

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 518

Short Title: City/County Planning Clarification.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 15, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY AND MAKE TECHNICAL CHANGES TO CITY AND
3 COUNTY PLANNING STATUTES.

4 The General Assembly of North Carolina enacts:

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

6 "**§ 160A-363. Supplemental powers.**

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

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

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

27 (d) A city may elect to combine any of the ordinances authorized by law into a
28 unified ordinance. Unless expressly provided otherwise, a city may apply any of the
29 definitions and procedures authorized by law to any or all aspects of the unified

1 ordinance and may employ any organizational structure, board, commission, or staffing
2 arrangement authorized by law to any or all aspects of the ordinance."

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

4 **"§ 153A-322. Supplemental powers.**

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

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

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

25 (d) A county may elect to combine any of the ordinances authorized by law into a
26 unified ordinance. Unless expressly provided otherwise, a county may apply any of the
27 definitions and procedures authorized by law to any or all aspects of the unified
28 ordinance and may employ any organizational structure, board, commission, or staffing
29 arrangement authorized by law to any or all aspects of the ordinance."

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

31 **"§ 160A-371. Subdivision regulation.**

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

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

39 **"§ 160A-373. Ordinance to contain procedure for plat approval; approval**
40 **prerequisite to plat recordation; statement by owner.**

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

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

- 3 (1) The city council,
- 4 (2) The city council on recommendation of a ~~planning agency, designated~~
5 ~~body, or~~
- 6 (3) A designated planning ~~agency board, technical review committee, or~~
7 ~~other designated body or staff person.~~

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

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

18 **"§ 153A-330. Subdivision regulation.**

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

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

29 **"§ 153A-332. Ordinance to contain procedure for plat approval; approval**
30 **prerequisite to plat recordation; statement by owner.**

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

34 The ordinance shall provide that the following agencies be given an opportunity to
35 make recommendations concerning an individual subdivision plat before the plat is
36 approved:

- 37 (1) The district highway engineer as to proposed State streets, State
38 highways, and related drainage systems;
- 39 (2) The county health director or local public utility, as appropriate, as to
40 proposed water or sewerage systems;
- 41 (3) Any other agency or official designated by the board of
42 commissioners.

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

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

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

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

16 "**§ 160A-384. Method of procedure.**

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

29 (b) The first class mail notice required under subsection (a) of this section shall
30 not be required if the zoning map amendment directly affects more than 50 properties,
31 owned by a total of at least 50 different property owners, and the city elects to use the
32 expanded published notice provided for in this subsection. In this instance, a city may
33 elect to either make the mailed notice provided for in subsection (a) of this section or
34 may as an alternative elect to publish ~~once a week for four successive calendar weeks in~~
35 ~~a newspaper having general circulation in the area an advertisement of the public~~
36 ~~hearing that shows the boundaries of the area affected by the proposed zoning map~~
37 ~~amendment and explains the nature of the proposed change. The final two~~
38 ~~advertisements shall comply with and be deemed to satisfy the provisions of~~
39 ~~G.S. 160A-364. The advertisement notice of the hearing as required by G.S. 160A-364,~~
40 but provided that each advertisement shall not be less than one-half of a newspaper page
41 in size. The advertisement shall only be effective for property owners who reside in the
42 area of general circulation of the newspaper which publishes the notice. Property
43 owners who reside outside of the newspaper circulation area, according to the address
44 listed on the most recent property tax listing for the affected property, shall be notified

1 ~~by first class mail pursuant to~~ according to the provisions of subsection (a) of this
2 section. ~~The person or persons mailing the notices shall certify to the city council that~~
3 ~~fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition~~
4 ~~to the published notice, a city shall post one or more prominent signs on or immediately~~
5 ~~adjacent to the subject area reasonably calculated to give public notice of the proposed~~
6 ~~rezoning.~~

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

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

10 "**§ 160A-385. Changes.**

11 (a) Qualified Protests.

