECTION 3.(a)** G.S. 160A-373 reads as rewritten:

16 **"§ 160A-373. Ordinance to contain procedure for plat approval; approval**
17 **prerequisite to plat recordation; statement by owner.**

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

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

- 23 (1) The city council,
- 24 (2) The city council on recommendation of a ~~planning agency, designated~~
25 ~~body, or~~
- 26 (3) A ~~designated planning agency board, technical review committee, or~~
27 ~~other designated body or staff person.~~

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

37 **SECTION 3.(b)** G.S. 153A-332 reads as rewritten:

38 **"§ 153A-332. Ordinance to contain procedure for plat approval; approval**
39 **prerequisite to plat recordation; statement by owner.**

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

1 The ordinance shall provide that the following agencies be given an opportunity to
2 make recommendations concerning an individual subdivision plat before the plat is
3 approved:

- 4 (1) The district highway engineer as to proposed State streets, State
5 highways, and related drainage systems;
- 6 (2) The county health director or local public utility, as appropriate, as to
7 proposed water or sewerage systems;
- 8 (3) Any other agency or official designated by the board of
9 commissioners.

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

- 12 (1) The board of commissioners,
- 13 (2) The board of commissioners on recommendation of a ~~planning agency,~~
14 designated body, or
- 15 (3) A designated ~~planning agency board,~~ technical review committee, or
16 other designated body or staff person.

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

26 **SECTION 4.(a)** G.S. 160A-384 reads as rewritten:

27 **"§ 160A-384. Method of procedure.**

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

40 (b) The first class mail notice required under subsection (a) of this section shall
41 not be required if the zoning map amendment directly affects more than 50 properties,
42 owned by a total of at least 50 different property owners, and the city elects to use the
43 expanded published notice provided for in this subsection. In this instance, a city may
44 elect to either make the mailed notice provided for in subsection (a) of this section or

1 may as an alternative elect to publish ~~once a week for four successive calendar weeks in~~
2 ~~a newspaper having general circulation in the area an advertisement of the public~~
3 ~~hearing that shows the boundaries of the area affected by the proposed zoning map~~
4 ~~amendment and explains the nature of the proposed change. The final two~~
5 ~~advertisements shall comply with and be deemed to satisfy the provisions of~~
6 ~~G.S. 160A-364. The advertisement notice of the hearing as required by G.S. 160A-364,~~
7 ~~but provided that each advertisement shall not be less than one-half of a newspaper page~~
8 ~~in size. The advertisement shall only be effective for property owners who reside in the~~
9 ~~area of general circulation of the newspaper which publishes the notice. Property~~
10 ~~owners who reside outside of the newspaper circulation area, according to the address~~
11 ~~listed on the most recent property tax listing for the affected property, shall be notified~~
12 ~~by first class mail pursuant to according to the provisions of subsection (a) of this~~
13 ~~section. The person or persons mailing the notices shall certify to the city council that~~
14 ~~fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition~~
15 ~~to the published notice, a city shall post one or more prominent signs on or immediately~~
16 ~~adjacent to the subject area reasonably calculated to give public notice of the proposed~~
17 ~~rezoning.~~

18 (c) When a zoning map amendment is proposed, the city shall prominently post a
19 notice of the public hearing on the site proposed for rezoning. When multiple parcels
20 are included within a proposed zoning map amendment, a posting on each individual
21 parcel is not required, but the city shall post sufficient notices to provide reasonable
22 notice to interested persons."

23 **SECTION 4.(b)** G.S. 153A-343 reads as rewritten:

24 "**§ 153A-343. Method of procedure.**

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

38 (b) The first class mail notice required under subsection (a) of this section shall
39 not be required if the zoning map amendment directly affects more than 50 properties,
40 owned by a total of at least 50 different property owners, and the county elects to use
41 the expanded published notice provided for in this subsection. In this instance, a county
42 may elect to either make the mailed notice provided for in subsection (a) of this section
43 or may as an alternative elect to publish ~~once a week for four successive calendar weeks~~
44 ~~in a newspaper having general circulation in the area an advertisement of the public~~

