

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE DRH70382-LR-134 (04/13)

Short Title: Clarify City/County Planning.

(Public)

Sponsors: Representative L. Allen.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND MAKE TECHNICAL CHANGES TO CITY AND COUNTY PLANNING STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-363 reads as rewritten:

"§ 160A-363. Supplemental powers.

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

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

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

1 (d) A city may elect to combine any of the ordinances authorized by law into a
2 unified ordinance. Unless expressly provided otherwise, a city may apply any of the
3 definitions and procedures authorized by law to any or all aspects of the unified
4 ordinance and may employ any organizational structure, board, commission, or staffing
5 arrangement authorized by law to any or all aspects of the ordinance."

6 **SECTION 2.** G.S. 153A-322 reads as rewritten:

7 "**§ 153A-322. Supplemental powers.**

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

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

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

28 (d) A county may elect to combine any of the ordinances authorized by law into a
29 unified ordinance. Unless expressly provided otherwise, a county may apply any of the
30 definitions and procedures authorized by law to any or all aspects of the unified
31 ordinance and may employ any organizational structure, board, commission, or staffing
32 arrangement authorized by law to any or all aspects of the ordinance. The procedures
33 required by this Article shall be followed in the adoption, amendment, or repeal of any
34 aspect of the unified ordinance."

35 **SECTION 3.** G.S. 160A-371 reads as rewritten:

36 "**§ 160A-371. Subdivision regulation.**

37 A city may by ordinance regulate the subdivision of land within its territorial
38 jurisdiction. In addition to final plat approval, the ordinance may include provisions for
39 review and approval of sketch plans and preliminary plats. The ordinance may provide
40 for different review procedures for differing classes of subdivisions. The ordinance may
41 be adopted as part of a unified development ordinance or as a separate subdivision
42 ordinance."

43 **SECTION 4.** G.S. 160A-373 reads as rewritten:

1 **"§ 160A-373. Ordinance to contain procedure for plat approval; approval**
2 **prerequisite to plat recordation; statement by owner.**

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

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

- 8 (1) The city council,
9 (2) The city council on recommendation of a ~~planning agency, designated~~
10 ~~body, or~~
11 (3) A designated planning agency-board, technical review committee, or
12 other designated body or staff person.

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

22 **SECTION 5.** G.S. 153A-330 reads as rewritten:

23 **"§ 153A-330. Subdivision regulation.**

24 A county may by ordinance regulate the subdivision of land within its territorial
25 jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance
26 that applies only to one or more designated portions of its territorial jurisdiction, it may
27 adopt subdivision regulations that apply only within the areas so zoned and need not
28 regulate the subdivision of land in the rest of its jurisdiction. In addition to final plat
29 approval, the ordinance may include provisions for review and approval of sketch plans
30 and preliminary plats. The ordinance may provide for different review procedures for
31 differing classes of subdivisions. The ordinance may be adopted as part of a unified
32 development ordinance or as a separate subdivision ordinance."

33 **SECTION 6.** G.S. 153A-332 reads as rewritten:

34 **"§ 153A-332. Ordinance to contain procedure for plat approval; approval**
35 **prerequisite to plat recordation; statement by owner.**

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

39 The ordinance shall provide that the following agencies be given an opportunity to
40 make recommendations concerning an individual subdivision plat before the plat is
41 approved:

- 42 (1) The district highway engineer as to proposed State streets, State
43 highways, and related drainage systems;

- 1 (2) The county health director or local public utility, as appropriate, as to
2 proposed water or sewerage systems;
- 3 (3) Any other agency or official designated by the board of
4 commissioners.

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

- 7 (1) The board of commissioners,
8 (2) The board of commissioners on recommendation of a ~~planning agency,~~
9 ~~designated body, or~~
10 (3) A designated planning agency board, technical review committee, or
11 other designated body or staff person.

