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HOUSE BILL 483  
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Short Title: Land-Use Regulatory Changes.

(Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE STATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 160A-385 reads as rewritten:

"§ 160A-385. Changes.

...

(b) Amendments in land development regulations, as defined in G.S. 160A-400.21(6), including zoning ordinances or unified development ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to buildings and uses—buildings, uses, or developments for which ~~either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1~~ any of the following approvals or permits have been validly issued and remain unexpired pursuant to law:

(1) A zoning approval, which includes, but is not limited to, a zoning permit, a site plan approval, a conditional use permit, or any other permit or approval given under the authority of Article 19 of Chapter 160A of the General Statutes that authorizes the use of land.

(2) A building permit issued pursuant to this Chapter.

The applicable application for either such zoning approval or building permit must be submitted in accordance with G.S. 143-755 prior to the change in the development regulations. Amendments shall also not be applicable or enforceable without the written consent of the owner if a vested right has been established pursuant to G.S. 160A-385.1, and such vested right remains valid and unexpired or if a vested right is established by the terms of a development agreement authorized by Part 3D of this Article. A vested right, once established as provided for in this section, precludes any action by a city which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the application, except where a change in State or federal law mandating local government enforcement occurs after the application is submitted that has a fundamental effect on such development or use.

(b1) For purposes of this section, a multi-phased development shall be considered vested for the entire development with the land development regulations then in place at the time of application for the initial phase so long as the developer notifies the approving authority in an



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1 application that it is a multi-phased project and submits a plan describing with reasonable certainty  
2 the type and intensity of use for a specific parcel or parcels of property and showing the proposed  
3 phase boundaries. A right which has been vested as provided for in this subsection shall remain  
4 vested for a period of 10 years.

5 (b2) Nothing in this section shall preclude a judicial determination, based on common law  
6 principles or other statutory provisions, that a vested right exists in a particular case."

7 **SECTION 2.** G.S. 153A-344 reads as rewritten:

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

9 ...

10 (b) Amendments in land development regulations, as defined in G.S. 153A-349.2(6),  
11 including zoning ordinances or unified development ordinances, shall not be applicable or  
12 enforceable without the written consent of the owner with regard to buildings and uses buildings,  
13 uses, or developments for which either (i) building permits have been issued pursuant to G.S.  
14 153A-357 prior to the enactment of the ordinance making the change or changes so long as the  
15 permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S.  
16 153A-362 or (ii) a vested right has been established pursuant to G.S. 153A-344.1 and such vested  
17 right remains valid and unexpired pursuant to G.S. 153A-344.1 any of the following approvals or  
18 permits have been validly issued and remain unexpired pursuant to law:

19 (1) A zoning approval, which includes, but is not limited to, a zoning permit, a site  
20 plan approval, a conditional use permit, or any other permit or approval given  
21 under the authority of Article 18 of Chapter 153A of the General Statutes that  
22 authorizes the use of land.

23 (2) A building permit issued pursuant to this Chapter.

24 The applicable application for either such zoning approval or building permit must be submitted in  
25 accordance with G.S. 143-755 prior to the change in the development regulations. Amendments  
26 shall also not be applicable or enforceable without the written consent of the owner if a vested  
27 right has been established pursuant to G.S. 153A-344.1, and such vested right remains valid and  
28 unexpired or if a vested right is established by the terms of a development agreement authorized  
29 by Part 3A of this Article. A vested right, once established as provided for in this section,  
30 precludes any action by a city which would change, alter, impair, prevent, diminish, or otherwise  
31 delay the development or use of the property as set forth in the application, except where a change  
32 in State or federal law mandating local government enforcement occurs after the application is  
33 submitted that has a fundamental effect on such development or use.

34 (b1) For purposes of this section, a multi-phased development shall be considered vested for  
35 the entire development with the land development regulations then in place at the time of  
36 application for the initial phase so long as the developer notifies the approving authority in the  
37 application that it is a multi-phased project and submits a plan describing with reasonable certainty  
38 the type and intensity of use for a specific parcel or parcels of property and showing the proposed  
39 phase boundaries. A right which has been vested as provided for in this subsection shall remain  
40 vested for a period of 10 years.

