GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SENATE BILL 355

Short Title:	Land-Use Regulatory Changes.	(Public)
Sponsors:	Senators Bishop, Newton, and Searcy (Primary Sponsors).	
Referred to:	Rules and Operations of the Senate	

March 27, 2019

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE STATE.

The General Assembly of North Carolina enacts:

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

"**§ 143-755. Permit choice.**

(a) If a development permit applicant submits a permit application for any type of development and a rule or ordinance ~~changes~~ is amended, including an amendment to any applicable land development regulation, between the time the development permit application was submitted and a development permit decision is made, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the ~~permit.~~permit and use of the building, structure, or land indicated on the permit application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. If an applicable rule or ordinance is amended after the development permit is wrongfully denied or after an illegal condition is imposed, as determined in a proceeding challenging the permit denial or the condition imposed, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application. Provided, however, any provision of the development permit applicant's chosen version of the rule or ordinance that is determined to be illegal for any reason shall not be enforced upon the applicant without the written consent of the applicant.

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

(c) Repealed by Session Laws 2015 246, s. 5(a), effective September 23, 2015.

(d) Any person aggrieved by the failure of a State agency or local government to comply with this section or G.S. 160A-360.1 or G.S. 153A-320.1 may apply to the appropriate division of the General Court of Justice for an order compelling compliance by the offending agency or local government, and the court shall have jurisdiction to issue that order. Actions brought pursuant to any of these sections shall be set down for immediate hearing and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts.

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

(1) Development. – Without altering the scope of any regulatory authority granted by statute or local act, any of the following:

a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
b. Excavation, grading, filling, clearing, or alteration of land.
c. The subdivision of land as defined in G.S. 153A-335 or G.S. 160A-376.
d. The initiation of substantial change in the use of land or the intensity of the use of land.

(2) Development permit. – An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:
a. Zoning permits.
b. Site plan approvals.
c. Special use permits.
d. Variances.
e. Certificates of appropriateness.
f. Plat approvals.
g. Development agreements.
h. Building permits.
i. Subdivision of land.
j. State agency permits for development.
k. Driveway permits.
l. Erosion and sedimentation control permits.
m. Sign permit.

(3) Land development regulation. – Any State statute, rule, or regulation, or local ordinance affecting the development or use of real property, including any of the following:
a. Unified development ordinance.
b. Zoning regulation, including zoning maps.
c. Subdivision regulation.
d. Erosion and sedimentation control regulation.
e. Floodplain or flood damage prevention regulation.
f. Mountain ridge protection regulation.
g. Stormwater control regulation.
h. Wireless telecommunication facility regulation.
i. Historic preservation or landmark regulation.
j. Housing code."

SECTION 2.(a) G.S. 160A-360.1 reads as rewritten:

"**§ 160A-360.1. Permit choice.**

(a) If a rule or ~~ordinance changes~~ ordinance is amended, including an amendment to any applicable land development regulation, between the time a development permit application is submitted and a development permit decision is ~~made,~~ made or if a rule or ordinance is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, then G.S. 143-755 shall apply.

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

SECTION 2.(b) G.S. 153A-320.1 reads as rewritten:

"**§ 153A-320.1. Permit choice.**

(a) If a rule or ~~ordinance changes~~ ordinance is amended, including an amendment to any applicable land development regulation, between the time a development permit application is submitted and a development permit decision is ~~made,~~made or if a rule or ordinance is amended

after a development permit decision has been challenged and found to be wrongfully denied or illegal, then G.S. 143-755 shall apply.

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

SECTION 3.(a) G.S. 160A-385(c) is recodified as G.S. 160A-385(b)(5).

SECTION 3.(b) G.S. 160A-385, as amended by this section, reads as rewritten:

"**§ 160A-385. ~~Changes.~~Changes to land development regulations.**

(a) Citizen Comments. –

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

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

(b) Amendments in ~~zoning ordinances~~ land development regulations, shall not be applicable or enforceable without the written 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)~~ any of the following:

(1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

(2) Subdivisions of land for which a development permit authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.

(3) ~~a~~ 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.

(4) A vested right established by the terms of a development agreement authorized by Part 3D of this Article.

(5) ~~Amendments in zoning ordinances, subdivision ordinances, and unified development ordinances shall not be applicable or enforceable without the written consent of the owner with regard to a~~ A multi-phased development as ~~defined in G.S. 160A-385.1(b)(7).~~ provided for in this subdivision, in accordance with G.S. 143-755. A multi-phased development shall be vested for the entire development with the ~~zoning ordinances, subdivision ordinances, and unified development ordinances~~ land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this ~~subsection~~ subdivision shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(c) Recodified.

(d) Upon issuance of a development permit, the statutory vesting granted by this section shall be effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by statute, local development permits expire one year after issuance unless work authorized by such permit has substantially commenced. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive.

(e) The establishment of a vested right under any subdivision of subsection (b) of this section does not preclude vesting under one or more other subdivisions of subsection (b) of this section or vesting by application of common law principles. A vested right, once established as provided for in this section, precludes any action by a city that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the development permit application, except where a change in State or federal law mandating local government enforcement occurs after the development application that has a fundamental and retroactive effect on such development or use.