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

21 **SECTION 7.** G.S. 160A-384 reads as rewritten:

22 **"§ 160A-384. Method of procedure.**

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

35 (b) The first class mail notice required under subsection (a) of this section shall
36 not be required if the zoning map amendment directly affects more than 50 properties,
37 owned by a total of at least 50 different property owners, and the city elects to use the
38 expanded published notice provided for in this subsection. In this instance, a city may
39 elect to either make the mailed notice provided for in subsection (a) of this section or
40 may as an alternative elect to publish ~~once a week for four successive calendar weeks in~~
41 ~~a newspaper having general circulation in the area an advertisement of the public~~
42 ~~hearing that shows the boundaries of the area affected by the proposed zoning map~~
43 ~~amendment and explains the nature of the proposed change. The final two~~
44 ~~advertisements shall comply with and be deemed to satisfy the provisions of~~

1 ~~G.S. 160A-364. The advertisement notice of the hearing as required by G.S. 160A-364,~~
2 ~~but provided that each advertisement shall not be less than one-half of a newspaper page~~
3 ~~in size. The advertisement shall only be effective for property owners who reside in the~~
4 ~~area of general circulation of the newspaper which publishes the notice. Property~~
5 ~~owners who reside outside of the newspaper circulation area, according to the address~~
6 ~~listed on the most recent property tax listing for the affected property, shall be notified~~
7 ~~by first class mail pursuant to according to the provisions of subsection (a) of this~~
8 ~~section. The person or persons mailing the notices shall certify to the city council that~~
9 ~~fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition~~
10 ~~to the published notice, a city shall post one or more prominent signs on or immediately~~
11 ~~adjacent to the subject area reasonably calculated to give public notice of the proposed~~
12 ~~rezoning.~~

13 (c) The provisions of this section shall not be applicable to any zoning map
14 adoption that initially zones property added to the territorial coverage of the ordinance."

15 **SECTION 8.** G.S. 160A-385 reads as rewritten:

16 "**§ 160A-385. Changes.**

17 (a) Qualified Protests.

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

32 (2) To qualify as a protest under this section, the petition must be signed
33 by the owners of either (i) twenty percent (20%) or more of the area
34 included in the proposed change or (ii) five percent (5%) of a
35 100-foot-wide buffer extending along the entire boundary of each
36 discrete or separate area proposed to be rezoned. Street rights-of-way
37 shall not be considered in computing the 100-foot buffer area. When
38 less than an entire parcel of land is subject to the proposed zoning map
39 amendment, the 100-foot buffer shall be measured from the property
40 line of that parcel. For the purposes of this section, the 'owners' are
41 those listed on the county tax listing.

42 (3) The foregoing provisions concerning protests shall not be applicable to
43 any amendment which initially zones property added to the territorial
44 coverage of the ordinance as a result of annexation or otherwise, or to

1 an amendment to an adopted ~~(i) special use district or district, (ii)~~
2 conditional use ~~district-district, or (iii) conditional district~~ if the
3 amendment does not change the types of uses that are permitted within
4 the district or increase the approved density for residential
5 development, or increase the total approved size of nonresidential
6 development, or reduce the size of any buffers or screening approved
7 for the special use ~~or use district, conditional use district.district, or~~
8 conditional district.

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

18 **SECTION 9.** G.S. 160A-386 reads as rewritten:

19 **"§ 160A-386. Protest petition; form; requirements; time for filing.**

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

36 **SECTION 10.** G.S. 160A-387 reads as rewritten:

37 **"§ 160A-387. Planning agency; zoning plan; certification to city council.**

38 In order to initially exercise the powers conferred by this Part, a city council shall
39 create or designate a planning ~~agency-board~~ under the provisions of this Article or of a
40 special act of the General Assembly. The planning ~~agency-board~~ shall ~~prepare-review~~
41 and comment upon a proposed zoning ordinance, including both the full text of such
42 ordinance and maps showing proposed district boundaries. The planning ~~agency-board~~
43 may hold public hearings in the course of preparing the ordinance. Upon completion,
44 the planning ~~agency-board~~ shall ~~certify~~ make a written recommendation regarding

1 adoption of the ordinance to the city council. The city council shall not hold its required
2 public hearing or take action until it has received a ~~certified recommendation regarding~~
3 ordinance from the planning ~~agency-board~~. Following its required public hearing, the
4 city council may refer the ordinance back to the planning ~~agency-board~~ for any further
5 recommendations that the ~~agency-board~~ may wish to make prior to final action by the
6 city council in adopting, modifying and adopting, or rejecting the ordinance.

