

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

D

HOUSE DRH80230-LR-92 (04/02)

Short Title: Zoning/Nonconforming Uses.

(Public)

Sponsors: Representatives Rapp and L. Allen (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT RELATING TO THE AMORTIZATION OF PROPERTY AND TO LIMIT
THE PHASING OUT OF NONCONFORMING USES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding the following new sections to read:

"§ 160A-384.1. Right to continue nonconforming uses and characteristics.

(a) Except as otherwise provided in this Part, the uses and characteristics of a dwelling, building, structure, improvement, or parcel of land that were lawful when commenced may continue despite the subsequent adoption or amendment of an ordinance that renders a use or a characteristic of a dwelling, building, structure, improvement, or parcel of land nonconforming.

(b) Notwithstanding subsection (a) of this section, a city may by ordinance do any of the following:

(1) Restrict or prohibit the expansion, enlargement, or change of a nonconforming use or characteristic.

(2) Restrict or prohibit the repair or reconstruction of a dwelling, building, or structure beyond fifty percent (50%) of the dwelling, building, or structure that is nonconforming.

(3) Restrict or prohibit the resumption of a nonconforming use that has ceased or been discontinued or abandoned.

(4) Require minor modification of a nonconforming characteristic within a reasonable period.

(c) This section does not limit the authority of a city to regulate prospective land use or related activities where otherwise authorized by law.

"§ 160A-384.2. Voluntary modification of nonconforming uses and characteristics.

(a) As used in this section, a 'modification plan' is a plan which:

1 (1) Describes, in specific terms, a proposal to relocate a nonconforming
2 use to a different location or vary the characteristics of a
3 nonconforming use at its existing location; and

4 (2) Identifies a period during which the nonconforming use or
5 characteristic, as modified, would retain a lawful nonconforming
6 status.

7 (b) A city may permit voluntary modification of an existing use or characteristic
8 that is rendered nonconforming by the adoption or amendment of an ordinance. The
9 modification shall be completed pursuant to a modification plan approved by the city
10 council as provided in this section. A city council may delegate its authority under this
11 section to the board of adjustment.

12 (c) A person with a legally recognizable interest in a dwelling, building,
13 structure, or parcel of land with an existing nonconforming use or characteristic may
14 submit a modification plan for review by the city council or board of adjustment. The
15 city council or board of adjustment may approve a modification plan following notice
16 and a hearing in accordance with the provisions of G.S. 160A-364. If the city council or
17 board of adjustment approves a modification plan, it shall issue a permit authorizing the
18 modification.

19 (d) In determining whether to approve a modification plan, the city council or
20 board of adjustment shall consider whether the modification plan is consistent with the
21 public interest in each of the following respects:

22 (1) The proposed modifications bring the use or characteristic closer to
23 conformity with the comprehensive plan.

24 (2) The proposed modifications decrease the extent of incompatibility
25 between the nonconforming use or characteristics and properties and
26 uses in the area.

27 (3) The proposed modifications make adequate provision for mitigation of
28 significant adverse effects on nearby properties and uses.

29 (4) The proposed modifications include other necessary provisions to
30 protect the interests of the public as a whole and other affected
31 properties and uses.

32 (5) Whether the proposed modification plan identifies an appropriate
33 period during which the nonconforming use or characteristic, as
34 modified, will retain a lawful nonconforming status, taking into
35 account all of the following factors:

36 a. The character and value of the nonconforming use or
37 characteristic at the time of the proposed modification,
38 including the initial investment in the use or characteristic and
39 related financial obligations, remaining lifetime, and
40 depreciation to date.

41 b. The cost of relocation or reconstruction, if applicable.

42 c. The character of the use or characteristic as modified under the
43 proposal, including the cost of the proposed modification, the

1 projected lifetime of the use or characteristic as modified, and
2 the anticipated rate of depreciation.

3 **"§ 160A-384.3. Elimination of nonconforming uses and characteristics in the**
4 **interest of public health or safety.**

5 Notwithstanding the provisions of G.S. 160A-384.1, a city may require the
6 immediate or phased elimination of an existing use or characteristic of property which is
7 rendered nonconforming by the adoption or amendment of an ordinance if the use or
8 characteristic is dangerous or detrimental to the public health or public safety. Before
9 the city eliminates or phases out the use or characteristic, the city council must hold a
10 hearing and must give notice of the hearing. The city shall mail or deliver notice of the
11 proposed action to each occupier of the affected property and to each owner of the
12 property as shown on the county property tax listing at least seven days prior to the
13 hearing on the proposed action. If notice is mailed, it shall be mailed by first-class mail
14 to the last addresses listed for the owners on the county property tax listing. The
15 decision of the city council to require the immediate or phased elimination of an
16 existing nonconforming use or characteristic of property shall be subject to review by
17 the superior court by proceedings in the nature of certiorari. Any petition for review by
18 the superior court shall be filed with the clerk of superior court within 30 days after the
19 decision of the city council is filed in such office as the ordinance specifies or after a
20 written copy thereof is delivered to every aggrieved party who has filed a written
21 request for such copy with the clerk at the time of the hearing of the case, whichever is
22 later. The decision of the city council may be delivered to the aggrieved party by
23 personal service, registered mail, or certified mail, return receipt requested.