1 ~~hearing that shows the boundaries of the area affected by the proposed zoning map~~
2 ~~amendment and explains the nature of the proposed change. The final two~~
3 ~~advertisements shall comply with and be deemed to satisfy the provisions of~~
4 ~~G.S. 153A-323. The advertisement notice of the hearings required by G.S. 153A-323,~~
5 ~~but provided that each of the advertisements shall not be less than one-half of a~~
6 ~~newspaper page in size. The advertisement shall only be effective for property owners~~
7 ~~who reside in the area of general circulation of the newspaper which publishes the~~
8 ~~notice. Property owners who reside outside of the newspaper circulation area, according~~
9 ~~to the address listed on the most recent property tax listing for the affected property,~~
10 ~~shall be notified by first class mail pursuant to according to the provisions of subsection~~
11 ~~(a) of this section. The person or persons mailing the notices shall certify to the board of~~
12 ~~commissioners that fact, and the certificates shall be deemed conclusive in the absence~~
13 ~~of fraud. In addition to the published notice, a county shall post one or more prominent~~
14 ~~signs on or immediately adjacent to the subject area reasonably calculated to give public~~
15 ~~notice of the proposed rezoning.~~

16 (e) ~~The provisions of this section shall not be applicable to any zoning map~~
17 ~~adoption that initially zones property added to the territorial coverage of the ordinance.~~

18 (d) When a zoning map amendment is proposed, the county shall prominently
19 post a notice of the public hearing on the site proposed for rezoning. When multiple
20 parcels are included within a proposed zoning map amendment, a posting on each
21 individual parcel is not required, but the county shall post sufficient notices to provide
22 reasonable notice to interested persons."

23 **SECTION 5.** G.S. 160A-385 reads as rewritten:

24 "**§ 160A-385. Changes.**

25 (a) Qualified Protests.

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

40 (2) To qualify as a protest under this section, the petition must be signed
41 by the owners of either (i) twenty percent (20%) or more of the area
42 included in the proposed change or (ii) five percent (5%) of a
43 100-foot-wide buffer extending along the entire boundary of each
44 discrete or separate area proposed to be rezoned. A street right-of-way

1 shall not be considered in computing the 100-foot buffer area. When
2 less than an entire parcel of land is subject to the proposed zoning map
3 amendment, the 100-foot buffer shall be measured from the property
4 line of that parcel. For the purposes of this section, the 'owners' are
5 those listed on the county tax listing.

6 (3) The foregoing provisions concerning protests shall not be applicable to
7 any amendment which initially zones property added to the territorial
8 coverage of the ordinance as a result of annexation or otherwise, or to
9 an amendment to an adopted (i) special use ~~district or district~~, (ii)
10 conditional use ~~district-district~~, or (iii) conditional district if the
11 amendment does not change the types of uses that are permitted within
12 the district or increase the approved density for residential
13 development, or increase the total approved size of nonresidential
14 development, or reduce the size of any buffers or screening approved
15 for the special use ~~or use district~~, conditional use ~~district~~, district, or
16 conditional district.

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

26 **SECTION 6.** G.S. 160A-386 reads as rewritten:

27 "**§ 160A-386. Protest petition; form; requirements; time for filing.**

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

44 **SECTION 7.(a)** G.S. 160A-387 reads as rewritten:

1 **"§ 160A-387. Planning ~~agency;~~ board; zoning plan; certification to city council.**

2 In order to initially exercise the powers conferred by this Part, a city council shall
3 create or designate a planning ~~agency~~ board under the provisions of this Article or of a
4 special act of the General Assembly. The planning ~~agency~~ board shall ~~prepare~~ review
5 and comment upon a proposed zoning ordinance, including both the full text of such
6 ordinance and maps showing proposed district boundaries. The planning ~~agency~~ board
7 may hold public hearings in the course of preparing the ordinance. Upon completion,
8 the planning ~~agency~~ board shall ~~certify~~ make a written recommendation regarding
9 adoption of the ordinance to the city council. The city council shall not hold its required
10 public hearing or take action until it has received a ~~certified~~ recommendation regarding
11 ordinance from the planning ~~agency~~ board. Following its required public hearing, the
12 city council may refer the ordinance back to the planning ~~agency~~ board for any further
13 recommendations that the agency board may wish to make prior to final action by the
14 city council in adopting, modifying and adopting, or rejecting the ordinance.