7 Subsequent to initial adoption of a zoning ordinance, all proposed amendments to
8 the zoning ordinance or zoning map shall be submitted to the planning board for review
9 and comment, including amendments proposed by the planning board, city council, city
10 staff, landowners, or any other person. The planning board shall consider whether the
11 proposed amendment is consistent with the comprehensive plan and any other officially
12 adopted plans that are applicable. The planning board shall provide a written
13 recommendation to the governing board that addresses plan consistency and other
14 matters as deemed appropriate by the planning board. If no written report is received
15 from the planning board within 30 days of referral of the amendment to that board, the
16 governing board may proceed in its consideration of the amendment without the
17 planning board report."

18 **SECTION 11.** G.S. 160A-388 reads as rewritten:

19 **"§ 160A-388. Board of adjustment.**

20 (a) The city council may provide for the appointment and compensation of a
21 board of adjustment consisting of five or more members, each to be appointed for three
22 years. In appointing the original members of such board, or in the filling of vacancies
23 caused by the expiration of the terms of existing members, the council may appoint
24 certain members for less than three years to the end that thereafter the terms of all
25 members shall not expire at the same time. The council may, in its discretion, appoint
26 and provide compensation for alternate members to serve on the board in the absence or
27 temporary disqualification of any regular ~~member~~ member or to fill a vacancy pending
28 appointment of a member. Alternate members shall be appointed for the same term, at
29 the same time, and in the same manner as regular members. Each alternate member,
30 while attending any regular or special meeting of the board and serving ~~in the absence~~
31 on behalf of any regular member, shall have and may exercise all the powers and duties
32 of a regular member. A city may designate a planning ~~agency-board~~ or governing board
33 to perform any or all of the duties of a board of adjustment in addition to its other
34 duties.

35 (b) The board of adjustment shall hear and decide appeals from and review any
36 order, requirement, decision, or determination made by an administrative official
37 charged with the enforcement of any ordinance adopted pursuant to this Part. An appeal
38 may be taken by any person aggrieved or by an officer, department, board, or bureau of
39 the city. Appeals shall be taken within times prescribed by the board of adjustment by
40 general rule, by filing with the officer from whom the appeal is taken and with the board
41 of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom
42 the appeal is taken shall forthwith transmit to the board all the papers constituting the
43 record upon which the action appealed from was taken. An appeal stays all proceedings
44 in furtherance of the action appealed from, unless the officer from whom the appeal is

1 taken certifies to the board of adjustment, after notice of appeal has been filed with him,
2 that because of facts stated in the certificate a stay would, in his opinion, cause
3 imminent peril to life or property or that because the violation charged is transitory in
4 nature a stay would seriously interfere with enforcement of the ordinance. In that case
5 proceedings shall not be stayed except by a restraining order, which may be granted by
6 the board of adjustment or by a court of record on application, on notice to the officer
7 from whom the appeal is taken and on due cause shown. The board of adjustment shall
8 fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties,
9 and decide it within a reasonable time. The board of adjustment may reverse or affirm,
10 wholly or partly, or may modify the order, requirement, decision, or determination
11 appealed from, and shall make any order, requirement, decision, or determination that in
12 its opinion ought to be made in the premises. To this end the board shall have all the
13 powers of the officer from whom the appeal is taken.

14 (c) The zoning ordinance may provide that the board of adjustment may permit
15 special exceptions to the zoning regulations in specified classes of cases or situations
16 ~~and such as minor modifications to dimensional and nonuse related regulations and that~~
17 ~~the board may issue special and conditional use permits, all to be in accordance with the~~
18 principles, conditions, safeguards, and procedures specified in the ordinance. The
19 ordinance may also authorize the board to interpret zoning maps and pass upon disputed
20 questions of lot lines or district boundary lines and similar questions as they arise in the
21 administration of the ordinance. The board shall hear and decide all matters referred to
22 it or upon which it is required to pass under any zoning ordinance.

