

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 507*
Committee Substitute Favorable 4/19/17
Third Edition Engrossed 4/20/17

Short Title: Land-Use Regulatory Changes.

(Public)

Sponsors:

Referred to:

March 29, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE
3 STATE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 143-755 reads as rewritten:

6 "**§ 143-755. Permit choice.**

7 (a) If a development permit applicant submits a permit application for any type of
8 development and a rule or ordinance ~~changes~~ amended, including an amendment to a zoning
9 map or text of any applicable land development regulation or a change to a State agency
10 regulation affecting the development of property, between the time the development permit
11 application was submitted and a development permit decision is made, the development permit
12 applicant may choose which adopted version of the rule or ordinance will apply to the permit.
13 If the development permit applicant opts for the version of the rule or ordinance applicable at
14 the time of the permit application, the development permit applicant shall not be required to
15 wait for the outcome of the pending rule or ordinance.

16 (b) This section applies to all development permits issued by the State and by local
17 governments.

18 (c) Repealed by Session Laws 2015 246, s. 5(a), effective September 23, 2015.

19 (d) Any person aggrieved by the failure of a State agency or local government to
20 comply with this section or G.S. 160A-360.1 or G.S. 153A-320.1 may apply to the appropriate
21 division of the General Court of Justice for an order compelling compliance by the offending
22 agency, and the court shall have jurisdiction to issue that order. Actions brought pursuant to
23 any of these sections shall be set down for immediate hearing and subsequent proceedings in
24 those actions shall be accorded priority by the trial and appellate courts. If any State agency or
25 local government takes action that is inconsistent with, or in violation of, this section, the
26 development permit applicant shall be entitled to any damages that can be demonstrated as a
27 result of the State agency or local government's actions.

28 (e) For purposes of this section, the following definitions shall apply:

29 (1) Development. – The planning for or carrying out of a building activity, the
30 making of a material change in the use or appearance of any structure or
31 property, or the dividing of land into two or more parcels, including the
32 planning for and all other activity customarily associated with it.

33 (2) Development permit. – A building permit, zoning permit, subdivision
34 approval, special or conditional use permit, variance, site plan, or any other



1 official action of State or local government having the effect of permitting
2 the development of property.

- 3 (3) Land development regulation. – Ordinances and regulations enacted by the
4 State or the appropriate governing body for the regulation of any aspect of
5 development and includes zoning, subdivision, or any other land
6 development ordinances."

7 **SECTION 2.** G.S. 160A-360.1 reads as rewritten:

8 **"§ 160A-360.1. Permit choice.**

9 If a rule or ~~ordinance~~ordinance, including an amendment to a zoning map or text of any
10 applicable land development regulation, changes between the time a development permit
11 application is submitted and a development permit decision is made, then G.S. 143-755 shall
12 apply."

13 **SECTION 3.** G.S. 153A-320.1 reads as rewritten:

14 **"§ 153A-320.1. Permit choice.**

15 If a rule or ~~ordinance~~ordinance, including an amendment to a zoning map or text of any
16 applicable land development regulation, changes between the time a development permit
17 application is submitted and a development permit decision is made, then G.S. 143-755 shall
18 apply."

19 **SECTION 4.** G.S. 160A-385 reads as rewritten:

20 **"§ 160A-385. Changes.**

21 (a) Citizen Comments. –

- 22 (1) ~~Zoning~~Subject to the limitations in this Chapter, zoning ordinances may
23 from time to time be amended, supplemented, changed, modified or
24 repealed. If any resident or property owner in the city submits a written
25 statement regarding a proposed amendment, modification, or repeal to a
26 zoning ~~ordinance~~ordinance, including a zoning map or text, that has been
27 properly initiated as provided in G.S. 160A-384, to the clerk to the board at
28 least two business days prior to the proposed vote on such change, the clerk
29 to the board shall deliver such written statement to the city council. If the
30 proposed change is the subject of a quasi-judicial proceeding under
31 G.S. 160A-388, or any other statute, the clerk shall provide only the names
32 and addresses of the individuals providing written comment, and the
33 provision of such names and addresses to all members of the board shall not
34 disqualify any member of the board from voting.

- 35 (2), (3) Repealed by Session Laws 2015-160, s. 1, effective August 1, 2015, and
36 applicable to zoning ordinance changes initiated on or after that date.