15 Subsequent to initial adoption of a zoning ordinance, all proposed amendments to
16 the zoning ordinance or zoning map shall be submitted to the planning board for review
17 and comment, including amendments proposed by the planning board, city council, city
18 staff, landowners, or any other person. The planning board shall advise and comment on
19 whether the proposed amendment is consistent with any comprehensive plan that has
20 been adopted and any other officially adopted plan that is applicable. The planning
21 board shall provide a written recommendation to the governing board that addresses
22 plan consistency and other matters as deemed appropriate by the planning board, but a
23 comment by the planning board that a proposed amendment is inconsistent with the
24 comprehensive plan shall not preclude consideration or approval of the proposed
25 amendment by the governing board. If no written report is received from the planning
26 board within 30 days of referral of the amendment to that board, the governing board
27 may proceed in its consideration of the amendment without the planning board report."

28 **SECTION 7.(b)** G.S. 153A-344 reads as rewritten:

29 **"§ 153A-344. Planning ~~agency;~~ board; zoning plan; certification to board of**
30 **commissioners; amendments. commissioners.**

31 (a) To initially exercise the powers conferred by this Part, a county shall create or
32 designate a planning ~~agency~~ board under the provisions of this Article or of a local act.
33 The planning ~~agency~~ board shall ~~prepare~~ review and comment upon a proposed zoning
34 ordinance, including both the full text of such ordinance and maps showing proposed
35 district boundaries. The planning ~~agency~~ board may hold public hearings in the course
36 of preparing the ordinance. Upon completion, the planning ~~agency~~ board shall ~~certify~~
37 make a written recommendation regarding adoption of the ordinance to the board of
38 commissioners. The board of commissioners shall not hold the public hearing required
39 by G.S. 153A-323 or take action until it has received a ~~certified~~ recommendation
40 regarding the ordinance from the planning ~~agency~~ board. Following its required public
41 hearing, the board of commissioners may refer the ordinance back to the planning
42 agency board for any further recommendations that the agency board may wish to make
43 prior to final action by the board in adopting, modifying and adopting, or rejecting the
44 ordinance.

1 ~~Zoning regulations and restrictions and zone boundaries may from time to time be~~
2 ~~amended, supplemented, changed, modified, or repealed. Whenever territory is added to~~
3 ~~an existing designated zoning area, it shall be treated as an amendment to the zoning~~
4 ~~ordinance for that area. Before an amendment may be adopted, it must be referred to the~~
5 ~~planning agency for the agency's recommendation. The agency shall be given at least 30~~
6 ~~days in which to make a recommendation. Subsequent to initial adoption of a zoning~~
7 ~~ordinance, all proposed amendments to the zoning ordinance or zoning map shall be~~
8 ~~submitted to the planning board for review and comment, including amendments~~
9 ~~proposed by the planning board, the board of county commissioners, county staff,~~
10 ~~landowners, or any other person. The planning board shall advise and comment on~~
11 ~~whether the proposed amendment is consistent with any comprehensive plan that has~~
12 ~~been adopted and any other officially adopted plan that is applicable. The planning~~
13 ~~board shall provide a written recommendation to the board of county commissioners~~
14 ~~that addresses plan consistency and other matters as deemed appropriate by the planning~~
15 ~~board, but a comment by the planning board that a proposed amendment is inconsistent~~
16 ~~with the comprehensive plan shall not preclude consideration or approval of the~~
17 ~~proposed amendment by the governing board. If no written report is received from the~~
18 ~~planning board within 30 days of referral of the amendment to that board, the board of~~
19 ~~county commissioners may proceed in its consideration of the amendment without the~~
20 ~~planning board report. The board of commissioners is not bound by the~~
21 ~~recommendations, if any, of the planning agency board.~~

22 ~~(b) Amendments, modifications, supplements, repeal or other changes in zoning~~
23 ~~regulations and restrictions and zone boundaries Amendments in zoning ordinances~~
24 shall not be applicable or enforceable without consent of the owner with regard to
25 buildings and uses for which either (i) building permits have been issued pursuant to
26 G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so
27 long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and
28 unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established
29 pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired
30 pursuant to G.S. 153A-344.1."

31 **SECTION 8.(a)** G.S. 160A-388 reads as rewritten:

32 "**§ 160A-388. Board of adjustment.**

33 (a) The city council may provide for the appointment and compensation of a
34 board of adjustment consisting of five or more members, each to be appointed for three
35 years. In appointing the original members of such board, or in the filling of vacancies
36 caused by the expiration of the terms of existing members, the council may appoint
37 certain members for less than three years to the end that thereafter the terms of all
38 members shall not expire at the same time. The council may, in its discretion, appoint
39 and provide compensation for alternate members to serve on the board in the absence or
40 temporary disqualification of any regular ~~member~~ member or to fill a vacancy pending
41 appointment of a member. Alternate members shall be appointed for the same term, at
42 the same time, and in the same manner as regular members. Each alternate member,
43 while attending any regular or special meeting of the board and serving ~~in the absence~~
44 on behalf of any regular member, shall have and may exercise all the powers and duties

1 of a regular member. A city may designate a planning ~~agency~~ board or governing board
2 to perform any or all of the duties of a board of adjustment in addition to its other
3 duties.