23 (d) When practical difficulties or unnecessary hardships would result from
24 carrying out the strict letter of a zoning or other land development ordinance, the board
25 of adjustment shall have the ~~power, in passing upon appeals, power~~ to vary or modify
26 any of the regulations or provisions of the ordinance ~~relating to the use, construction or~~
27 ~~alteration of buildings or structures or the use of land,~~ so that the spirit of the ordinance
28 shall be observed, public safety and welfare secured, and substantial justice done. No
29 change in permitted uses may be authorized by variance.

30 (e) The concurring vote of four-fifths of the members of the board shall be
31 necessary to reverse any order, requirement, decision, or determination of any
32 administrative official charged with the enforcement of an ordinance adopted pursuant
33 to this Part, or to decide in favor of the applicant any matter upon which it is required to
34 pass under any ordinance, or to grant a variance from the provisions of the ordinance.
35 For the purposes of this subsection, vacant positions on the board and members who are
36 disqualified from voting on a quasi-judicial matter shall not be considered 'members of
37 the board' for calculation of the requisite supermajority if there are no qualified
38 alternates available to take the place of such members. Appropriate conditions may be
39 imposed on any approval issued by the board where the condition is reasonably
40 necessary to secure compliance with the standards of the ordinance.

41 (e1) A member of the board or any other body exercising the functions of a board
42 of adjustment shall not participate in or vote on any quasi-judicial matter in a manner
43 that would violate affected persons' constitutional rights to an impartial decision maker.
44 Impermissible conflicts include, but are not limited to, a member having a fixed opinion

1 prior to hearing the matter that is not susceptible to change, undisclosed ex parte
2 communications, a close familial, business, or other associational relationship with an
3 affected person, or a financial interest in the outcome of the matter. If an objection is
4 raised to a member's participation and that member does not recuse himself or herself,
5 the remaining members of the board shall by majority vote rule on the objection.

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

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

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

27 **SECTION 12.** G.S. 153A-343(b) reads as rewritten:

28 "(b) The first class mail notice required under subsection (a) of this section shall
29 not be required if the zoning map amendment directly affects more than 50 properties,
30 owned by a total of at least 50 different property owners, and the county elects to use
31 the expanded published notice provided for in this subsection. In this instance, a county
32 may elect to either make the mailed notice provided for in subsection (a) of this section
33 or may as an alternative elect to publish ~~once a week for four successive calendar weeks~~
34 ~~in a newspaper having general circulation in the area an advertisement of the public~~
35 ~~hearing that shows the boundaries of the area affected by the proposed zoning map~~
36 ~~amendment and explains the nature of the proposed change. The final two~~
37 ~~advertisements shall comply with and be deemed to satisfy the provisions of~~
38 ~~G.S. 153A-323. The advertisement notice of the hearings required by G.S. 153A-323,~~
39 but provided that each of the advertisements shall not be less than one-half of a
40 newspaper page in size. The advertisement shall only be effective for property owners
41 who reside in the area of general circulation of the newspaper which publishes the
42 notice. Property owners who reside outside of the newspaper circulation area, according
43 to the address listed on the most recent property tax listing for the affected property,
44 shall be notified by first class mail pursuant to according to the provisions of subsection

1 ~~(a) of this section. The person or persons mailing the notices shall certify to the board of~~
2 ~~commissioners that fact, and the certificates shall be deemed conclusive in the absence~~
3 ~~of fraud. In addition to the published notice, a county shall post one or more prominent~~
4 ~~signs on or immediately adjacent to the subject area reasonably calculated to give public~~
5 ~~notice of the proposed rezoning."~~

6 SECTION 13. G.S. 153A-344 reads as rewritten:

7 "**§ 153A-344. Planning agency; zoning plan; certification to board of**
8 **commissioners; amendments, commissioners.**

9 (a) To initially exercise the powers conferred by this Part, a county shall create or
10 designate a planning agency board under the provisions of this Article or of a local act.
11 The planning agency board shall prepare review and comment upon a proposed zoning
12 ordinance, including both the full text of such ordinance and maps showing proposed
13 district boundaries. The planning agency board may hold public hearings in the course
14 of preparing the ordinance. Upon completion, the planning agency board shall certify
15 make a written recommendation regarding adoption of the ordinance to the board of
16 commissioners. The board of commissioners shall not hold the public hearing required
17 by G.S. 153A-323 or take action until it has received a certified recommendation
18 regarding the ordinance from the planning agency board. Following its required public
19 hearing, the board of commissioners may refer the ordinance back to the planning
20 agency board for any further recommendations that the agency board may wish to make
21 prior to final action by the board in adopting, modifying and adopting, or rejecting the
22 ordinance.