41 (b2) Nothing in this section shall preclude a judicial determination, based on common law  
42 principles or other statutory provisions, that a vested right exists in a particular case."

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

45 **"§ 160A-393.1. Civil action for declaratory relief, injunctive relief, or other remedies.**

46 (a) Action for Relief Authorized. – Notwithstanding the provisions of G.S. 160A-388, any  
47 person who either meets the criteria set forth in G.S. 160A-393(d)(1) or is a permit applicant and  
48 who is aggrieved by a final decision of an administrative official involving the application or  
49 enforcement or a city or county zoning ordinance, subdivision ordinance, unified development  
50 ordinance, or other ordinance regulating the use or development of land may, in lieu of taking an  
51 appeal to a board of adjustment, maintain an original action in the superior court or business court

1 for declaratory relief, injunctive relief, damages, or other remedy provided or allowed by law or  
2 equity, where any one or more of the following claims or defenses are asserted:

- 3       (1) That the ordinance, either on its face or as applied by the final decision of the  
4 administrative official, violates the United States or North Carolina  
5 Constitutions.  
6       (2) That the ordinance or the final decision of the administrative official is invalid  
7 or unenforceable on grounds of ultra vires, preemption, including preemption  
8 under G.S. 160A-174(b), or is otherwise in excess of authority.  
9       (3) That the ordinance or the final decision of the administrative official violates  
10 common law or statutory vested rights of the aggrieved person.  
11       (4) That the ordinance or the final decision of the administrative official constitutes  
12 a taking of property.

13 In any action brought pursuant to this subsection and notwithstanding G.S. 160A-388(b1), the  
14 aggrieved party may join any other claims and defenses arising from or relating to the final  
15 decision of the administrative official, including, without limitation, claims or defenses relating to  
16 the interpretation or application of the ordinance.

17       (b) Time for Commencement of Action. – Any action brought pursuant to this section shall  
18 be commenced within one year after the date on which written notice of the final decision is  
19 delivered to the aggrieved party by personal delivery, electronic mail, or by first-class mail.

20       (c) Availability of Alternative Remedy. – Any person otherwise entitled to maintain an  
21 action under this section may elect instead to present any of the claims or defenses set forth in  
22 subdivisions (1) through (3) of subsection (a) of this section by way of appeal to the board of  
23 adjustment as provided in G.S. 160A-388(b1) and may thereafter appeal from a decision by the  
24 board of adjustment as provided in G.S. 160A-393. Once an appeal setting forth such claims or  
25 defenses has been filed pursuant to G.S. 160A-388(b1)(1) and its related hearing before the board  
26 of adjustment commenced, a party may not thereafter bring an action as authorized by this section,  
27 provided, however, that nothing herein shall be deemed to preclude a party from maintaining an  
28 action under federal law or a takings claim.

29       (d) Notice to Abutting Landowners. – A person who commences an action pursuant to this  
30 section shall notify by first-class mail the owners of all parcels of land abutting the parcel of land  
31 that is the subject of the complaint that such action has been filed. The notice shall include a copy  
32 of the complaint. The person bringing the civil action may rely on the county tax listing to  
33 determine owners of property entitled to mailed notice and the applicable mailing addresses. The  
34 notice shall be mailed no later than 30 days after the commencement of the action, unless an  
35 extension not to exceed 30 days is granted pursuant to Rule 6(b) of the North Carolina Rules of  
36 Civil Procedure."

37       **SECTION 4.** G.S. 160A-393 reads as rewritten:

38       **"§ 160A-393. Appeals in the nature of certiorari.**

39       ...  
40       (j) Hearing on the Record. – The court shall hear and decide all issues raised by the  
41 petition by reviewing the record submitted in accordance with subsection (h) of this section.  
42 Except that the court may, in its discretion, allow the record to be supplemented with affidavits,  
43 testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is  
44 not adequate to allow an appropriate determination of the following issues:

- 45       (1) Whether a petitioner or intervenor has standing.  
46       (2) Whether, as a result of impermissible conflict as described in  
47 G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making  
48 body was not sufficiently impartial to comply with due process principles.  
49       (3) Whether the decision-making body erred for the reasons set forth in  
50 sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this