24 **"§ 160A-384.4. Phasing out of certain nonconforming uses, characteristics, or**
25 **structures.**

26 (a) Notwithstanding the provisions of G.S. 160A-384.1, a city may phase out the
27 following existing uses, characteristics, or structures that are rendered nonconforming
28 by the adoption or amendment of an ordinance:

29 (1) Signs, both on-premises and off-premises.

30 (2) Adult establishments, including adult bookstores, adult movie houses,
31 and dance establishments in which dancers disrobe in whole or in part.

32 (3) Junkyards, as defined in G.S. 136-143(4).

33 (b) To phase out a nonconforming use, characteristic, or structure under this
34 section, the city must hold a public hearing and must mail or deliver notice of the
35 proposed zoning action establishing the phaseout to each occupier of the affected
36 property and to each owner of the property as shown on the county property tax listing
37 at least 10 days before each public hearing on the proposed ordinance. Notice shall be
38 mailed by first-class mail to the last addresses listed for such owners on the county
39 property tax listing.

40 (c) The phase-out period must be at least six years unless the city determines that
41 the use, characteristic, or structure being phased out is dangerous or detrimental to the
42 public health or public safety, is in a state of disrepair, or is contributing to the
43 deterioration of the surrounding neighborhood.

1 (d) An owner or lessee subject to a phaseout may seek a time-limited variance
2 from the board of adjustment. The board of adjustment may grant a time-limited
3 variance that allows the use or structure to continue until the value of the use,
4 characteristic, or structure has been recovered if all of the following conditions are met:

5 (1) The property owner or lessee presents evidence, including supporting
6 business records, that the revenue of the nonconforming use,
7 characteristic, or structure during the phase-out period, minus
8 necessary business expenses, is less than the value of the use,
9 characteristic, or structure, minus the value of the use, characteristic,
10 or structure, after the phase-out period.

11 (2) The property owner or lessee allows the board of adjustment access to
12 all business records that would establish the cost, the value, the
13 revenue, and the expenses of the affected use, characteristic, or
14 structure, subject to the requirement that, on request, the board restricts
15 access to such records to the board, its staff, attorneys, and the courts.

16 (3) The maximum value of the use, characteristic, or structure shall not
17 exceed one hundred fifty percent (150%) of its appraised value for
18 local property tax prior to the passage of the ordinance.

19 (4) The appeal is brought within nine months of the date on which the
20 local ordinance establishing the phaseout is passed.

21 (e) A decision of a board of adjustment to grant or deny a variance is subject to
22 review by the superior court by proceedings in the nature of certiorari as provided in
23 G.S. 160A-388.

24 **"§ 160A-384.5. Right to continue residential uses.**

25 (a) A city may not phase out an existing residential use, including manufactured
26 home communities and manufactured homes on individual lots, unless it is necessary to
27 abate a condition that is dangerous or detrimental to the public health or public safety.
28 Such action shall be taken in accordance with the provisions of G.S. 160A-384.3.

29 (b) Notwithstanding subsection (a) of this section, a city may, within a
30 reasonable period of time, require the elimination of a nonconforming characteristic of a
31 residential use.

32 (c) For purposes of this section, the term 'manufactured home' has the same
33 meaning as in G.S. 143-145.

34 **"§ 160A-384.6. Elimination of nonconforming uses and characteristics by eminent**
35 **domain.**

36 If a city may not eliminate an existing nonconforming use or characteristic pursuant
37 to G.S. 160A-384.3 and G.S. 160A-384.4, or chooses not to eliminate an existing
38 nonconforming use or characteristic even though it could do so, the city may acquire, by
39 purchase, condemnation, or any other lawful method, private property or an interest in
40 private property for the purpose of eliminating a nonconforming use or characteristic.
41 The expenditure of public funds to eliminate a nonconforming use or characteristic is
42 declared to be for a public purpose. Chapter 40A of the General Statutes applies to a
43 city's exercise of its power of eminent domain under this section."