37 (b) Amendments in land development regulations, including zoning
38 ~~ordinances~~ordinances, subdivision ordinances, or unified development ordinances, shall not be
39 applicable or enforceable without the written consent of the owner with regard to ~~buildings and~~
40 ~~uses for which either (i) building permits have been issued pursuant to G.S. 160A 417 prior to~~
41 ~~the enactment of the ordinance making the change or changes so long as the permits remain~~
42 ~~valid and unexpired pursuant to G.S. 160A 418 and unrevoked pursuant to G.S. 160A 422 or~~
43 ~~(ii)(i) uses of buildings or land, or subdivisions of land, for which a development permit has~~
44 been issued that authorizes the use or subdivision of land or (ii) buildings, or uses thereof, for
45 which a building permit has been issued pursuant to this Chapter. Upon issuance of a
46 development permit, the statutory vesting granted by this subsection commences at the time the
47 application for the development permit is submitted in accordance with G.S. 143-755 prior to
48 the change in the land development regulations so long as the permit remains valid and
49 unexpired pursuant to law. Unless otherwise specified by statute, local development permits
50 expire one year after issuance unless work authorized by such permit has substantially
51 commenced. Amendments shall also not be applicable or enforceable without the written

1 consent of the owner if a vested right has been established pursuant to G.S. 160A-385.1 and
 2 such vested right remains valid and unexpired pursuant to ~~G.S. 160A-385.1~~ thereto or if a
 3 vested right is established by the terms of a development agreement authorized by Part 3D of
 4 this Article. The establishment of a vested right under one subsection does not preclude vesting
 5 under one or more other subsections or vesting by application of common law principles. A
 6 vested right, once established as provided for in this subsection, precludes any action by a city
 7 that would change, alter, impair, prevent, diminish, or otherwise delay the development or use
 8 of the property as set forth in the application, except where a change in State or federal law
 9 mandating local government enforcement occurs after the application is submitted that has a
 10 fundamental and retroactive effect on such development or use.

11 (c) Amendments in ~~land development regulations, including zoning ordinances,~~
 12 subdivision ordinances, ~~and/or unified development ordinances—ordinances,~~ shall not be
 13 applicable or enforceable without the written consent of the owner with regard to a
 14 multi-phased development as ~~defined in G.S. 160A-385.1(b)(7)~~ provided for in this subsection.
 15 A multi-phased development shall be vested for the entire development with the ~~zoning~~
 16 ~~ordinances, subdivision ordinances, and unified development ordinances~~land development
 17 regulations then in place at the time ~~a site plan approval is granted for the initial phase of the~~
 18 ~~multi-phased development~~the applicable application for a development permit is submitted in
 19 accordance with G.S. 143-755 prior to the change in the land development regulations, so long
 20 as the permit remains valid and unexpired pursuant to law. A right which has been vested as
 21 provided for in this subsection shall remain vested for a period of seven years from the time a
 22 site plan approval is granted for the initial phase of the multi-phased development. For
 23 purposes of this subsection, a "multi-phased development" shall mean a development
 24 containing 25 acres or more that (i) is submitted for development permit approval to occur in
 25 more than one phase and (ii) is subject to a master development plan with committed elements,
 26 showing the type and intensity of use of each phase.

27 (d) For purposes of this section, the definitions in G.S. 143-755 shall apply."

28 **SECTION 5.** G.S. 160A-385.1 reads as rewritten:

29 **"§ 160A-385.1. Vested rights.**

30 ...

31 (b) Definitions. –

32 ...

33 (7) "Multi-phased development" means a development containing 100 acres or
 34 more that (i) is submitted for site plan approval for construction to occur in
 35 more than one phase and (ii) is subject to a master development plan with
 36 committed elements, including a requirement to offer land for public use as a
 37 condition of its master development plan approval.

38"

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

40 **"§ 153A-344. Planning board; zoning plan; certification to board of commissioners.**

41 ...

42 (b) Amendments in ~~land development regulations, including zoning~~
 43 ~~ordinancesordinances, subdivision ordinances, or unified development ordinances,~~ shall not be
 44 applicable or enforceable without the written consent of the owner with regard to ~~buildings and~~
 45 ~~uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to~~
 46 ~~the enactment of the ordinance making the change or changes so long as the permits remain~~
 47 ~~valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or~~
 48 ~~(ii)(i) uses of buildings or land, or subdivisions of land, for which a development permit has~~
 49 ~~been issued that authorizes the use or subdivision of land or (ii) buildings, or uses thereof, for~~
 50 ~~which a building permit has been issued pursuant to this Chapter. Upon issuance of a~~
 51 development permit, the statutory vesting granted by this subsection commences at the time the

1 application for the development permit is submitted in accordance with G.S. 143-755 prior to
 2 the change in the land development regulations so long as the permit remains valid and
 3 unexpired pursuant to law. Unless otherwise specified by statute, local development permits
 4 expire one year after issuance unless work authorized by such permit has substantially
 5 commenced. Amendments shall also not be applicable or enforceable without the written
 6 consent of the owner if a vested right has been established pursuant to G.S. 153A-344.1 and
 7 such vested right remains valid and unexpired pursuant to ~~G.S. 153A-344.1~~thereto or if a
 8 vested right is established by the terms of a development agreement authorized by Part 3A of
 9 this Article. The establishment of a vested right under one subsection does not preclude vesting
 10 under one or more other subsections or vesting by application of common law principles. A
 11 vested right, once established as provided for in this subsection, precludes any action by a
 12 county that would change, alter, impair, prevent, diminish, or otherwise delay the development
 13 or use of the property as set forth in the application, except where a change in State or federal
 14 law mandating local government enforcement occurs after the application is submitted that has
 15 a fundamental and retroactive effect on such development or use.