- 1 ~~section~~ section, including an error related to the claims or defenses in  
2 subdivision (k)(4) of this section.
- 3 (k) Scope of Review. –
- 4 (1) When reviewing the decision of a decision-making board under the provisions  
5 of this section, the court shall ensure that the rights of petitioners have not been  
6 prejudiced because the decision-making body's findings, inferences,  
7 conclusions, or decisions were:
- 8 a. In violation of constitutional provisions, including those protecting  
9 procedural due process rights.
- 10 b. In excess of the statutory authority conferred upon the city or the  
11 authority conferred upon the decision-making board by ordinance.
- 12 c. Inconsistent with applicable procedures specified by statute or  
13 ordinance.
- 14 d. Affected by other error of law.
- 15 e. Unsupported by substantial competent evidence in view of the entire  
16 record.
- 17 f. Arbitrary or capricious.
- 18 (2) When the issue before the court is whether the decision-making board erred in  
19 interpreting an ordinance, the court shall review that issue de novo. The court  
20 shall consider the interpretation of the decision-making board, but is not bound  
21 by that interpretation, and may freely substitute its judgment as appropriate.
- 22 (3) The term "competent evidence," as used in this subsection, shall not preclude  
23 reliance by the decision-making board on evidence that would not be  
24 admissible under the rules of evidence as applied in the trial division of the  
25 General Court of Justice if (i) the evidence was admitted without objection or  
26 (ii) the evidence appears to be sufficiently trustworthy and was admitted under  
27 such circumstances that it was reasonable for the decision-making board to rely  
28 upon it. The term "competent evidence," as used in this subsection, shall not be  
29 deemed to include the opinion testimony of lay witnesses as to any of the  
30 following:
- 31 a. The use of property in a particular way would affect the value of other  
32 property.
- 33 b. The increase in vehicular traffic resulting from a proposed development  
34 would pose a danger to the public safety.
- 35 c. Matters about which only expert testimony would generally be  
36 admissible under the rules of evidence.
- 37 (4) The petitioner may assert and the court shall determine de novo, based on the  
38 record in subsection (j) of this section, any of the following claims or defenses:
- 39 a. That the ordinance, either on its face or as applied by the final decision  
40 of the administrative official, violates the United States or North  
41 Carolina Constitutions.
- 42 b. That the ordinance or the final decision of the administrative official is  
43 invalid or unenforceable on grounds of ultra vires, preemption,  
44 including preemption under G.S. 160A-174(b), or is otherwise in excess  
45 of authority.
- 46 c. That the ordinance or the final decision of the administrative official  
47 violates common law or statutory vested rights of the aggrieved person.
- 48 (5) In order to raise any of the claims or defenses listed in subdivision (4) of this  
49 subsection, to the extent that they do not involve some act of the  
50 decision-making board itself or any of its members, the claim or defense shall  
51 be made known to the decision-making board at the hearing.

1 ...."

2 **SECTION 5.** Part 3 of Article 19 of Chapter 160A of the General Statutes is amended  
3 by adding a new section to read:

4 **"§ 160A-393.2. No estoppel effect when challenging unlawful conditions.**

5 No landowner or permit applicant shall be precluded from timely challenging any unlawful  
6 condition imposed on a development as part of the application of land development regulations as  
7 defined in G.S. 160A-400.21(6) as a result of actions by the landowner or permit applicant to  
8 proceed with the development or use. A local government may not raise estoppel, waiver, release,  
9 or acceptance or other similar grounds as a defense to such challenge. This section shall not apply  
10 to rezoning decisions."

11 **SECTION 6.** G.S. 6-21.7 reads as rewritten:

12 **"§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

13 In any action in which a city or county is a party, upon a finding by the court that the city or  
14 county ~~acted outside the scope of its legal authority, violated a statute or case law setting forth~~  
15 unambiguous limits on its authority, the court may shall award reasonable attorneys' fees and costs  
16 to the party who successfully challenged the city's or county's ~~action, provided that if the court~~  
17 ~~also finds that the city's or county's action was an abuse of its discretion, the court shall award~~  
18 attorneys' fees and costs. In all other matters, the court may award reasonable attorneys' fees  
19 and costs to the prevailing private litigant. For purposes of this section, "unambiguous" means that  
20 the limits of authority are not reasonably susceptible to multiple constructions."

