

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 483
Committee Substitute Favorable 4/28/15
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Short Title: Land-Use Regulatory Changes.

(Public)

Sponsors:

Referred to:

April 2, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE
3 STATE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 143-755 reads as rewritten:

6 "§ 143-755. Permit choice.

7 (a) If a permit applicant submits a permit for any type of development and a rule or
8 ordinance changes between the time the permit application was submitted and a permit decision
9 is made, the permit applicant may choose which version of the rule or ordinance will apply to
10 the permit.

11 (b) This section applies to all development permits issued by the State and by local
12 governments, government, including any zoning permit.

13 (c) ~~This section shall not apply to any zoning permit.~~"

14 SECTION 2. G.S. 160A-385(b) reads as rewritten:

15 "(b) Amendments in land development regulations, as defined in G.S. 160A-400.21(6),
16 including zoning ordinances or unified development ordinances, shall not be applicable or
17 enforceable without the written consent of the owner with regard to buildings and
18 uses buildings, uses, or developments for which either (i) a zoning permit, which includes, but is
19 not limited to, a site plan approval, a special exception permit, or any other permit or approval
20 given under the authority of Article 19 of Chapter 160A of the General Statutes that authorizes
21 the use of land, or (ii) a building permits have permit has been issued pursuant to
22 G.S. 160A-417 this Chapter prior to the enactment of the ordinance making the change or
23 changes so long as the permits remain either permit remains valid and unexpired pursuant to
24 G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) law. Amendments shall also
25 not be applicable or enforceable without the written consent of the owner if a vested right has
26 been established pursuant to G.S. 160A-385.1 and such vested right remains valid and
27 unexpired pursuant to G.S. 160A-385.1 or if a vested right is established by the terms of a
28 development agreement authorized by Part 3D of this Article."

29 SECTION 3. G.S. 153A-344(b) reads as rewritten:

30 "(b) Amendments in land development regulations, as defined in G.S. 153A-349.2(6),
31 including zoning ordinances or unified development ordinances, shall not be applicable or
32 enforceable without the written consent of the owner with regard to buildings and
33 uses buildings, uses, or developments for which either (i) a zoning permit, which includes, but is
34 not limited to, a site plan approval, a special exception permit, or any other permit or approval
35 given under the authority of Article 18 of Chapter 153A of the General Statutes that authorizes



1 the use of land, or (ii) a building ~~permits have~~ permit has been issued pursuant to
2 G.S. 153A-357 ~~this Chapter~~ prior to the enactment of the ordinance making the change or
3 changes so long as ~~the permits remain~~ either permit remains valid and unexpired pursuant to
4 G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) law. Amendments shall also
5 not be applicable or enforceable without the written consent of the owner if a vested right has
6 been established pursuant to G.S. 153A-344.1 and such vested right remains valid and
7 unexpired pursuant to G.S. 153A-344.1 or if a vested right is established by the terms of a
8 development agreement authorized by Part 3A of this Article."

9 **SECTION 4.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
10 amended by adding a new section to read:

11 "**§ 160A-393.1. Civil action for declaratory relief, injunctive relief, or other remedies.**

12 (a) Action for Relief Authorized. – Any landowner, permit applicant, or tenant
13 aggrieved by a final and binding decision of an administrative official involving the application
14 or enforcement of a city or county zoning or unified development ordinance or any other
15 ordinance that regulates land use or development may, in lieu of an appeal to a board of
16 adjustment prescribed by Chapter 153A or Chapter 160A of the General Statutes, maintain an
17 original action in superior court or business court for declaratory relief, injunctive relief,
18 damages, or any other remedies provided by law or equity, where any of the following claims
19 or defenses are asserted by the aggrieved party:

- 20 (1) Constitutional matters.
- 21 (2) Ultra vires regulations.
- 22 (3) Preemption.
- 23 (4) 42 U.S.C. § 1983.
- 24 (5) Common law vested rights.

25 In such original action, the aggrieved party may, in addition to the above, raise any other
26 available claims or defenses, including asserting error in the interpretation of an ordinance.

27 (b) Time for Filing of Action. – Such action shall be filed within one year after the later
28 of the following occurrence: (i) notice of the decision as provided in G.S. 160A-388(b1)(2) or
29 (ii) where a taking of property is alleged by the aggrieved party, the final decision of a board of
30 adjustment denying a variance has been delivered as provided in G.S. 160A-388(e2)(1),
31 whenever the context makes the granting of such variance discretionary and not prohibited.

32 (c) Means for Obtaining Relief. – Except for exhausting the administrative remedy of a
33 variance, if applicable, as provided in this section, once the aggrieved party selects an appeal to
34 a board of adjustment as provided in G.S. 160A-388(b1) and the prescribed hearing proceeding
35 is concluded, such procedures, including an appeal thereafter in G.S. 160A-393, shall be the
36 exclusive means for obtaining relief as to the merits of the city or county enforcement action or
37 administrative decision being challenged. Nothing herein shall preclude any other procedure
38 authorized by law for claims arising under 42 U.S.C. § 1983."