4 (b) ~~The board of adjustment shall hear and decide appeals from and review any~~
5 ~~order, requirement, decision, or determination made by an administrative official~~
6 ~~charged with the enforcement of any ordinance adopted pursuant to this Part. A zoning~~
7 ~~ordinance or those provisions of a unified development ordinance adopted pursuant to~~
8 ~~the authority granted in this Part may provide that the board of adjustment shall hear~~
9 ~~and decide appeals from and review any order, requirement, decision, or determination~~
10 ~~made by an administrative official charged with the enforcement of that ordinance.~~ An
11 appeal may be taken by any person aggrieved or by an officer, department, board, or
12 bureau of the city. Appeals shall be taken within times prescribed by the board of
13 adjustment by general rule, by filing with the officer from whom the appeal is taken and
14 with the board of adjustment a notice of appeal, specifying the grounds thereof. The
15 officer from whom the appeal is taken shall forthwith transmit to the board all the
16 papers constituting the record upon which the action appealed from was taken. An
17 appeal stays all proceedings in furtherance of the action appealed from, unless the
18 officer from whom the appeal is taken certifies to the board of adjustment, after notice
19 of appeal has been filed with him, that because of facts stated in the certificate a stay
20 would, in his opinion, cause imminent peril to life or property or that because the
21 violation charged is transitory in nature a stay would seriously interfere with
22 enforcement of the ordinance. In that case proceedings shall not be stayed except by a
23 restraining order, which may be granted by the board of adjustment or by a court of
24 record on application, on notice to the officer from whom the appeal is taken and on due
25 cause shown. The board of adjustment shall fix a reasonable time for the hearing of the
26 appeal, give due notice thereof to the parties, and decide it within a reasonable time. The
27 board of adjustment may reverse or affirm, wholly or partly, or may modify the order,
28 requirement, decision, or determination appealed from, and shall make any order,
29 requirement, decision, or determination that in its opinion ought to be made in the
30 premises. To this end the board shall have all the powers of the officer from whom the
31 appeal is taken.

32 (c) The zoning ordinance may provide that the board of adjustment may permit
33 special exceptions to the zoning regulations in specified classes of cases or situations
34 ~~and such as minor modifications, not including variances in permitted uses, and that the~~
35 ~~board may use special and conditional use permits, all to be in accordance with the~~
36 principles, conditions, safeguards, and procedures specified in the ordinance. The
37 ordinance may also authorize the board to interpret zoning maps and pass upon disputed
38 questions of lot lines or district boundary lines and similar questions as they arise in the
39 administration of the ordinance. The board shall hear and decide all matters referred to
40 it or upon which it is required to pass under any zoning ordinance.

41 (d) When practical difficulties or unnecessary hardships would result from
42 carrying out the strict letter of a zoning ordinance, the board of adjustment shall have
43 the ~~power, in passing upon appeals,~~ power to vary or modify any of the regulations or
44 provisions of the ordinance ~~relating to the use, construction or alteration of buildings or~~

1 ~~structures or the use of land~~, so that the spirit of the ordinance shall be observed, public
2 safety and welfare secured, and substantial justice done. No change in permitted uses
3 may be authorized by variance. Appropriate conditions, which must be reasonably
4 related to the condition or circumstance that gives rise to the need for a variance, may
5 be imposed on any approval issued by the board.

6 (e) The concurring vote of four-fifths of the members of the board shall be
7 necessary to reverse any order, requirement, decision, or determination of any
8 administrative official charged with the enforcement of an ordinance adopted pursuant
9 to this Part, or to decide in favor of the applicant any matter upon which it is required to
10 pass under any ordinance, or to grant a variance from the provisions of the ordinance.
11 For the purposes of this subsection, vacant positions on the board and members who are
12 disqualified from voting on a quasi-judicial matter shall not be considered 'members of
13 the board' for calculation of the requisite supermajority if there are no qualified
14 alternates available to take the place of such members.