1 **SECTION 2.** Part 3 of Article 18 of Chapter 153A of the General Statutes is
2 amended by adding the following new sections to read:

3 **"§ 153A-343.1. Right to continue nonconforming uses and characteristics.**

4 (a) Except as otherwise provided in this Part, the uses and characteristics of a
5 dwelling, building, structure, improvement, or parcel of land that were lawful when
6 commenced may continue despite the subsequent adoption or amendment of an
7 ordinance that renders a use or a characteristic of a dwelling, building, structure,
8 improvement, or parcel of land nonconforming.

9 (b) Notwithstanding subsection (a) of this section, a county may by ordinance do
10 any of the following:

11 (1) Restrict or prohibit the expansion, enlargement, or change of a
12 nonconforming use or characteristic.

13 (2) Restrict or prohibit the repair or reconstruction of a dwelling, building,
14 or structure beyond fifty percent (50%) of the dwelling, building, or
15 structure that is nonconforming.

16 (3) Restrict or prohibit the resumption of a nonconforming use that has
17 ceased or been discontinued or abandoned.

18 (4) Require minor modifications of a nonconforming characteristic within
19 a reasonable period.

20 (c) This section does not limit the authority of a county to regulate prospective
21 land use or related activities where otherwise authorized by law.

22 **"§ 153A-343.2. Voluntary modification of nonconforming uses and characteristics.**

23 (a) As used in this section, a 'modification plan' is a plan which:

24 (1) Describes, in specific terms, a proposal to relocate a nonconforming
25 use to a different location or vary the characteristics of a
26 nonconforming use at its existing location; and

27 (2) Identifies a period during which the nonconforming use or
28 characteristic, as modified, would retain a lawful nonconforming
29 status.

30 (b) A county may permit voluntary modification of an existing use or
31 characteristic that is rendered nonconforming by the adoption or amendment of an
32 ordinance. The modification shall be completed pursuant to a modification plan
33 approved by the board of commissioners as provided in this section. A board of
34 commissioners may delegate its authority under this section to the board of adjustment.

35 (c) A person with a legally recognizable interest in a dwelling, building,
36 structure, or parcel of land with an existing nonconforming use or characteristic may
37 submit a modification plan for review by the board of commissioners or board of
38 adjustment. The board of commissioners or board of adjustment may approve a
39 modification plan following notice and a hearing in accordance with the provisions of
40 G.S. 153A-323. If the board of commissioners or board of adjustment approves a
41 modification plan, it shall issue a permit authorizing the modification.

42 (d) In determining whether to approve a modification plan, the board of
43 commissioners or board of adjustment shall consider whether the modification plan is
44 consistent with the public interest in each of the following respects:

- 1 (1) The proposed modifications bring the use or characteristic closer to
2 conformity with the comprehensive plan.
- 3 (2) The proposed modifications decrease the extent of incompatibility
4 between the nonconforming use or characteristics and properties and
5 uses in the area.
- 6 (3) The proposed modifications make adequate provision for mitigation of
7 significant adverse effects on nearby properties and uses.
- 8 (4) The proposed modifications include other necessary provisions to
9 protect the interests of the public as a whole and other affected
10 properties and uses.
- 11 (5) Whether the proposed modification plan identifies an appropriate
12 period during which the nonconforming use or characteristic, as
13 modified, will retain a lawful nonconforming status, taking into
14 account all of the following factors:
- 15 a. The character and value of the nonconforming use or
16 characteristic at the time of the proposed modification,
17 including the initial investment in the use or characteristic and
18 related financial obligations, remaining lifetime, and
19 depreciation to date.
- 20 b. The cost of relocation or reconstruction, if applicable.
- 21 c. The character of the use or characteristic as modified under the
22 proposal, including the cost of the proposed modification, the
23 projected lifetime of the use or characteristic as modified, and
24 the anticipated rate of depreciation.

25 **§ 153A-343.3. Elimination of nonconforming uses and characteristics in the**
26 **interest of public health or safety.**

27 Notwithstanding the provisions of G.S. 153A-343.1, a county may require the
28 immediate or phased elimination of an existing use or characteristic of property which is
29 rendered nonconforming by the adoption or amendment of an ordinance if the use or
30 characteristic is dangerous or detrimental to the public health or public safety. Before
31 the county eliminates or phases out the use or characteristic, the board of commissioners
32 must hold a hearing and must give notice of the hearing. The county shall mail or
33 deliver notice of the proposed action to each occupier of the affected property and to
34 each owner of the property as shown on the county property tax listing at least seven
35 days prior to the hearing on the proposed action. If notice is mailed, it shall be mailed
36 by first-class mail to the last addresses listed for the owners on the county property tax
37 listing. The decision of the board of commissioners to require the immediate or phased
38 elimination of an existing nonconforming use or characteristic of property shall be
39 subject to review by the superior court by proceedings in the nature of certiorari. Any
40 petition for review by the superior court shall be filed with the clerk of superior court
41 within 30 days after the decision of the board of commissioners is filed in such office as
42 the ordinance specifies or after a written copy thereof is delivered to every aggrieved
43 party who has filed a written request for such copy with the clerk at the time of the
44 hearing of the case, whichever is later. The decision of the board of commissioners may

1 be delivered to the aggrieved party by personal service, registered mail, or certified
2 mail, return receipt requested.