39 **SECTION 5.** G.S. 160A-364.1(c) reads as rewritten:

40 "(c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an
41 action involving the enforcement of a zoning or unified development ordinance or in an action
42 authorized by G.S. 160A-393.1 from raising as a defense to such enforcement action the
43 invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a
44 party who files a timely appeal from an order, requirement, decision, or determination made by
45 an administrative official contending that such party is in violation of a zoning or unified
46 development ordinance from raising in the appeal the invalidity of such ordinance as a defense
47 to such order, requirement, decision, or determination. A party in an enforcement action or
48 appeal may not assert the invalidity of the ordinance on the basis of an alleged defect in the
49 adoption process unless the defense is formally raised within three years of the adoption of the
50 challenged ordinance."

51 **SECTION 6.** G.S. 160A-393 reads as rewritten:

1 "§ 160A-393. Appeals in the nature of certiorari.

2 ...

3 (j) Hearing on the Record. – The court shall hear and decide all issues raised by the
4 petition by reviewing the record submitted in accordance with subsection (h) of this section.
5 Except that the court may, in its discretion, allow the record to be supplemented with affidavits,
6 testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is
7 not adequate to allow an appropriate determination of the following issues:

8 (1) Whether a petitioner or intervenor has standing.

9 (2) Whether, as a result of impermissible conflict as described in
10 G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making
11 body was not sufficiently impartial to comply with due process principles.

12 (3) Whether the decision-making body erred for the reasons set forth in
13 sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this
14 ~~section~~section, including an error related to the claims or defenses in
15 subdivision (k)(4) of this section.

16 (k) Scope of Review. –

17 (1) When reviewing the decision of a decision-making board under the
18 provisions of this section, the court shall ensure that the rights of petitioners
19 have not been prejudiced because the decision-making body's findings,
20 inferences, conclusions, or decisions were:

21 a. In violation of constitutional provisions, including those protecting
22 procedural due process rights.

23 b. In excess of the statutory authority conferred upon the city or the
24 authority conferred upon the decision-making board by ordinance.

25 c. Inconsistent with applicable procedures specified by statute or
26 ordinance.

27 d. Affected by other error of law.

28 e. Unsupported by substantial competent evidence in view of the entire
29 record.

30 f. Arbitrary or capricious.

31 (2) When the issue before the court is whether the decision-making board erred
32 in interpreting an ordinance, the court shall review that issue de novo. The
33 court shall consider the interpretation of the decision-making board, but is
34 not bound by that interpretation, and may freely substitute its judgment as
35 appropriate.

36 (3) The term "competent evidence," as used in this subsection, shall not preclude
37 reliance by the decision-making board on evidence that would not be
38 admissible under the rules of evidence as applied in the trial division of the
39 General Court of Justice if (i) the evidence was admitted without objection
40 or (ii) the evidence appears to be sufficiently trustworthy and was admitted
41 under such circumstances that it was reasonable for the decision-making
42 board to rely upon it. The term "competent evidence," as used in this
43 subsection, shall not be deemed to include the opinion testimony of lay
44 witnesses as to any of the following:

45 a. The use of property in a particular way would affect the value of
46 other property.

47 b. The increase in vehicular traffic resulting from a proposed
48 development would pose a danger to the public safety.

49 c. Matters about which only expert testimony would generally be
50 admissible under the rules of evidence.

(4) The petitioner may assert and the court shall determine de novo, based on the record in subsection (j) of this section, any of the following claims or defenses:

- a. That the applicable ordinance is invalid or otherwise unenforceable.
- b. Constitutional matters.
- c. Preemption.
- d. 42 U.S.C. § 1983.
- e. Common law vested rights.

(5) In order to raise any of the claims or defenses listed in subdivision (4) of this subsection, to the extent that they do not involve some act of the decision-making board itself or any of its members, the claim or defense shall be made known to the decision-making board at the hearing.

...."

SECTION 7. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-393.2. No estoppel effect when challenging unlawful conditions.

No landowner or permit applicant shall be precluded from timely challenging any unlawful condition imposed on a development as part of the application of land development regulations as defined in G.S. 160A-400.21(6) as a result of actions by the landowner or permit applicant to proceed with the development or use. This section shall not apply to rezoning decisions."

SECTION 8. G.S. 6-21.7 reads as rewritten:

"§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.

In any action in which a city or county is a party, upon a finding by the court that the city or county acted outside the scope of its legal authority, violated a statute setting forth clear limits on its authority, the court may shall award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's action, provided that if the court also finds that the city's or county's action was an abuse of its discretion, the court shall award attorneys' fees and costs. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing party."

SECTION 9. G.S. 6-19.1 reads as rewritten:

"§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.

(a) In any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the State, the court may, in its discretion, shall allow the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of Chapter ~~150B~~, 150B of the General Statutes, or any other provision of law, to be taxed as court costs against the appropriate agency if:

- (1) The court finds that the agency acted without substantial justification in pressing its claim against the ~~party~~; party. The lack of substantial justification shall be conclusively established when an agency acts in violation of a statute setting forth clear limits on its authority; and
- (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust. The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the administrative review portion of the case in contested cases arising under Article 9 of Chapter 131E of the General Statutes.

1 Nothing in this section grants permission to bring an action against an agency otherwise
2 immune from suit or gives a right to bring an action to a party who otherwise lacks standing to
3 bring the action.

4 Any attorney's fees assessed against an agency under this section shall be charged against
5 the operating expenses of the agency and shall not be reimbursed from any other source.

6 (b) Expired."

7 **SECTION 10.** This act becomes effective October 1, 2015, and applies to permit
8 applications filed, actions filed in court, and claims and defenses asserted on or after that date.