16 (b1) Amendments in land development regulations, including zoning ordinances,
 17 subdivision ordinances, ~~and~~ unified development ordinances—ordinances, shall not be
 18 applicable or enforceable without the written consent of the owner with regard to a
 19 multi-phased development as ~~defined in G.S. 153A-344.1(b)(7)~~as provided in this subsection.
 20 A multi-phased development shall be vested for the entire development with the ~~zoning~~
 21 ~~ordinances, subdivision ordinances, and unified development ordinances~~land development
 22 regulations then in place at the time a site plan approval is granted for the initial phase of the
 23 multi-phased development;the applicable application for a development permit is submitted in
 24 accordance with G.S. 143-755 prior to the change in the land development regulations, so long
 25 as the permit remains valid and unexpired pursuant to law. A right which has been vested as
 26 provided for in this subsection shall remain vested for a period of seven years from the time a
 27 site plan approval is granted for the initial phase of the multi-phased development. For
 28 purposes of this subsection, a "multi-phased development" shall mean a development
 29 containing 25 acres or more that (i) is submitted for development permit approval to occur in
 30 more than one phase and (ii) is subject to a master development plan with committed elements,
 31 showing the type and intensity of use of each phase.

32 (c) For purposes of this section, the definitions in G.S. 143-755 shall apply."

33 **SECTION 7.** G.S. 153A-344.1 reads as rewritten:

34 "**§ 153A-344.1. Vesting rights.**

35 ...

36 (b) Definitions.

37 ...

38 (7) "~~Multi-phased development" means a development containing 100 acres or~~
 39 ~~more that (i) is submitted for site plan approval for construction to occur in~~
 40 ~~more than one phase and (ii) is subject to a master development plan with~~
 41 ~~committed elements, including a requirement to offer land for public use as a~~
 42 ~~condition of its master development plan approval.~~

43"

44 **SECTION 8.** G.S. 160A-384 reads as rewritten:

45 "**§ 160A-384. Method of procedure.**

46 (a) ~~The~~Subject to the limitations of this Chapter, the city council shall provide for the
 47 manner in which zoning regulations and restrictions and the boundaries of zoning districts shall
 48 be determined, established and enforced, and from time to time amended, supplemented or
 49 changed, in accordance with the provisions of this Article. The procedures adopted pursuant to
 50 this section shall provide that whenever there is a zoning map amendment, the owner of that
 51 parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting

1 that parcel of land as shown on the county tax listing, shall be mailed a notice of a public
2 hearing on the proposed amendment by first class mail at the last addresses listed for such
3 owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not
4 more than 25 days prior to the date of the public hearing. No zoning map amendment shall be
5 initiated nor shall it be enforceable without the written consent of all property owners whose
6 property is the subject of the zoning map amendment, unless the zoning map amendment is
7 initiated by the city. ~~Except for a city-initiated zoning map amendment, when an application is~~
8 ~~filed to request a zoning map amendment and that application is not made by the owner of the~~
9 ~~parcel of land to which the amendment would apply, the applicant shall certify to the city~~
10 ~~council that the owner of the parcel of land as shown on the county tax listing has received~~
11 ~~actual notice of the proposed amendment and a copy of the notice of public hearing. The person~~
12 ~~or persons required to provide notice shall certify to the city council that proper notice has been~~
13 ~~provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.~~

14 (b) The first class mail notice required under subsection (a) of this section shall not be
15 required if the zoning map amendment directly affects more than 50 properties, owned by a
16 total of at least 50 different property owners, and the city elects to use the expanded published
17 notice provided for in this subsection. In this instance, a city may elect to either make the
18 mailed notice provided for in subsection (a) of this section or may as an alternative elect to
19 publish notice of the hearing as required by G.S. 160A-364, but provided that each
20 advertisement shall not be less than one-half of a newspaper page in size. The advertisement
21 shall only be effective for property owners who reside in the area of general circulation of the
22 newspaper which publishes the notice. Property owners who reside outside of the newspaper
23 circulation area, according to the address listed on the most recent property tax listing for the
24 affected property, shall be notified according to the provisions of subsection (a) of this section.

