

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 792

Short Title: Interpretation of Zoning.

(Public)

Sponsors: Senator Staton.

Referred to: Local Government.

April 5, 1989

A BILL TO BE ENTITLED  
AN ACT REGARDING CHANGES IN THE INTERPRETATION OF ZONING  
ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-344(b) reads as rewritten:

"(b) Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries, or in the interpretation thereof by the courts or by authorities with the power to administer or enforce such regulations, restrictions, or boundaries, shall not be applicable or enforceable without consent of the owner with regard to lots for which building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance making the change or changes, or prior to the change in interpretation, so long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362. The issuance of a building permit shall constitute an interpretation by the issuing authority that the applicable zoning regulations, restrictions and boundaries allow the use for which the building permit was issued. Notwithstanding the foregoing, if any court of competent jurisdiction shall determine in an action properly before the court that an interpretation of a zoning regulation, restriction or boundary in effect as of the issuance of the building permit is based upon a construction that no reasonable person could adopt, then such court may balance all of the equities, take into account all relevant facts and circumstances, and, if the interest of justice so requires, find that such construction is not an interpretation within the meaning of this subsection and that the holder of the building permit shall not be entitled to claim the benefit of such construction after the date of the court's decision or after such later date as the court in its discretion may

1 require in the interest of justice. The court may not make such a finding effective  
2 retroactively, except for any period during which the reliance by the property owner on  
3 the issuing authority's interpretation of the zoning regulation, restriction or boundary  
4 was not in good faith; provided that in a criminal action, the absence of good faith must  
5 be proven by the prosecution beyond a reasonable doubt; and in a civil action, the  
6 absence of good faith must be proven by the party seeking retroactive enforcement  
7 against the holder of the building permit by the clear and convincing weight of the  
8 evidence. This subsection shall be construed to grant the holder of a building permit  
9 rights in addition to, and not in substitution or limitation of, those granted by other  
10 statutes, the common law, or other applicable laws or regulations. This subsection shall  
11 not be construed in any way to limit the rights of property owners, either prior to or  
12 subsequent to the issuance of a building permit, pursuant to other statutes, the common  
13 law or other applicable laws or regulations."

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

15 "(b) Amendments, modifications, supplements, repeal or other changes in zoning  
16 regulations and restrictions and zone boundaries, or in the interpretation thereof by the  
17 courts or by authorities with the power to administer or enforce such regulations,  
18 restrictions, or boundaries, shall not be applicable or enforceable without consent of the  
19 owner with regard to lots for which building permits have been issued pursuant to G.S.  
20 160A-417 prior to the enactment of the ordinance making the change or changes, or  
21 prior to the change in interpretation, so long as the permits remain valid and unexpired  
22 pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422. The issuance of  
23 a building permit shall constitute an interpretation by the issuing authority that the  
24 applicable zoning regulations, restrictions and boundaries allow the use for which the  
25 building permit was issued. Notwithstanding the foregoing, if any court of competent  
26 jurisdiction shall determine in an action properly before the court that an interpretation  
27 of a zoning regulation, restriction or boundary in effect as of the issuance of the building  
28 permit is based upon a construction that no reasonable person could adopt, then such  
29 court may balance all of the equities, take into account all relevant facts and  
30 circumstances, and, if the interest of justice so requires, find that such construction is  
31 not an interpretation within the meaning of this subsection and that the holder of the  
32 building permit shall not be entitled to claim the benefit of such construction after the  
33 date of the court's decision or after such later date as the court in its discretion may  
34 require in the interest of justice. The court may not make such a finding effective  
35 retroactively, except for any period during which the reliance by the property owner on  
36 the issuing authority's interpretation of the zoning regulation, restriction or boundary  
37 was not in good faith; provided that in a criminal action, the absence of good faith must  
38 be proven by the prosecution beyond a reasonable doubt; and in a civil action, the  
39 absence of good faith must be proven by the party seeking retroactive enforcement  
40 against the holder of the building permit by the clear and convincing weight of the  
41 evidence. This subsection shall be construed to grant the holder of a building permit  
42 rights in addition to, and not in substitution or limitation of, those granted by other  
43 statutes, the common law, or other applicable laws or regulations. This subsection shall  
44 not be construed in any way to limit the rights of property owners, either prior to or

1 subsequent to the issuance of a building permit, pursuant to other statutes, the common  
2 law or other applicable laws or regulations."

3           Sec. 3. This act is effective upon ratification.