3 **"§ 153A-343.4. Phasing out of certain nonconforming uses, characteristics, or**
4 **structures.**

5 (a) Notwithstanding the provisions of G.S. 153A-343.1, a county may phase out
6 the following existing uses, characteristics, or structures that are rendered
7 nonconforming by the adoption or amendment of an ordinance:

8 (1) Signs, both on-premises and off-premises.

9 (2) Adult establishments, including adult bookstores, adult movie houses,
10 and dance establishments in which dancers disrobe in whole or in part.

11 (3) Junkyards, as defined in G.S. 136-143(4).

12 (b) To phase out a nonconforming use, characteristic, or structure under this
13 section, the county must hold a public hearing and must mail or deliver notice of the
14 proposed zoning action establishing the phaseout to each occupier of the affected
15 property and to each owner of the property as shown on the county property tax listing
16 at least 10 days before each public hearing on the proposed ordinance. Notice shall be
17 mailed by first-class mail to the last addresses listed for such owners on the county
18 property tax listing.

19 (c) The phase-out period must be at least six years unless the county determines
20 that the use, characteristic, or structure being phased out is dangerous or prejudicial to
21 the public health or public safety, is in a state of disrepair, or is contributing to the
22 deterioration of the surrounding neighborhood.

23 (d) An owner or lessee subject to a phaseout may seek a time-limited variance
24 from the board of adjustment. The board of adjustment may grant a time-limited
25 variance that allows the use or structure to continue until the value of the use,
26 characteristic, or structure has been recovered if all of the following conditions are met:

27 (1) The property owner or lessee presents evidence, including supporting
28 business records, that the revenue of the nonconforming use,
29 characteristic, or structure during the phase-out period, minus
30 necessary business expenses, is less than the value of the use,
31 characteristic, or structure, minus the value of the use, characteristic,
32 or structure, after the phase-out period.

33 (2) The property owner or lessee allows the board of adjustment access to
34 all business records that would establish the cost, the value, the
35 revenue, and the expenses of the affected use, characteristic, or
36 structure, subject to the requirement that, on request, the board restricts
37 access to such records to the board, its staff, attorneys, and the courts.

38 (3) The maximum value of the use, characteristic, or structure shall not
39 exceed one hundred fifty percent (150%) of its appraised value for
40 local property tax prior to the passage of the ordinance.

41 (4) The appeal is brought within nine months of the date on which the
42 local ordinance establishing the phaseout is passed.

1 (e) A decision of a board of adjustment to grant or deny a variance is subject to
2 review by the superior court by proceedings in the nature of certiorari as provided in
3 G.S. 153A-345.

4 **"§ 153A-343.5. Right to continue residential uses.**

5 (a) A county may not phase out an existing residential use, including
6 manufactured home communities and manufactured homes on individual lots, unless it
7 is necessary to abate a condition that is dangerous or detrimental to the public health or
8 public safety. Such action shall be taken in accordance with the provisions of G.S.
9 153A-343.3.

10 (b) Notwithstanding subsection (a) of this section, a county may, within a
11 reasonable period of time, require the elimination of a nonconforming characteristic of a
12 residential use.

13 (c) For purposes of this section, the term 'manufactured home' has the same
14 meaning as in G.S. 143-145.

15 **"§ 153A-343.6. Elimination of nonconforming uses and characteristics by eminent**
16 **domain.**

17 If a county may not eliminate an existing nonconforming use or characteristic
18 pursuant to G.S. 153A-343.3 and G.S. 153A-343.4, or chooses not to eliminate an
19 existing nonconforming use or characteristic even though it could do so, the county may
20 acquire, by purchase, condemnation, or any other lawful method, private property or an
21 interest in private property for the purpose of eliminating a nonconforming use or
22 characteristic. The expenditure of public funds to eliminate a nonconforming use or
23 characteristic is declared to be for a public purpose. Chapter 40A of the General Statutes
24 applies to a county's exercise of its power of eminent domain under this section."

25 **SECTION 3.** This act is effective when it becomes law but does not apply to
26 ordinances that were adopted or amended before the effective date of the act or to
27 ordinances that are the subject of litigation pending on the effective date.