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

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

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

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

1 **SECTION 8.(b)** G.S. 153A-345 reads as rewritten:

2 "**§ 153A-345. Board of adjustment.**

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

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

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

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

5 (c) The zoning ordinance may provide that the board of adjustment may permit
6 special exceptions to the zoning regulations in specified classes of cases or situations
7 ~~and such as minor modifications, not including variances in permitted uses, and that the~~
8 board may use special and conditional use permits, all to be in accordance with the
9 principles, conditions, safeguards, and procedures specified in the ordinance. The
10 ordinance may also authorize the board to interpret zoning maps and pass upon disputed
11 questions of lot lines or district boundary lines and similar questions that may arise in
12 the administration of the ordinance. The board shall hear and decide all matters referred
13 to it or upon which it is required to pass under the zoning ordinance.

14 (d) When practical difficulties or unnecessary hardships would result from
15 carrying out the strict letter of a zoning ordinance, the board of adjustment ~~may, in~~
16 ~~passing upon appeals, shall have the power to~~ vary or modify any regulation or
17 provision of the ordinance ~~relating to the use, construction, or alteration of buildings or~~
18 ~~structures or the use of land,~~ so that the spirit of the ordinance is observed, public safety
19 and welfare secured, and substantial justice done. No change in permitted uses may be
20 authorized by variance. Appropriate conditions, which must be reasonably related to the
21 condition or circumstance that gives rise to the need for a variance, may be imposed on
22 any approval issued by the board.

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

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

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

1 delivered to every aggrieved party who has filed a written request for such copy with
2 the secretary or chairman of the board at the time of its hearing of the case, whichever is
3 later. The decision of the board may be delivered to the aggrieved party either by
4 personal service or by registered mail or certified mail return receipt requested.

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

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

18 **SECTION 9.** G.S. 136-44.50(d) reads as rewritten:

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

34 **SECTION 10.** G.S. 160A-360(a1) reads as rewritten:

35 "(a1) Any municipality planning to exercise extraterritorial jurisdiction under this
36 Article shall notify the owners of all parcels of land proposed for addition to the area of
37 extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent
38 by first-class mail to the last addresses listed for affected property owners in the county
39 tax records. The notice shall inform the landowner of the effect of the extension of
40 extraterritorial jurisdiction, of the landowner's right to participate in a public hearing
41 prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as
42 provided in G.S. 160A-364, and the right of all residents of the area to apply to the
43 board of county commissioners to serve as a representative on the planning ~~agency~~
44 board and the board of adjustment, as provided in G.S. 160A-362. The notice shall be

1 mailed at least four weeks prior to the public hearing. The person or persons mailing the
2 notices shall certify to the city council that the notices were sent by first-class mail, and
3 the certificate shall be deemed conclusive in the absence of fraud."

4 **SECTION 11.** G.S. 160A-362 reads as rewritten:

5 **"§ 160A-362. Extraterritorial representation.**

6 When a city elects to exercise extraterritorial zoning or subdivision-regulation
7 powers under G.S. 160A-360, it shall in the ordinance creating or designating its
8 planning ~~agency or agencies~~ board provide a means of proportional representation based
9 on population for residents of the extraterritorial area to be regulated. Representation
10 shall be provided by appointing at least one resident of the entire extraterritorial zoning
11 and subdivision regulation area to the planning ~~agency~~ board and the board of
12 adjustment that makes recommendations or grants relief in these matters. For purposes
13 of this section, an additional member must be appointed to the planning ~~agency~~ board or
14 board of adjustment to achieve proportional representation only when the population of
15 the entire extraterritorial zoning and subdivision area constitutes a full fraction of the
16 municipality's population divided by the total membership of the planning ~~agency~~ board
17 or board of adjustment. Membership of joint municipal county planning agencies or
18 boards of adjustment may be appointed as agreed by counties and municipalities. Any
19 advisory board established prior to July 1, 1983, to provide the required extraterritorial
20 representation shall constitute compliance with this section until the board is abolished
21 by ordinance of the city. The representatives on the planning ~~agency~~ board and the
22 board of adjustment shall be appointed by the board of county commissioners with
23 jurisdiction over the area. When selecting a new representative to the planning ~~agency~~ board
24 board or to the board of adjustment as a result of an extension of the extraterritorial
25 jurisdiction, the board of county commissioners shall hold a public hearing on the
26 selection. A notice of the hearing shall be given once a week for two successive
27 calendar weeks in a newspaper having general circulation in the area. The board of
28 county commissioners shall select appointees only from those who apply at or before
29 the public hearing. The county shall make the appointments within 45 days following
30 the public hearing. Once a city provides proportional representation, no power available
31 to a city under G.S. 160A-360 shall be ineffective in its extraterritorial area solely
32 because county appointments have not yet been made. If there is an insufficient number
33 of qualified residents of the area to meet membership requirements, the board of county
34 commissioners may appoint as many other residents of the county as necessary to make
35 up the requisite number. When the extraterritorial area extends into two or more
36 counties, each board of county commissioners concerned shall appoint representatives
37 from its portion of the area, as specified in the ordinance. If a board of county
38 commissioners fails to make these appointments within 90 days after receiving a
39 resolution from the city council requesting that they be made, the city council may make
40 them. If the ordinance so provides, the outside representatives may have equal rights,
41 privileges, and duties with the other members of the ~~agency~~ board to which they are
42 appointed, regardless of whether the matters at issue arise within the city or within the
43 extraterritorial area; otherwise they shall function only with respect to matters within the
44 extraterritorial area."