23 ~~Zoning regulations and restrictions and zone boundaries may from time to time be~~
24 ~~amended, supplemented, changed, modified, or repealed. Whenever territory is added to~~
25 ~~an existing designated zoning area, it shall be treated as an amendment to the zoning~~
26 ~~ordinance for that area. Before an amendment may be adopted, it must be referred to the~~
27 ~~planning agency for the agency's recommendation. The agency shall be given at least 30~~
28 ~~days in which to make a recommendation. Subsequent to initial adoption of a zoning~~
29 ~~ordinance, all proposed amendments to the zoning ordinance or zoning map shall be~~
30 ~~submitted to the planning board for review and comment, including amendments~~
31 ~~proposed by the planning board, the board of county commissioners, county staff,~~
32 ~~landowners, or any other person. The planning board shall consider whether the~~
33 ~~proposed amendment is consistent with the comprehensive plan and any other officially~~
34 ~~adopted plans that are applicable. The planning board shall provide a written~~
35 ~~recommendation to the board of county commissioners that addresses plan consistency~~
36 ~~and other matters as deemed appropriate by the planning board. If no written report is~~
37 ~~received from the planning board within 30 days of referral of the amendment to that~~
38 ~~board, the board of county commissioners may proceed in its consideration of the~~
39 ~~amendment without the planning board report. The board of commissioners is not~~
40 ~~bound by the recommendations, if any, of the planning agency board.~~

41 (b) ~~Amendments, modifications, supplements, repeal or other changes in zoning~~
42 ~~regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances
43 shall not be applicable or enforceable without consent of the owner with regard to
44 buildings and uses for which either (i) building permits have been issued pursuant to

1 G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so
2 long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and
3 unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established
4 pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired
5 pursuant to G.S. 153A-344.1."

6 **SECTION 14.** G.S. 153A-345 reads as rewritten:

7 "**§ 153A-345. Board of adjustment.**

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

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

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

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

6 (c) The zoning ordinance may provide that the board of adjustment may permit
7 special exceptions to the zoning regulations in specified classes of cases or situations
8 ~~and such as minor modifications to dimensional and nonuse related regulations and that~~
9 the board may issue special and conditional use permits, all to be in accordance with the
10 principles, conditions, safeguards, and procedures specified in the ordinance. The
11 ordinance may also authorize the board to interpret zoning maps and pass upon disputed
12 questions of lot lines or district boundary lines and similar questions that may arise in
13 the administration of the ordinance. The board shall hear and decide all matters referred
14 to it or upon which it is required to pass under the zoning ordinance.

15 (d) When practical difficulties or unnecessary hardships would result from
16 carrying out the strict letter of a zoning or other land development ordinance, the board
17 of adjustment ~~may, in passing upon appeals, shall have the power to vary or modify any~~
18 ~~regulation or provision of the ordinance relating to the use, construction, or alteration of~~
19 ~~buildings or structures or the use of land,~~ so that the spirit of the ordinance is observed,
20 public safety and welfare secured, and substantial justice done. No change in permitted
21 uses may be authorized by variance.

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

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

42 (e2) Each decision of the board is subject to review by the superior court by
43 proceedings in the nature of certiorari. Any petition for review by the superior court
44 shall be filed with the clerk of superior court within 30 days after the decision of the

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

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

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

19 **SECTION 15.** G.S. 136-44.50(d) reads as rewritten:

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

35 **SECTION 16.** The provisions of this act shall not be deemed to amend or
36 affect the validity or enforceability of any local act or charter provision previously
37 enacted by the General Assembly.

38 **SECTION 17.** This act becomes effective January 1, 2006.