25 ~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing~~
26 ~~required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1,~~
27 ~~Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or~~
28 ~~certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. §~~
29 ~~7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This~~
30 ~~subsection applies only to an application to request a zoning map amendment where the~~
31 ~~application is not made by the owner of the parcel of land to which the amendment would~~
32 ~~apply. This subsection does not apply to a city-initiated zoning map amendment.~~

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

38 **SECTION 9.** G.S. 153A-343 reads as rewritten:

39 **"§ 153A-343. Method of procedure.**

40 (a) The board of commissioners shall, in accordance with the provisions of this Article,
41 provide for the manner in which zoning regulations and restrictions and the boundaries of
42 zoning districts shall be determined, established, and enforced, and from time to time amended,
43 supplemented, or changed. The procedures adopted pursuant to this section shall provide that
44 whenever there is a zoning map amendment, the owner of that parcel of land as shown on the
45 county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on
46 the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment
47 by first class mail at the last addresses listed for such owners on the county tax abstracts. This
48 notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of
49 the public hearing. No zoning map amendment shall be initiated nor shall it be enforceable
50 without the written consent of all property owners whose property is the subject of the zoning
51 map amendment, unless the zoning map amendment is initiated by the county. ~~Except for a~~

1 county-initiated zoning map amendment, when an application is filed to request a zoning map
2 amendment and that application is not made by the owner of the parcel of land to which the
3 amendment would apply, the applicant shall certify to the board of commissioners that the
4 owner of the parcel of land as shown on the county tax listing has received actual notice of the
5 proposed amendment and a copy of the notice of public hearing. The person or persons
6 required to provide notice shall certify to the board of commissioners that proper notice has
7 been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

8 (b) The first class mail notice required under subsection (a) of this section shall not be
9 required if the zoning map amendment directly affects more than 50 properties, owned by a
10 total of at least 50 different property owners, and the county elects to use the expanded
11 published notice provided for in this subsection. In this instance, a county may elect to either
12 make the mailed notice provided for in subsection (a) of this section or may as an alternative
13 elect to publish notice of the hearings required by G.S. 153A-323, but provided that each of the
14 advertisements shall not be less than one-half of a newspaper page in size. The advertisement
15 shall only be effective for property owners who reside in the area of general circulation of the
16 newspaper which publishes the notice. Property owners who reside outside of the newspaper
17 circulation area, according to the address listed on the most recent property tax listing for the
18 affected property, shall be notified according to the provisions of subsection (a) of this section.

19 ~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing~~
20 ~~required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1,~~
21 ~~Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or~~
22 ~~certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. §~~
23 ~~7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This~~
24 ~~subsection applies only to an application to request a zoning map amendment where the~~
25 ~~application is not made by the owner of the parcel of land to which the amendment would~~
26 ~~apply. This subsection does not apply to a county-initiated zoning map amendment.~~

27 (c) Repealed by Session Laws 2005-418, s. 4, effective January 1, 2006.

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

33 **SECTION 10.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
34 amended by adding a new section to read:

35 **"§ 160A-393.1 Civil action for declaratory relief, injunctive relief, or other remedies.**

36 (a) Action for Relief Authorized. – Any party who is either an owner of an interest in
37 real property that is the subject matter of a local government enforcement action or a permit
38 applicant who is aggrieved by a final and binding decision of an administrative official
39 involving the application or enforcement of a city or county zoning or unified development
40 ordinance or any other ordinance that regulates land use or development may, in lieu of an
41 appeal to a board of adjustment prescribed by Chapter 153A or Chapter 160A of the General
42 Statutes, maintain an original action in superior court for declaratory relief, injunctive relief,
43 damages, or any other remedies provided by law or equity, where any of the following claims
44 or defenses are asserted by the aggrieved party:

45 (1) That the ordinance, either on its face or as applied by the final decision of
46 the administrative official, violates the United States or North Carolina
47 Constitutions.

48 (2) That the ordinance or the final decision of the administrative official is
49 invalid or unenforceable on grounds of ultra vires or preemption, or is
50 otherwise in excess of authority.

1 (3) That the ordinance or the final decision of the administrative official violates
2 common law or statutory vested rights of the aggrieved party.

3 (4) That the ordinance or final decision of the administrative official constitutes
4 a taking of property.

5 In any action brought pursuant to this subsection and notwithstanding G.S. 160A-388(b1),
6 the aggrieved party may, in addition to the above, join any other available claims or defenses,
7 arising from or relating to the final decision of the administrative official, including, without
8 limitation, claims or defenses relating to the interpretation or application of the ordinance. The
9 burden of proof to show a violation of a city or county zoning or unified development
10 ordinance or any other ordinance that regulates land-use or development rests with the party
11 seeking to enforce such ordinance.

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

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

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

32 (e) Determination of Issues Other Than Damages. – In any action brought pursuant to
33 this section, a judge shall hear and determine any and all issues of fact or law raised by the
34 pleadings or otherwise consented to other than the issue of damages which may be determined
35 by a jury, if requested by any party."

36 **SECTION 11.** G.S. 160A-364.1 reads as rewritten:

37 **"§ 160A-364.1. Statute of limitations.**

38 ...