21 **SECTION 7.** G.S. 160A-372 reads as rewritten:

22 **"§ 160A-372. Contents and requirements of ordinance.**

23 ...

24 (c) The ordinance may provide for the more orderly development of subdivisions by  
25 requiring the construction of community service facilities in accordance with municipal plans,  
26 policies, and standards. To assure compliance with these and other ordinance requirements, the  
27 ordinance may provide for performance guarantees ~~to assure successful completion of required~~  
28 ~~improvements either at the time the plat is recorded as provided in subsection (b) of this section.~~  
29 section or at a time subsequent to the recording of the plat, but prior to the issuance of a permit  
30 pursuant to G.S. 160A-417(a)(1), to assure successful completion of required improvements. In  
31 the event a city fails to adopt an ordinance setting forth performance guarantees in compliance  
32 with subsection (g) of this section, a city shall not be authorized to require the successful  
33 completion of required improvements prior to a plat being recorded. For any specific  
34 development, the type and term of performance guarantee-guarantee, or any extension of the  
35 performance guarantee, shall be at the election of the developer-developer provided that any  
36 performance guarantee or extension be available to assure the successful completion of  
37 improvements for which it is required. The developer shall be allowed, without limitation, to  
38 reduce the amount of the performance guarantee to reflect only the remaining incomplete items.

39 ...

40 (g) For purposes of this section, all of the following shall apply with respect to  
41 performance guarantees:

- 42 (1) The term "performance guarantee" shall mean any of the following forms of  
43 guarantee:  
44 a. Surety bond issued by any company authorized to do business in this  
45 State.  
46 b. Letter of credit issued by any financial institution licensed to do  
47 business in this State.  
48 c. Other form of guarantee that provides equivalent security to a surety  
49 bond or letter of credit.  
50 (2) The performance guarantee shall be returned or released, as appropriate, in a  
51 timely manner upon the acknowledgement by the city or county that the

1 improvements for which the performance guarantee is being required are  
2 complete. If the improvements are not complete and the current performance  
3 guarantee is expiring, the performance guarantee shall be extended, or a new  
4 performance guarantee issued, for an additional period until such required  
5 improvements are complete. A developer shall demonstrate reasonable, good  
6 faith progress toward completion of the required improvements that are the  
7 subject of the performance guarantee or any extension. The form of any  
8 extension shall remain at the election of the developer.

9 (3) The amount of the performance guarantee shall not exceed one hundred  
10 twenty-five percent (125%) of the reasonably estimated cost of completion at  
11 the time the performance guarantee is issued. Any extension of the performance  
12 guarantee necessary to complete required improvements shall not exceed one  
13 hundred twenty-five percent (125%) of the reasonably estimated cost of  
14 completion of the remaining incomplete improvements still outstanding at the  
15 time the extension is obtained. At the election of the developer, the one hundred  
16 twenty-five percent (125%) of the reasonably estimated cost of completion may  
17 be conclusively determined by a report provided under seal by an architect  
18 licensed under the provisions of Chapter 83A of the General Statutes or an  
19 engineer registered under the provisions of Chapter 89C of the General  
20 Statutes. This report may contain unit pricing information provided by a general  
21 contractor, licensed under Chapter 87 of the General Statutes, or any other  
22 competent source which the architect or engineer certifies, under seal, as  
23 accurate. The reasonably estimated cost of completion shall include all costs of  
24 inflation and costs of administration and enforcement, no matter how such  
25 related fees or charges are denominated.

26 (4) The performance guarantee shall only be used for completion of the required  
27 improvements and not for repairs or maintenance after completion.

28 (5) The developer shall have the option to post one form of a performance  
29 guarantee as provided for in subdivision (1) of this subsection, in lieu of  
30 multiple bonds, letters of credit, or other equivalent security, for all  
31 development matters related to the same project requiring performance  
32 guarantees, including, without limitation, subdivision, erosion control, and  
33 storm water.

34 (6) No person shall have or may claim any rights under or to any performance  
35 guarantee provided pursuant to this subsection or in or to the proceeds of any  
36 such performance guarantee other than the following:

37 a. The local government to whom such performance guarantee is provided.

38 b. The developer at whose request or for whose benefit such performance  
39 guarantee is given.

40 c. The person or entity issuing or providing such performance guarantee at  
41 the request of or for the benefit of the developer."