(f) As used in this section, the following terms mean:

(1) Development permit. – Shall mean as defined in G.S. 143-755(e)(2).

(2) Land development regulation. – Shall mean as defined in G.S. 143-755(e)(3).

(3) Multi-phased development. – A development containing 25 acres or more that is both of the following:

a. Submitted for development permit approval to occur in more than one phase.

b. Subject to a master development plan with committed elements showing the type and intensity of use of each phase."

SECTION 3.(c) G.S. 160A-385.1 reads as rewritten:

"**§ 160A-385.1. Vested rights.**

…

(b) Definitions. –

…

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

…."

SECTION 3.(d) G.S. 153A-344(b1) is recodified as G.S. 153A-344(b)(5).

SECTION 3.(e) G.S. 153A-344 reads as rewritten:

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

…

(b) Amendments in ~~zoning ordinances~~ land development regulations, shall not be applicable or enforceable without the written 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)~~ any of the following:

(1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

(2) Subdivisions of land for which a development permit authorizing the subdivision has been issued in accordance with G.S. 143-755.

(3) ~~a~~ 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-385.1.

(4) A vested right established by the terms of a development agreement authorized by Part 3D of this Article.

(5) ~~Amendments in zoning ordinances, subdivision ordinances, and unified development ordinances shall not be applicable or enforceable without the written consent of the owner with regard to a~~ A multi-phased development as ~~defined in G.S. 153AA-344.1(b)(7).~~ provided for in this subdivision, in accordance with G.S. 143-755. A multi-phased development shall be vested for the entire development with the ~~zoning ordinances, subdivision ordinances, and unified development ordinances~~ land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this ~~subsection~~ subdivision shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(b1) Recodified.

(c) Upon issuance of a development permit, the statutory vesting granted by this section shall be effective upon filing of the application in accordance with G.S. 143-755 for so long as the permit remains valid pursuant to law. Unless otherwise specified by statute, local development permits expire one year after issuance unless work authorized by such permit has substantially commenced. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive.

(d) The establishment of a vested right under any subdivision of subsection (b) of this section does not preclude vesting under one or more other subdivisions of subsection (b) of this section or vesting by application of common law principles. A vested right, once established as provided for in this section, precludes any action by a county that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the development permit application, except where a change in State or federal law mandating local government enforcement occurs after the development application that has a fundamental and retroactive effect on such development or use.

(e) As used in this section, the following terms mean:

(1) Development permit. – Shall mean as defined in G.S. 143-755(e)(2).

(2) Land development regulation. – Shall mean as defined in G.S. 143-755(e)(3).

(3) Multi-phased development. – A development containing 25 acres or more that is both of the following:

a. Submitted for development permit approval to occur in more than one phase.

b. Subject to a master development plan with committed elements showing the type and intensity of use of each phase."

SECTION 3.(f) G.S. 153A-344.1 reads as rewritten:

"**§ 153A-344.1. Vesting rights.**

…

(b) Definitions.

…

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

…."

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

"**§ 160A-384. Method of procedure.**

(a) ~~The~~ Subject to the limitations of this Chapter, 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. ~~Except for a city-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the city council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.~~ No zoning map amendment shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the zoning map amendment, unless the zoning map amendment is initiated by the city.

(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 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 according to the provisions of subsection (a) of this section.

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

(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 5. 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. ~~Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the board of commissioners that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.~~ No zoning map amendment shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the zoning map amendment, unless the zoning map amendment is initiated by the county.

(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 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 according to the provisions of subsection (a) of this section.

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

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

(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 6. G.S. 160A-388 reads as rewritten:

"**§ 160A-388. Board of adjustment.**

…

(b1) Appeals. – The board of adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

(1) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of

appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.

(2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. In order for a decision to be effective, written notice of the decision shall include language that the determination is final and that the party for whom the notice is given may appeal the decision as provided by law.

…

(6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed ~~from~~ from, including any accumulation of fines, during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160A-393 or during the pendency of any civil proceeding authorized by law, including G.S. 160A-393.1, or appeals therefrom, unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

…."

SECTION 7. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.1 Civil action for declaratory relief, injunctive relief, other remedies; joinder of complaint and petition for writ of certiorari in certain cases.**

(a) Review of Vested Rights Claim. – A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The zoning administrator's or officer's determination may be appealed under G.S. 160A-388(b1). On appeal, the question of law regarding the existence of a vested right shall be reviewed de novo. In lieu of an appeal under G.S. 160A-388(b1), a person claiming a vested right may bring an original civil action as provided by subsection (b) of this section.

(b) Civil Action. – Except as otherwise provided in this section for claims involving questions of interpretation, in lieu of any remedies available under G.S. 160A-388(b1), a person with standing, as defined in subsection (c) of this section, may bring an original civil action seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity, in superior court or federal court to challenge the enforceability, validity, or effect of a local land development regulation for any of the following claims:

(1) The ordinance, either on its face or as applied, is unconstitutional.

(2) The ordinance, either on its face or as applied, is ultra vires, preempted, or otherwise in excess of statutory authority.