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

26 (2) To qualify as a protest under this section, the petition must be signed
27 by the owners of either (i) twenty percent (20%) or more of the area
28 included in the proposed change or (ii) five percent (5%) of a
29 100-foot-wide buffer extending along the entire boundary of each
30 discrete or separate area proposed to be rezoned. Street rights-of-way
31 shall not be considered in computing the 100-foot buffer area. When
32 less than an entire parcel of land is subject to the proposed zoning map
33 amendment, the 100-foot buffer shall be measured from the property
34 line of that parcel. For the purposes of this section, the 'owners' are
35 those listed on the county tax listing.

36 (3) The foregoing provisions concerning protests shall not be applicable to
37 any amendment which initially zones property added to the territorial
38 coverage of the ordinance as a result of annexation or otherwise, or to
39 an amendment to an adopted (i) special use district or district, (ii)
40 conditional use district or district, or (iii) conditional district if the
41 amendment does not change the types of uses that are permitted within
42 the district or increase the approved density for residential
43 development, or increase the total approved size of nonresidential
44 development, or reduce the size of any buffers or screening approved

1 for the special use or use district, conditional use ~~district~~.district, or
2 conditional district.

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

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

13 **"§ 160A-386. Protest petition; form; requirements; time for filing.**

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

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

31 **"§ 160A-387. Planning agency; zoning plan; certification to city council.**

32 In order to initially exercise the powers conferred by this Part, a city council shall
33 create or designate a planning ~~agency board~~ under the provisions of this Article or of a
34 special act of the General Assembly. The planning ~~agency board~~ shall ~~prepare~~ review
35 and comment upon a proposed zoning ordinance, including both the full text of such
36 ordinance and maps showing proposed district boundaries. The planning ~~agency board~~
37 may hold public hearings in the course of preparing the ordinance. Upon completion,
38 the planning ~~agency board~~ shall ~~certify~~ make a written recommendation regarding
39 adoption of the ordinance to the city council. The city council shall not hold its required
40 public hearing or take action until it has received a ~~certified~~ recommendation regarding
41 ordinance from the planning ~~agency board~~. Following its required public hearing, the
42 city council may refer the ordinance back to the planning ~~agency board~~ for any further
43 recommendations that the ~~agency board~~ may wish to make prior to final action by the
44 city council in adopting, modifying and adopting, or rejecting the ordinance.

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

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

13 **"§ 160A-388. Board of adjustment.**

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

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

1 from whom the appeal is taken and on due cause shown. The board of adjustment shall
2 fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties,
3 and decide it within a reasonable time. The board of adjustment may reverse or affirm,
4 wholly or partly, or may modify the order, requirement, decision, or determination
5 appealed from, and shall make any order, requirement, decision, or determination that in
6 its opinion ought to be made in the premises. To this end the board shall have all the
7 powers of the officer from whom the appeal is taken.

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

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

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

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

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

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

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

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

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

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

2 "**§ 153A-344. Planning agency; zoning plan; certification to board of**
3 **commissioners; amendments, commissioners.**

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

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

36 (b) ~~Amendments, modifications, supplements, repeal or other changes in zoning~~
37 ~~regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances
38 shall not be applicable or enforceable without consent of the owner with regard to
39 buildings and uses for which either (i) building permits have been issued pursuant to
40 G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so
41 long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and
42 unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established
43 pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired
44 pursuant to G.S. 153A-344.1."

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

2 "**§ 153A-345. Board of adjustment.**

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

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

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

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

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

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

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

37 (e2) Each decision of the board is subject to review by the superior court by
38 proceedings in the nature of certiorari. Any petition for review by the superior court
39 shall be filed with the clerk of superior court within 30 days after the decision of the
40 board is filed in such office as the ordinance specifies, or after a written copy thereof is
41 delivered to every aggrieved party who has filed a written request for such copy with
42 the secretary or chairman of the board at the time of its hearing of the case, whichever is
43 later. The decision of the board may be delivered to the aggrieved party either by
44 personal service or by registered mail or certified mail return receipt requested.

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

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

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

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

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

33 **SECTION 17.** This act becomes effective September 1, 2005.