39 (c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an
40 action involving the enforcement of a zoning or unified development ordinance or in an action
41 authorized by G.S. 160A-393.1 from raising as a claim or defense to such enforcement action in
42 such proceedings the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or
43 G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision, or
44 determination made by an administrative official contending that such party is in violation of a
45 zoning or unified development ordinance from raising in the appeal the invalidity of such
46 ordinance as a defense to such order, requirement, decision, or determination. A party in an
47 enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an
48 alleged defect in the adoption process unless the defense is formally raised within three years of
49 the adoption of the challenged ordinance.

50 "

51 **SECTION 12.** G.S. 160A-393 reads as rewritten:

1 "§ 160A-393. Appeals in the nature of certiorari.

2 ...
3 (j) Hearing on the Record. – The court shall hear and decide all issues raised by the
4 petition by reviewing the record submitted in accordance with subsection ~~(h)~~(i) of this section.
5 Except that the court ~~may, in its discretion,~~shall allow the record to be supplemented with
6 affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that,
7 ~~the record is not adequate to allow an appropriate determination~~petition raises any of the
8 following ~~issues:~~issues, in which case the rules of discovery set forth in the North Carolina
9 Rules of Civil Procedure shall apply to the supplementation of the record of said issues:

10 (1) Whether a petitioner or intervenor has standing.

11 (2) Whether, as a result of impermissible conflict as described in
12 G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making
13 body was not sufficiently impartial to comply with due process principles.

14 (3) Whether the decision-making body erred for the reasons set forth in
15 sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this
16 section, including an error related to the claims or defenses in
17 subdivision (k)(4) of this section.

18 (k) Scope of Review. –

19 (1) When reviewing the decision of a decision-making board under the
20 provisions of this section, the court shall ensure that the rights of petitioners
21 have not been prejudiced because the decision-making body's findings,
22 inferences, conclusions, or decisions were:

23 a. In violation of constitutional provisions, including those protecting
24 procedural due process rights.

25 b. In excess of the statutory authority conferred upon the city or the
26 authority conferred upon the decision-making board by ordinance.

27 c. Inconsistent with applicable procedures specified by statute or
28 ordinance.

29 d. Affected by other error of law.

30 e. Unsupported by substantial competent evidence in view of the entire
31 record.

32 f. Arbitrary or capricious.

33 (2) When the issue before the court is one set forth in sub-subdivisions a.
34 through d. of subdivision (1) of this subsection, including whether the
35 decision-making board erred in interpreting an ordinance, the court shall
36 review that issue de novo. The court shall consider the interpretation of the
37 decision-making board, but is not bound by that interpretation, and may
38 freely substitute its judgment as appropriate.

39 (3) The term "competent evidence," as used in this subsection, shall not preclude
40 reliance by the decision-making board on evidence that would not be
41 admissible under the rules of evidence as applied in the trial division of the
42 General Court of Justice if (i) except for the items noted in sub-subdivisions
43 a., b., and c. of this subdivision that are conclusively incompetent, the
44 evidence was admitted without objection or (ii) the evidence appears to be
45 sufficiently trustworthy and was admitted under such circumstances that it
46 was reasonable for the decision-making board to rely upon it. The term
47 "competent evidence," as used in this subsection, ~~shall~~shall, regardless of the
48 lack of a timely objection, not be deemed to include the opinion testimony of
49 lay witnesses as to any of the following:

50 a. The use of property in a particular way would affect the value of
51 other property.

- 1 b. The increase in vehicular traffic resulting from a proposed
2 development would pose a danger to the public safety.
- 3 c. Matters about which only expert testimony would generally be
4 admissible under the rules of evidence.
- 5 (4) The petitioner may assert and the court shall determine de novo, based on
6 the record, as supplemented in accordance with subsection (j) of this section,
7 any of the following claims or defenses:
- 8 a. That the ordinance, either on its face or as applied by the final
9 decision of the administrative official, violates the United States or
10 North Carolina Constitutions.
- 11 b. That the ordinance or the final decision of the administrative official
12 is invalid or unenforceable on grounds of ultra vires or preemption,
13 or is otherwise in excess of authority.
- 14 c. That the ordinance or the final decision of the administrative official
15 violates common law or statutory vested rights of the petitioner.
- 16 (5) In order to raise any claim or defense listed in subdivision (4) of this
17 subsection, to the extent that they do not involve some act of the
18 decision-making board itself or any of its members, the claim or defense
19 shall be made known to the decision-making board at the hearing.
- 20 (l) Decision of the Court. – Following its review of the decision-making board in
21 accordance with subsection (k) of this section, the court may affirm the decision, reverse the
22 decision and remand the case with appropriate instructions, or remand the case for further
23 proceedings. If the court does not affirm the decision below in its entirety, then the court shall
24 be guided by the following in determining what relief should be granted to the petitioners:
- 25 (1) If the court concludes that the error committed by the decision-making board
26 is procedural only, the court may remand the case for further proceedings to
27 correct the procedural error.
- 28 (2) If the court concludes that the decision-making board has erred by failing to
29 make findings of fact such that the court cannot properly perform its
30 function, then the court may remand the case with appropriate instructions so
31 long as the record contains substantial competent evidence that could
32 support the decision below with appropriate findings of fact. However,
33 findings of fact are not necessary when the record sufficiently reveals the
34 basis for the decision below or when the material facts are undisputed and
35 the case presents only an issue of law.
- 36 (3) If the court concludes that the decision by the decision-making board is not
37 supported by substantial competent evidence in the record or is based upon
38 an error of law, then the court may remand the case with an order that directs
39 the decision-making board to take whatever action should have been taken
40 had the error not been committed or to take such other action as is necessary
41 to correct the error. Specifically:
- 42 a. If the court concludes that a permit was wrongfully denied because
43 the denial was not based on substantial competent evidence or was
44 otherwise based on an error of law, the court ~~may~~shall remand with
45 instructions that the permit be issued, subject to ~~reasonable and~~
46 ~~appropriate conditions.~~any conditions expressly consented to by the
47 permit applicant as part of the application or during the board of
48 adjustment appeal or writ of certiorari appeal.
- 49 b. If the court concludes that a permit was wrongfully issued because
50 the issuance was not based on substantial competent evidence or was

