

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 913
SENATE BILL 233

AN ACT TO AMEND THE DEFINITION OF "DEVELOPMENT" AND TO CLARIFY
HEARING RIGHTS IN THE COASTAL AREA MANAGEMENT ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-103(5)b.5. is rewritten to read:

"5. Maintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes."

Sec. 2. G.S. 113A-121(d) is repealed.

Sec. 3. Part 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-121A. Review of grant or denial of permits. — (a) Any person who is directly affected by the decision of the Secretary or the designated local official (as the case may be) to grant or deny an application for a minor development permit, may request in writing within 20 days of such action, a hearing before the Commission. In the case of a grant or denial of a permit by a local official, the Secretary shall be considered to be a person affected by the decision.

(b) Any person who is directly affected by the decision of the Commission or its duly authorized agent to grant or deny an application for a major development permit may submit a written request, within 20 days of such action, for a hearing before the Commission.

(c) Requests for a hearing by any person other than the applicant or the Secretary shall be reviewed by the Commission or its duly authorized agent to determine whether a hearing should be granted. The determination of whether to grant a hearing shall be in the sole discretion of the Commission or its duly authorized agent and shall be based on consideration of the following factors:

1. Whether the petitioner has alleged that the decision was contrary to applicable statutes and/or regulations;
2. Whether the petitioner is a person directly affected by the decision;
3. Whether, upon consideration of all the information available, the petitioner has a reasonable likelihood of success on the merits.

Denial of a request for a hearing pursuant to this paragraph shall be a final decision of the Commission which may be appealed under G.S. 113A-123.

(d) Pending final disposition of any such review by the Commission, no action shall be taken which would be unlawful in the absence of a permit under this Part.

(e) In cases where the request for a hearing has been denied under paragraph (c) of this section, development authorized by the permit may be undertaken unless prohibited by an order of the superior court."

Sec. 4. G.S. 113A-122(a), as it appears in the 1979 Supplement to Volume 3A, Part II, is amended on the third line by deleting the citation "G.S. 113A-121(d)" and substituting therefor the citation "G.S. 113A-121A".

Sec. 5. G.S. 113A-122(b)(7), as it appears in the 1978 Replacement Volume 3A, Part II, is rewritten to read:

"7. The burden of proof at any hearing on appeal shall be upon the person who requested the hearing."

Sec. 6. G.S. 113A-122(b)(9), as it appears in the 1978 Replacement Volume 3A, Part II, is amended on the second line by deleting the words "30 days" and substituting therefor the words "20 days".

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 10th day of July, 1981.