

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1054

Short Title: Zoning/Nonconforming Uses.

(Public)

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Sponsors: Representatives Colton; Gottovi, and Jarrell.

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Referred to: Judiciary I.

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April 19, 1993

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.

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

3 **"§ 160A-384.2. Voluntary modification of nonconforming uses and characteristics.**

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

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

8 (2) Identifies a period during which the nonconforming use or  
9 characteristic, as modified, would retain a lawful nonconforming  
10 status.

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

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

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

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

28 (2) The proposed modifications decrease the extent of incompatibility  
29 between the nonconforming use or characteristics and properties and  
30 uses in the area.

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

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

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

40 a. The character and value of the nonconforming use or  
41 characteristic at the time of the proposed modification,  
42 including the initial investment in the use or characteristic and  
43 related financial obligations, remaining lifetime, and  
44 depreciation to date.

- 1           b.     The cost of relocation or reconstruction, if applicable.  
2           c.     The character of the use or characteristic as modified under the  
3                 proposal, including the cost of the proposed modification, the  
4                 projected lifetime of the use or characteristic as modified, and  
5                 the anticipated rate of depreciation.

6 **"§ 160A-384.3. Elimination of nonconforming uses and characteristics in the**  
7 **interest of public health or safety.**

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

27 **"§ 160A-384.4. Phasing out of certain nonconforming uses, characteristics, or**  
28 **structures.**

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

- 32           (1)   Signs, both on-premises and off-premises.  
33           (2)   Adult establishments, including adult bookstores, adult movie houses,  
34                 and dance establishments in which dancers disrobe in whole or in part.  
35           (3)   Junkyards, as defined in G.S. 136-143(4).

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

43     (c) The phase-out period must be at least six years unless the city determines that  
44 the use, characteristic, or structure being phased out is dangerous or detrimental to the

1 public health or public safety, is in a state of disrepair, or is contributing to the  
2 deterioration of the surrounding neighborhood.

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

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

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

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

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

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

26 **"§ 160A-384.5. Right to continue residential uses.**

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

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

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

36 **"§ 160A-384.6. Elimination of nonconforming uses and characteristics by eminent**  
37 **domain.**

38 If a city may not eliminate an existing nonconforming use or characteristic pursuant  
39 to G.S. 160A-384.3 and G.S. 160A-384.4, or chooses not to eliminate an existing  
40 nonconforming use or characteristic even though it could do so, the city may acquire by  
41 purchase, condemnation, or any other lawful method, private property or an interest in  
42 private property for the purpose of eliminating a nonconforming use or characteristic.  
43 The expenditure of public funds to eliminate a nonconforming use or characteristic is

1 declared to be for a public purpose. Chapter 40A of the General Statutes applies to a  
2 city's exercise of its power of eminent domain under this section."

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

5 **"§ 153A-343.1. Right to continue nonconforming uses and characteristics.**

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

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

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

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

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

20 (4) Require minor modifications of a nonconforming characteristic within  
21 a reasonable period.

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

24 **"§ 153A-343.2. Voluntary modification of nonconforming uses and characteristics.**

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

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

29 (2) Identifies a period during which the nonconforming use or  
30 characteristics as modified, would retain a lawful nonconforming  
31 status.

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

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

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

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

28 **"§ 153A-343.3. Elimination of nonconforming uses and characteristics in the**  
29 **interest of public health or safety.**

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

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

6 **"§ 153A-343.4. Phasingout of certain nonconforming uses, characteristics, or**  
7 **structures.**

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

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

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

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

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

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

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

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

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

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

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

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

6 **"§ 153A-343.5. Right to continue residential uses.**

7           (a) A county may not phase out an existing residential use, including  
8 manufactured home communities and manufactured homes on individual lots, unless it  
9 is necessary to abate a condition that is dangerous or detrimental to the public health or  
10 public safety. Such action shall be taken in accordance with the provisions of G.S.  
11 153A-343.3.

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

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

17 **"§ 153A-343.6. Elimination of nonconforming uses and characteristics by eminent**  
18 **domain.**

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

28           Sec. 3. This act is effective upon ratification but does not apply to ordinances  
29 that were adopted or amended before the effective date of the act, or to ordinances that  
30 are the subject of litigation pending on the effective date.