1 otherwise based on an error of law, the court may remand with
 2 instructions that the permit be revoked.

3 c. If the court concludes that a zoning board decision upholding a
 4 zoning enforcement action was not supported by substantial
 5 competent evidence or was otherwise based on an error of law, the
 6 court shall reverse the decision.

7"

8 **SECTION 13.** Part 3 of Article 19 of Chapter 160A of the General Statutes is
 9 amended by adding a new section to read:

10 **"§ 160A-393.2. No estoppel effect when challenging development conditions.**

11 A city or county may not assert before a board of adjustment or in any civil action the
 12 defenses of estoppel, waiver, release, acceptance, or other similar grounds as a result of actions
 13 by the landowner or permit applicant to proceed with development authorized by a rezoning or
 14 a development permit as defined in G.S. 160A-400.21 while said landowner or permit applicant
 15 challenges conditions imposed on said development."

16 **SECTION 14.** G.S. 6-21.7 reads as rewritten:

17 **"§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

18 In any action in which a city or county is a party, upon a finding by the court that the city or
 19 county acted outside the scope of its legal authority, violated a statute or case law setting forth
 20 unambiguous limits on its authority, the court may shall award reasonable attorneys' fees and
 21 costs to the party who successfully challenged the city's or county's action, provided that if the
 22 court also finds that the city's or county's action was an abuse of its discretion, the court shall
 23 award attorneys' fees and costs. In any action in which a city or county is a party, upon
 24 finding by the court that the city or county took action inconsistent with, or in violation of,
 25 G.S. 160A-360.1, 153A-320.1, or 143-755, the court shall award reasonable attorneys' fees and
 26 costs to the party who successfully challenged the local government's failure to comply with
 27 any of those provisions. In all other matters, the court may award reasonable attorneys' fees and
 28 costs to the prevailing private litigant. For purposes of this section, "unambiguous" means that
 29 the limits of authority are not reasonably susceptible to multiple constructions."

30 **SECTION 15.** G.S. 160A-372 reads as rewritten:

31 **"§ 160A-372. Contents and requirements of ordinance.**

32 ...

33 (c) The ordinance may provide for the more orderly development of subdivisions by
 34 requiring the construction of community service facilities in accordance with municipal plans,
 35 policies, and standards. To assure compliance with these and other ordinance requirements, the
 36 ordinance may provide for performance guarantees to assure successful completion of required
 37 improvements either at the time the plat is recorded as provided in subsection (b) of this
 38 section, section or at a time subsequent to the recording of the plat to assure successful
 39 completion of required improvements. In the event a city fails to adopt an ordinance setting
 40 forth performance guarantees in compliance with subsection (g) of this section, a city shall not
 41 be authorized to require the successful completion of required improvements prior to a plat
 42 being recorded. For any specific development, the type and term of performance
 43 guarantee guarantee, or any extension of the performance guarantee, shall be at the election of
 44 the developer-developer provided that any performance guarantee or extension be available to
 45 assure the successful completion of improvements for which it is required. The developer shall
 46 be allowed, without limitation, to reduce the amount of the performance guarantee to reflect
 47 only the remaining incomplete items.

48 ...

