

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 406

Short Title: Limit Conditional Zoning. (Public)

Sponsors: Senators McInnis and Gunn (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 1, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT THE USE OF CONDITIONAL ZONING BY COUNTIES AND
3 MUNICIPALITIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 160A-382 reads as rewritten:

6 "**§ 160A-382. Districts.**

7 (a) For any or all these purposes, the city may divide its territorial jurisdiction into
8 districts of any number, shape, and area that may be deemed best suited to carry out the purposes
9 of this Part; and within those districts it may regulate and restrict the erection, construction,
10 reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may
11 include, but shall not be limited to, general use districts, in which a variety of uses are permissible
12 in accordance with general standards; overlay districts, in which additional requirements are
13 imposed on certain properties within one or more underlying general or special use districts; and
14 special use districts or conditional use districts, in which uses are permitted only upon the
15 issuance of a special use permit or a conditional use permit and conditional zoning districts, in
16 which site plans and individualized development conditions are imposed.

17 (b) Property may be placed in a special use district, conditional use district, or conditional
18 district only in response to a petition by the owners of all the property to be included. Specific
19 conditions applicable to these districts may be proposed by the petitioner or the city or its
20 agencies, but only those conditions mutually approved by the city and the petitioner may be
21 incorporated into the zoning regulations or permit requirements. Conditions and site-specific
22 standards imposed in a conditional district shall be limited to those that address the conformance
23 of the development and use of the site to city ordinances and an officially adopted comprehensive
24 or other plan and those that address the impacts reasonably expected to be generated by the
25 development or use of the site.

26 A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each
27 petition for a rezoning to a special or conditional use district, or a conditional district, or other
28 small-scale rezoning.

29 (b1) A city may not impose upon a petitioner, through ordinance, regulation, or permit
30 requirements, any conditions for a use that is permitted by the zoning classification of the subject
31 parcel unless the city would otherwise be able to impose those conditions by authority granted in
32 the General Statutes.

33 (c) Except as authorized by the foregoing, all regulations shall be uniform for each class
34 or kind of building throughout each district, but the regulations in one district may differ from
35 those in other districts."

36 **SECTION 2.** G.S. 160A-388 reads as rewritten:



1 "§ 160A-388. Board of adjustment.

2 ...

3 (c) Special and Conditional Use Permits. – The ordinance may provide that the board of
4 adjustment may hear and decide special and conditional use permits in accordance with standards
5 and procedures specified in the ordinance. Reasonable and appropriate conditions may be
6 imposed upon these permits. A condition is reasonable and appropriate if the city would
7 otherwise be able to impose it in a similar fashion upon other similarly situated parcels that are
8 in the same zoning classification through a grant of authority in the General Statutes.

9"

10 **SECTION 3.** G.S. 153A-342 reads as rewritten:

11 "§ 153A-342. Districts; zoning less than entire jurisdiction.

12 (a) A county may divide its territorial jurisdiction into districts of any number, shape, and
13 area that it may consider best suited to carry out the purposes of this Part. Within these districts
14 a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or
15 use of buildings, structures, or land. Such districts may include, but shall not be limited to, general
16 use districts, in which a variety of uses are permissible in accordance with general standards;
17 overlay districts, in which additional requirements are imposed on certain properties within one
18 or more underlying general or special use districts; special use districts or conditional use
19 districts, in which uses are permitted only upon the issuance of a special use permit or a
20 conditional use permit and conditional zoning districts, in which site plans and individualized
21 development conditions are imposed.

22 (b) Property may be placed in a special use district, conditional use district, or conditional
23 district only in response to a petition by the owners of all the property to be included. Specific
24 conditions applicable to the districts may be proposed by the petitioner or the county or its
25 agencies, but only those conditions mutually approved by the county and the petitioner may be
26 incorporated into the zoning regulations or permit requirements. Conditions and site-specific
27 standards imposed in a conditional district shall be limited to those that address the conformance
28 of the development and use of the site to county ordinances and an officially adopted
29 comprehensive or other plan and those that address the impacts reasonably expected to be
30 generated by the development or use of the site.

31 A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each
32 petition for a rezoning to a special or conditional use district, or a conditional district, or other
33 small-scale rezoning.

34 (b1) A county may not impose upon a petitioner, through ordinance, regulation, or permit
35 requirements, any conditions for a use that is permitted by the zoning classification of the subject
36 parcel unless the county would otherwise be able to impose those conditions by authority granted
37 in the General Statutes.

38 (c) Except as authorized by the foregoing, all regulations shall be uniform for each class
39 or kind of building throughout each district, but the regulations in one district may differ from
40 those in other districts.

41 (d) A county may determine that the public interest does not require that the entire
42 territorial jurisdiction of the county be zoned and may designate one or more portions of that
43 jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres
44 and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by
45 the addition of any amount of territory. A zoning area may be regulated in the same manner as if
46 the entire county were zoned, and the remainder of the county need not be regulated."

47 **SECTION 4.** G.S. 153A-340 reads as rewritten:

48 "Part 3. Zoning.

49 "§ 153A-340. Grant of power.

50 ...

1 (c1) The regulations may also provide that the board of adjustment, the planning board, or
2 the board of commissioners may issue special use permits or conditional use permits in the
3 classes of cases or situations and in accordance with the principles, conditions, safeguards, and
4 procedures specified therein and may impose reasonable and appropriate conditions and
5 safeguards upon these permits. A condition is reasonable and appropriate if the county would
6 otherwise be able to impose it in a similar fashion upon other similarly situated parcels that are
7 in the same zoning classification through a grant of authority in the General Statutes. Conditions
8 and safeguards imposed under this subsection shall not include requirements for which the county
9 does not have authority under statute to regulate nor requirements for which the courts have held
10 to be unenforceable if imposed directly by the county. Where appropriate, the conditions may
11 include requirements that street and utility rights-of-way be dedicated to the public and that
12 recreational space be provided. When deciding special use permits or conditional use permits,
13 the board of county commissioners or planning board shall follow quasi-judicial procedures.
14 Notice of hearings on special or conditional use permit applications shall be as provided in
15 G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county
16 commissioners or planning board to issue such permits. For the purposes of this section, vacant
17 positions on the board and members who are disqualified from voting on a quasi-judicial matter
18 shall not be considered "members of the board" for calculation of the requisite majority. Every
19 such decision of the board of county commissioners or planning board shall be subject to review
20 of the superior court in the nature of certiorari consistent with G.S. 160A-388.

21"

22 **SECTION 5.** This act is effective when it becomes law and applies to permits
23 submitted on or after that date.