

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-418
SENATE BILL 518**

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

The General Assembly of North Carolina enacts:

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

"§ 160A-363. Supplemental powers.

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

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

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

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

SECTION 1.(b) G.S. 153A-322 reads as rewritten:

"§ 153A-322. Supplemental powers.

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

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

planning board with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning board ~~agency~~ under which it agrees to pay the other local government or planning board for technical planning assistance.

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

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

SECTION 2.(a) G.S. 160A-371 reads as rewritten:

"§ 160A-371. Subdivision regulation.

A city may by ordinance regulate the subdivision of land within its territorial jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance. Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance. Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval."

SECTION 2.(b) G.S. 153A-330 reads as rewritten:

"§ 153A-330. Subdivision regulation.

A county may by ordinance regulate the subdivision of land within its territorial jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance that applies only to one or more designated portions of its territorial jurisdiction, it may adopt subdivision regulations that apply only within the areas so zoned and need not regulate the subdivision of land in the rest of its jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance. Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance. Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval."

SECTION 3.(a) G.S. 160A-373 reads as rewritten:

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

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

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

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

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

SECTION 3.(b) G.S. 153A-332 reads as rewritten:

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

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

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

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

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

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

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

SECTION 4.(a) G.S. 160A-384 reads as rewritten:

"§ 160A-384. Method of procedure.

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

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish ~~once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 160A-364. The advertisement notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to~~ according to the provisions of subsection (a) of this section. The person or persons mailing the notices shall certify to the city council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a city shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 4.(b) G.S. 153A-343 reads as rewritten:

"§ 153A-343. Method of procedure.

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

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish ~~once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 153A-323. The advertisement notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners~~

who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified ~~by first class mail pursuant to~~ according to the provisions of subsection (a) of this section. ~~The person or persons mailing the notices shall certify to the board of commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a county shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.~~

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

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 5. G.S. 160A-385 reads as rewritten:

"§ 160A-385. Changes.

(a) Qualified Protests.

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

(2) To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.

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

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

(b) ~~Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses 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."

SECTION 6. G.S. 160A-386 reads as rewritten:

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

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

SECTION 7.(a) G.S. 160A-387 reads as rewritten:

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

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

Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may proceed in its consideration of the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board."

SECTION 7.(b) G.S. 153A-344 reads as rewritten:

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

(a) To initially exercise the powers conferred by this Part, a county shall create or designate a planning agency board under the provisions of this Article or of a local act.

The ~~planning agency board~~ shall prepare or shall review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The ~~planning agency board~~ may hold public hearings in the course of preparing the ordinance. Upon completion, the ~~planning agency board~~ shall ~~certify~~ make a written recommendation regarding adoption of the ordinance to the board of commissioners. The board of commissioners shall not hold the public hearing required by G.S. 153A-323 or take action until it has received a ~~certified recommendation regarding the ordinance from the planning agency board.~~ Following its required public hearing, the board of commissioners may refer the ordinance back to the ~~planning agency board~~ for any further recommendations that the ~~agency board~~ may wish to make prior to final action by the board in adopting, modifying and adopting, or rejecting the ordinance.

~~Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified, or repealed. Whenever territory is added to an existing designated zoning area, it shall be treated as an amendment to the zoning ordinance for that area. Before an amendment may be adopted, it must be referred to the planning agency for the agency's recommendation. The agency shall be given at least 30 days in which to make a recommendation. Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report. The board of commissioners is not bound by the recommendations, if any, of the planning agency board.~~

(b) ~~Amendments, modifications, supplements, repeal or other changes in zoning regulations and restrictions and zone boundaries~~ Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 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. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii) a vested right has been established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired pursuant to G.S. 153A-344.1."

SECTION 8.(a) G.S. 160A-388 reads as rewritten:

"§ 160A-388. Board of adjustment.

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

(b) ~~The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Part. A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear~~

and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations and as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power, in passing upon appeals, power to vary or modify any of the regulations or provisions of the ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

(e) The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

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

communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

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

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

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

SECTION 8.(b) G.S. 153A-345 reads as rewritten:

"§ 153A-345. Board of adjustment.

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

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

~~(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing an ordinance adopted pursuant to this Part. A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. Any person aggrieved or any officer, department, board, or bureau of the county may take an appeal. Appeals shall be taken within times prescribed by the board of adjustment by~~

general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time. The board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the board has all of the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations and as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under the zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment ~~may, in passing upon appeals, shall have the power to vary or modify any regulation or provision of the ordinance relating to the use, construction, or alteration of buildings or structures or the use of land,~~ so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

(e) The board of adjustment, by a vote of four-fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

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

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

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

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

SECTION 9. G.S. 136-44.50(d) reads as rewritten:

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

SECTION 10. G.S. 160A-360(a1) reads as rewritten:

"(a1) Any municipality planning to exercise extraterritorial jurisdiction under this Article shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a public hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160A-364, and the right of all residents of the area to apply to the board of county commissioners to serve as a representative on the planning agency board and the board of adjustment, as provided in G.S. 160A-362. The notice shall be mailed at least four weeks prior to the public hearing. The person or persons mailing the notices shall certify to the city council that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud."

SECTION 11. G.S. 160A-362 reads as rewritten:

"§ 160A-362. Extraterritorial representation.

When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its

~~planning agency or agencies board~~ provide a means of proportional representation based on population for residents of the extraterritorial area to be regulated. Representation shall be provided by appointing at least one resident of the entire extraterritorial zoning and subdivision regulation area to the ~~planning agency board~~ and the board of adjustment that makes recommendations or grants relief in these matters. For purposes of this section, an additional member must be appointed to the ~~planning agency board~~ or board of adjustment to achieve proportional representation only when the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality's population divided by the total membership of the ~~planning agency board~~ or board of adjustment. Membership of joint municipal county planning agencies or boards of adjustment may be appointed as agreed by counties and municipalities. Any advisory board established prior to July 1, 1983, to provide the required extraterritorial representation shall constitute compliance with this section until the board is abolished by ordinance of the city. The representatives on the ~~planning agency board~~ and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. When selecting a new representative to the ~~planning agency board~~ or to the board of adjustment as a result of an extension of the extraterritorial jurisdiction, the board of county commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The board of county commissioners shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within 45 days following the public hearing. Once a city provides proportional representation, no power available to a city under G.S. 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the ~~agency board~~ to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area."

SECTION 12. G.S. 160A-400.7 reads as rewritten:

"§ 160A-400.7. Historic Preservation Commission.

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this Part to deal only with historic districts or landmarks respectively, (ii) a ~~planning agency board~~ established pursuant to this Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall

have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a ~~planning agency board~~ or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission."

SECTION 13. G.S. 160A-400.14(a) reads as rewritten:

"(a) An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (c). However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal.

If the commission or ~~planning agency board~~ has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the local governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission or ~~planning agency board~~ for a period of up to 180 days or until the local governing board takes final action on the designation, whichever occurs first."

SECTION 14. The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly.

SECTION 15. This act becomes effective January 1, 2006.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:51 p.m. this 22nd day of September, 2005