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

- 1 (1) The term "performance guarantee" shall mean any of the following forms of
2 guarantee:
3 a. Surety bond issued by any company authorized to do business in this
4 State.
5 b. Letter of credit issued by any financial institution licensed to do
6 business in this State.
7 c. Other form of guarantee that provides equivalent security to a surety
8 bond or letter of credit.
- 9 (2) The performance guarantee shall be returned or released, as appropriate, in a
10 timely manner upon the acknowledgement by the city or county that the
11 improvements for which the performance guarantee is being required are
12 complete. If the improvements are not complete and the current performance
13 guarantee is expiring, the performance guarantee shall be extended, or a new
14 performance guarantee issued, for an additional period until such required
15 improvements are complete. A developer shall demonstrate reasonable, good
16 faith progress toward completion of the required improvements that are the
17 subject of the performance guarantee or any extension. The form of any
18 extension shall remain at the election of the developer.
- 19 (3) The amount of the performance guarantee shall not exceed one hundred
20 twenty-five percent (125%) of the reasonably estimated cost of completion
21 at the time the performance guarantee is issued. Any extension of the
22 performance guarantee necessary to complete required improvements shall
23 not exceed one hundred twenty-five percent (125%) of the reasonably
24 estimated cost of completion of the remaining incomplete improvements still
25 outstanding at the time the extension is obtained. At the election of the
26 developer, one hundred twenty-five percent (125%) of the reasonably
27 estimated cost of completion may be conclusively determined by a report
28 provided under seal by an architect licensed under the provisions of Chapter
29 83A of the General Statutes or an engineer registered under the provisions of
30 Chapter 89C of the General Statutes. This report may contain unit pricing
31 information provided by a general contractor, licensed under Chapter 87 of
32 the General Statutes, or any other competent source that the architect or
33 engineer certifies, under seal, as accurate. The reasonably estimated cost of
34 completion shall include all costs of inflation and costs of administration and
35 enforcement, no matter how such related fees or charges are denominated.
- 36 (4) The performance guarantee shall only be used for completion of the required
37 improvements and not for repairs or maintenance after completion.
- 38 (5) The developer shall have the option to post one form of a performance
39 guarantee as provided for in subdivision (1) of this subsection, in lieu of
40 multiple bonds, letters of credit, or other equivalent security, for all
41 development matters related to the same project requiring performance
42 guarantees, including, without limitation, subdivision, erosion control, and
43 stormwater.
- 44 (6) No person shall have or may claim any rights under or to any performance
45 guarantee provided pursuant to this subsection or in the proceeds of any such
46 performance guarantee other than the following:
47 a. The local government to whom such performance guarantee is
48 provided.
49 b. The developer at whose request or for whose benefit such
50 performance guarantee is given.

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

3 **SECTION 16.** G.S. 153A-331 reads as rewritten:

4 "**§ 153A-331. Contents and requirements of ordinance.**

5 ...

6 (e) The ordinance may provide for the more orderly development of subdivisions by
7 requiring the construction of community service facilities in accordance with county plans,
8 policies, and standards. To assure compliance with these and other ordinance requirements, the
9 ordinance may provide for performance guarantees ~~to assure successful completion of required~~
10 ~~improvements~~ either at the time the plat is recorded as provided in subsection (b) of this
11 ~~section~~ section or at a time subsequent to the recording of the plat to assure successful
12 completion of required improvements. In the event a county fails to adopt an ordinance setting
13 forth performance guarantees in compliance with subsection (g) of this section, a county shall
14 not be authorized to require the successful completion of required improvements prior to a plat
15 being recorded. For any specific development, the type and term of performance guarantee
16 ~~from the range specified by the county guarantee, or any extension of the performance~~
17 guarantee, shall be at the election of the developer-developer, provided that any performance
18 guarantee or extension be available to assure the successful completion of the improvements
19 for which it is required. The developer shall be allowed, without limitation, to reduce the
20 amount of the performance guarantee to reflect only the remaining incomplete items.

21 "

22 **SECTION 17.** G.S. 160A-381 reads as rewritten:

23 "**§ 160A-381. Grant of power.**

24 ...

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

45 Where appropriate, such conditions may include requirements that street and utility
46 rights-of-way be dedicated to the public and that provision be made of recreational space and
47 facilities. Notwithstanding anything to the contrary, a development permit authorized pursuant
48 to this subsection shall not be denied on the basis that existing public facilities are inadequate to
49 serve the property described in the permit application regardless of the type of use or
50 development of said property.

51 "

1 **SECTION 18.** G.S. 153A-340 reads as rewritten:

2 "**§ 153A-340. Grant of power.**

3 ...