42 **SECTION 8.** G.S. 153A-331(e) reads as rewritten:

43 "(e) The ordinance may provide for the more orderly development of subdivisions by  
44 requiring the construction of community service facilities in accordance with county plans,  
45 policies, and standards. To assure compliance with these and other ordinance requirements, the  
46 ordinance may provide for performance guarantees ~~to assure successful completion of required~~  
47 ~~improvements either~~ at the time the plat is recorded as provided in subsection (b) of this ~~section.~~  
48 section or at a time subsequent to the recording of the plat, but prior to the issuance of a permit  
49 pursuant to G.S. 153A-357(a)(1), to assure successful completion of required improvements. In  
50 the event a county fails to adopt an ordinance setting forth performance guarantees in compliance  
51 with subsection (g) of this section, a county shall not be authorized to require the successful

1 completion of required improvements prior to a plat being recorded. For any specific  
2 development, the type and term of performance guarantee from the range specified by the county  
3 guarantee, or any extension of the performance guarantee, shall be at the election of the  
4 developer-developer, provided that any performance guarantee or extension be available to assure  
5 the successful completion of the improvements for which it is required. The developer shall be  
6 allowed, without limitation, to reduce the amount of the performance guarantee to reflect only the  
7 remaining incomplete items."

8 **SECTION 9.** G.S. 160A-381(c) reads as rewritten:

9 "(c) The regulations may also provide that the board of adjustment, the planning board, or  
10 the city council may issue special use permits or conditional use permits in the classes of cases or  
11 situations and in accordance with the principles, conditions, safeguards, and procedures specified  
12 therein and may impose reasonable and appropriate conditions and safeguards upon these permits.  
13 Conditions and safeguards imposed under this subsection shall not include requirements for which  
14 the city does not have authority under statute to regulate nor requirements for which the courts  
15 have held to be unenforceable if imposed directly by the ~~city~~-city, including, without limitation,  
16 taxes, impact fees, building design elements within the scope of subsection (h) of this section not  
17 voluntarily offered by petitioner, street improvements in excess of those allowed in  
18 G.S. 160A-372, driveway-related improvements in excess of those allowed in G.S. 136-18(29) and  
19 G.S. 160A-307, or other unauthorized limitations on the development or use of land. When  
20 deciding special use permits or conditional use permits, the city council or planning board shall  
21 follow quasi-judicial procedures. Notice of hearings on special or conditional use permit  
22 applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall  
23 be required for the city council or planning board to issue such permits. For the purposes of this  
24 section, vacant positions on the board and members who are disqualified from voting on a  
25 quasi-judicial matter shall not be considered "members of the board" for calculation of the  
26 requisite majority. Every such decision of the city council or planning board shall be subject to  
27 review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

28 Where appropriate, such conditions may include requirements that street and utility  
29 rights-of-way be dedicated to the public and that provision be made of recreational space and  
30 facilities."

31 **SECTION 10.** G.S. 153A-340(c1) reads as rewritten:

32 "(c1) The regulations may also provide that the board of adjustment, the planning board, or  
33 the board of commissioners may issue special use permits or conditional use permits in the classes  
34 of cases or situations and in accordance with the principles, conditions, safeguards, and procedures  
35 specified therein and may impose reasonable and appropriate conditions and safeguards upon  
36 these permits. Conditions and safeguards imposed under this subsection shall not include  
37 requirements for which the county does not have authority under statute to regulate nor  
38 requirements for which the courts have held to be unenforceable if imposed directly by the ~~county~~-  
39 county, including, without limitation, taxes, impact fees, building design elements within the  
40 scope of subsection (l) of this section not voluntarily offered by petitioner, street improvements in  
41 excess of those allowed in G.S. 160A-372, driveway-related improvements in excess of those  
42 allowed in G.S. 136-18(29), or other unauthorized limitations on the development or use of land.  
43 Where appropriate, the conditions may include requirements that street and utility rights-of-way  
44 be dedicated to the public and that recreational space be provided. When deciding special use  
45 permits or conditional use permits, the board of county commissioners or planning board shall  
46 follow quasi-judicial procedures. Notice of hearings on special or conditional use permit  
47 applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall  
48 be required for the board of county commissioners or planning board to issue such permits. For the  
49 purposes of this section, vacant positions on the board and members who are disqualified from  
50 voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of  
51 the requisite majority. Every such decision of the board of county commissioners or planning

1 board shall be subject to review of the superior court in the nature of certiorari consistent with  
2 G.S. 160A-388."