1 **SECTION 12.** G.S. 160A-400.7 reads as rewritten:

2 "**§ 160A-400.7. Historic Preservation Commission.**

3 Before it may designate one or more landmarks or historic districts, a municipality
4 shall establish or designate a historic preservation commission. The municipal
5 governing board shall determine the number of the members of the commission, which
6 shall be at least three, and the length of their terms, which shall be no greater than four
7 years. A majority of the members of such a commission shall have demonstrated special
8 interest, experience, or education in history, architecture, archaeology, or related fields.
9 All the members shall reside within the territorial jurisdiction of the municipality as
10 established pursuant to G.S. 160A-360. The commission may appoint advisory bodies
11 and committees as appropriate.

12 In lieu of establishing a historic preservation commission, a municipality may
13 designate as its historic preservation commission, (i) a separate historic districts
14 commission or a separate historic landmarks commission established pursuant to this
15 Part to deal only with historic districts or landmarks respectively, (ii) a planning ~~agency~~
16 board established pursuant to this Article, or (iii) a community appearance commission
17 established pursuant to Part 7 of this Article. In order for a commission or board other
18 than the preservation commission to be designated, at least three of its members shall
19 have demonstrated special interest, experience, or education in history, architecture, or
20 related fields. At the discretion of the municipality the ordinance may also provide that
21 the preservation commission may exercise within a historic district any or all of the
22 powers of a planning ~~agency-board~~ or a community appearance commission.

23 A county and one or more cities in the county may establish or designate a joint
24 preservation commission. If a joint commission is established or designated, the county
25 and cities involved shall determine the residence requirements of members of the joint
26 preservation commission."

27 **SECTION 13.** G.S. 160A-400.14(a) reads as rewritten:

28 "(a) An application for a certificate of appropriateness authorizing the relocation,
29 demolition or destruction of a designated landmark or a building, structure or site within
30 the district may not be denied except as provided in subsection (c). However, the
31 effective date of such a certificate may be delayed for a period of up to 365 days from
32 the date of approval. The maximum period of delay authorized by this section shall be
33 reduced by the commission where it finds that the owner would suffer extreme hardship
34 or be permanently deprived of all beneficial use of or return from such property by
35 virtue of the delay. During such period the preservation commission shall negotiate with
36 the owner and with any other parties in an effort to find a means of preserving the
37 building or site. If the preservation commission finds that a building or site within a
38 district has no special significance or value toward maintaining the character of the
39 district, it shall waive all or part of such period and authorize earlier demolition, or
40 removal.

41 If the commission or planning ~~agency-board~~ has voted to recommend designation of
42 a property as a landmark or designation of an area as a district, and final designation has
43 not been made by the local governing board, the demolition or destruction of any
44 building, site, or structure located on the property of the proposed landmark or in the

1 proposed district may be delayed by the commission or planning ~~agency~~board for a
2 period of up to 180 days or until the local governing board takes final action on the
3 designation, whichever occurs first."

4 **SECTION 14.** The provisions of this act shall not be deemed to repeal or
5 amend the validity or enforceability of any local act or charter provision previously
6 enacted by the General Assembly.

7 **SECTION 15.** This act becomes effective January 1, 2006.