4 (c1) The regulations may also provide that the board of adjustment, the planning board,
5 or the board of commissioners may issue special use permits or conditional use permits in the
6 classes of cases or situations and in accordance with the principles, conditions, safeguards, and
7 procedures specified therein and may impose reasonable and appropriate conditions and
8 safeguards upon these permits. Conditions and safeguards imposed under this subsection shall
9 not include requirements for which the county does not have authority under statute to regulate
10 nor requirements for which the courts have held to be unenforceable if imposed directly by the
11 county-county, including, without limitation, taxes, impact fees, building design elements
12 within the scope of subsection (l) of this section not voluntarily offered by the petitioner, street
13 improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in
14 excess of those allowed in G.S. 136-18(29), or other unauthorized limitations on the
15 development or use of land. Where appropriate, the conditions may include requirements that
16 street and utility rights-of-way be dedicated to the public and that recreational space be
17 provided. Notwithstanding anything to the contrary, a development permit authorized pursuant
18 to this subsection shall not be denied on the basis that existing public facilities are inadequate to
19 serve the property described in the permit application regardless of the type of use or
20 development of said property. When deciding special use permits or conditional use permits,
21 the board of county commissioners or planning board shall follow quasi-judicial procedures.
22 Notice of hearings on special or conditional use permit applications shall be as provided in
23 G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of
24 county commissioners or planning board to issue such permits. For the purposes of this section,
25 vacant positions on the board and members who are disqualified from voting on a quasi-judicial
26 matter shall not be considered "members of the board" for calculation of the requisite majority.
27 Every such decision of the board of county commissioners or planning board shall be subject to
28 review of the superior court in the nature of certiorari consistent with G.S. 160A-388.

29 "

30 **SECTION 19.(a)** G.S. 153A-352(b) reads as rewritten:

31 "(b) Except as provided in G.S. 153A-364, a county may not adopt or enforce a local
32 ordinance or resolution or any other policy that requires regular, routine inspections of
33 buildings or structures constructed in compliance with the North Carolina Residential Code for
34 One- and Two-Family Dwellings in addition to the specific inspections required by the North
35 Carolina Building Code without first obtaining approval from the North Carolina Building
36 Code Council. The North Carolina Building Code Council shall review all applications for
37 additional inspections requested by a county and shall, in a reasonable manner, approve or
38 disapprove the additional inspections. This subsection does not limit the authority of the county
39 to require inspections upon unforeseen or unique circumstances that require immediate action.
40 In performing the specific inspections required by the North Carolina Building Code, the
41 inspector shall conduct all inspections requested by the permit holder for each scheduled
42 inspection visit. For each requested inspection, the inspector shall inform the permit holder of
43 instances in which the work inspected is incomplete or otherwise fails to meet the requirements
44 of the North Carolina Residential Code for One- and Two-Family Dwellings"

45 **SECTION 19.(b)** G.S. 160A-412(b) reads as rewritten:

46 "(b) Except as provided in G.S. 160A-424, a city may not adopt or enforce a local
47 ordinance or resolution or any other policy that requires regular, routine inspections of
48 buildings or structures constructed in compliance with the North Carolina Residential Code for
49 One- and Two-Family Dwellings in addition to the specific inspections required by the North
50 Carolina Building Code without first obtaining approval from the North Carolina Building
51 Code Council. The North Carolina Building Code Council shall review all applications for

1 additional inspections requested by a city and shall, in a reasonable manner, approve or
2 disapprove the additional inspections. This subsection does not limit the authority of the city to
3 require inspections upon unforeseen or unique circumstances that require immediate action. In
4 performing the specific inspections required by the North Carolina Building Code, the
5 inspector shall conduct all inspections requested by the permit holder for each scheduled
6 inspection visit. For each requested inspection, the inspector shall inform the permit holder of
7 instances in which the work inspected is incomplete or otherwise fails to meet the requirements
8 of the North Carolina Residential Code for One- and Two-Family Dwellings."

9 **SECTION 19.(c)** If House Bill 252, Third Edition, of the 2017 Regular Session,
10 becomes law, this section is repealed.

11 **SECTION 20.** G.S. 160A-37 reads as rewritten:

12 **"§ 160A-307. Curb cut regulations.**

13 (a) A city may by ordinance regulate the size, location, direction of traffic flow, and
14 manner of construction of driveway connections into any street or alley. The ordinance may
15 require the construction or reimbursement of the cost of construction and public dedication of
16 medians, acceleration and deceleration lanes, and traffic storage lanes for driveway connections
17 into any street or alley ~~if~~if all of the following apply:

18 (1) The need for such improvements is reasonably attributable to the traffic
19 using the ~~driveway;~~and driveway.

20 (2) The improvements serve the traffic of the driveway.

21 (b) No street or alley under the control of the Department of Transportation may be
22 improved without the consent of the Department of Transportation. ~~However, if there is a~~
23 ~~conflict between the written driveway regulations of the Department of Transportation and the~~
24 ~~related driveway improvements required by the city, the more stringent requirement shall~~
25 ~~apply.~~A city shall not require the applicant to acquire right-of-way from property not owned by
26 the applicant. However, an applicant may voluntarily agree to acquire such right-of-way."

27 **SECTION 21.** G.S. 160A-385(c), as enacted by Section 4 of this act and
28 G.S. 153A-344(b1), as enacted by Section 6 of this act are effective with respect to phased
29 development approvals that are valid and unexpired on the effective date of this act. The
30 remainder of this act is effective when it becomes law and applies to permits previously issued
31 that remain valid and unexpired on the date this act becomes law and to permit actions filed,
32 actions filed in court, and claims and defenses asserted on or after that date.