3 **SECTION 11.** G.S. 153A-352(b) reads as rewritten:

4 "(b) Except as provided in G.S. 153A-364, a county may not adopt or enforce a local  
5 ordinance or resolution or any other policy that requires regular, routine inspections of buildings  
6 or structures constructed in compliance with the North Carolina Residential Code for One- and  
7 Two-Family Dwellings in addition to the specific inspections required by the North Carolina  
8 Building Code without first obtaining approval from the North Carolina Building Code Council.  
9 The North Carolina Building Code Council shall review all applications for additional inspections  
10 requested by a county and shall, in a reasonable manner, approve or disapprove the additional  
11 inspections. This subsection does not limit the authority of the county to require inspections upon  
12 unforeseen or unique circumstances that require immediate action. In performing the specific  
13 inspections required by the North Carolina Building Code, the inspector shall conduct all  
14 inspections requested by the permit holder for each scheduled inspection visit. For each requested  
15 inspection, the inspector shall inform the permit holder of instances in which the work inspected is  
16 incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for  
17 One- and Two-Family Dwellings."

18 **SECTION 12.** G.S. 160A-412(b) reads as rewritten:

19 "(b) Except as provided in G.S. 160A-424, a city may not adopt or enforce a local  
20 ordinance or resolution or any other policy that requires regular, routine inspections of buildings  
21 or structures constructed in compliance with the North Carolina Residential Code for One- and  
22 Two-Family Dwellings in addition to the specific inspections required by the North Carolina  
23 Building Code without first obtaining approval from the North Carolina Building Code Council.  
24 The North Carolina Building Code Council shall review all applications for additional inspections  
25 requested by a city and shall, in a reasonable manner, approve or disapprove the additional  
26 inspections. This subsection does not limit the authority of the city to require inspections upon  
27 unforeseen or unique circumstances that require immediate action. In performing the specific  
28 inspections required by the North Carolina Building Code, the inspector shall conduct all  
29 inspections requested by the permit holder for each scheduled inspection visit. For each requested  
30 inspection, the inspector shall inform the permit holder of instances in which the work inspected is  
31 incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for  
32 One- and Two-Family Dwellings."

33 **SECTION 13.** G.S. 160A-307 reads as rewritten:

34 "**§ 160A-307. Curb cut regulations.**

35 A city may by ordinance regulate the size, location, direction of traffic flow, and manner of  
36 construction of driveway connections into any street or alley. The ordinance may require the  
37 construction or reimbursement of the cost of construction and public dedication of medians,  
38 acceleration and deceleration lanes, and traffic storage lanes for driveway connections into any  
39 street or alley if:

- 40 (1) The need for such improvements is reasonably attributable to the traffic using  
41 the driveway; and
- 42 (2) The improvements serve the traffic of the driveway.

43 No street or alley under the control of the Department of Transportation may be improved  
44 without the consent of the Department of Transportation. ~~However, if there is a conflict between~~  
45 ~~the written driveway regulations of the Department of Transportation and the related driveway~~  
46 ~~improvements required by the city, the more stringent requirement shall apply. A city may not~~  
47 ~~require the applicant to acquire right-of-way from property not owned by the applicant."~~

48 **SECTION 14.** G.S. 160A-385(b1), as enacted by Section 1 of this act, and  
49 G.S. 153A-344(b1), as enacted by Section 2 of this act, are effective with respect to phased  
50 development approvals which are valid and unexpired on the effective date of this act.  
51 G.S. 160A-372(g)(6), as enacted by Section 7 of this act, is declarative of existing law as to all

1 performance guarantees issued pursuant to Chapter 160A or Chapter 153A of the General Statutes  
2 and is not intended to be a change in existing law as to performance guarantees whenever issued.  
3 The remainder of this act is effective when it becomes law and applies to permit applications filed,  
4 permits previously issued which remain valid and unexpired on the date this act becomes law,  
5 actions filed in court, and claims and defenses asserted on or after that date.