(3) The ordinance, either on its face or as applied, constitutes a taking of property.

If the decision being challenged is from an administrative official charged with enforcement of a local land development regulation, the party with standing must first bring any claim that the ordinance was erroneously interpreted to the applicable board of adjustment pursuant to G.S. 160A-388(b1). An adverse ruling from the board of adjustment may then be challenged in an action brought pursuant to this subsection with the court hearing the matter de novo together with any of the claims listed in this subsection.

(c) Standing. – Any of the following criteria shall provide standing to bring an action under this section:

(1) The person has an ownership, leasehold, or easement interest in, or possesses an option or contract to, purchase the property that is the subject matter of a final and binding decision made by an administrative official charged with applying or enforcing a land development regulation.

(2) The person was a development permit applicant before the decision-making board whose decision is being challenged.

(3) The person was a development permit applicant who is aggrieved by a final and binding decision of an administrative official charged with applying or enforcing a land development regulation.

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

(e) Joinder. – An original civil action authorized by this section may, for convenience and economy, be joined with a petition for writ of certiorari and decided in the same proceedings. For the claims raised in the original civil action, the parties shall be governed by the Rules of Civil Procedure. The record of proceedings in the appeal pursuant to G.S. 160A-393 may not be supplemented by discovery from the civil action unless supplementation is otherwise allowed under G.S. 160A-393(j). The standard of review in the original civil action for the cause or causes of action pled as authorized by subsection (b) of this section shall be de novo. The standard of review of the petition for writ of certiorari shall be as established in G.S. 160A-393(k).

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

SECTION 8. G.S. 160A-364.1 reads as rewritten:

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

…

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

…."

SECTION 9. G.S. 160A-393 reads as rewritten:

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

…

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

(1) Whether a petitioner or intervenor has standing.

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

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this section.

(k) Scope of Review. –

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

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

b. In excess of the statutory authority conferred upon the ~~city~~ city, including preemption, or the authority conferred upon the decision-making board by ordinance.

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

d. Affected by other error of law.

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

f. Arbitrary or capricious.

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

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

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

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(*l*) Decision of the Court. – Following its review of the decision-making board in accordance with subsection (k) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court ~~may~~ shall remand with instructions that the permit be issued, subject to ~~reasonable and appropriate conditions.~~any conditions expressly consented to by the permit applicant as part of the application or during the board of adjustment appeal or writ of certiorari appeal.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

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

…."

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

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

A city or county may not assert before a board of adjustment or in any civil action the defense of estoppel as a result of actions by the landowner or permit applicant to proceed with development authorized by a rezoning or a development permit as defined in G.S. 143-755 if the landowner or permit applicant is challenging conditions that were illegally imposed."

SECTION 11. G.S. 6-21.7 reads as rewritten:

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

In any action in which a city or county is a party, upon a finding by the court that the city or county ~~acted outside the scope of its legal authority,~~ violated a statute or case law setting forth

unambiguous limits on its authority, the court ~~may~~ shall award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's ~~action, provided that if the court also finds that the city's or county's action was an abuse of its discretion, the court shall award attorneys' fees and costs.~~action. In any action in which a city or county is a party, upon finding by the court that the city or county took action inconsistent with, or in violation of, G.S. 160A-360.1, 153A-320.1, or 143-755, the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the local government's failure to comply with any of those provisions. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing private litigant. For purposes of this section, "unambiguous" means that the limits of authority are not reasonably susceptible to multiple constructions."

SECTION 12. G.S. 160A-381 reads as rewritten:

"**§ 160A-381. Grant of power.**

…

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

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

…."

SECTION 13. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

…

(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the county does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the ~~county.~~ county, including, without limitation, taxes, impact fees, building design elements within

the scope of subsection (*l*) of this section not voluntarily offered by the petitioner, street improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in excess of those allowed in G.S. 136-18(29), or other unauthorized limitations on the development or use of land. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. Notwithstanding anything to the contrary, a development permit authorized pursuant to this subsection shall not be denied on the basis that existing public facilities are inadequate to serve the property described in the permit application regardless of the type of use or development of said property. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, 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 majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 160A-388.

…."

SECTION 14. G.S. 160A-382 reads as rewritten:

"**§ 160A-382. Districts.**

…

(b) Property may be placed in a special use district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to these districts may be proposed by the petitioner or the city or its agencies, but only those conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit ~~requirements.~~ requirements; provided, however, notwithstanding any provision of law or regulation to the contrary, in the exercise of the authority granted by this section, including the establishment of special or conditional use districts or conditional zoning, a city may not require, enforce, or incorporate into the zoning regulations or permit requirements any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160A-381(h) that are not voluntarily offered by the petitioner, street improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

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

…."

SECTION 15. G.S. 153A-342 reads as rewritten:

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

…

(b) Property may be placed in a special use district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to the districts may be proposed by the petitioner or the county or its agencies, but only those conditions mutually approved by the county and the petitioner may be incorporated into the zoning regulations or permit ~~requirements.~~ requirements; provided,

however, notwithstanding any provision of law or regulation to the contrary, in the exercise of the authority granted by this section, including the establishment of special or conditional use districts or conditional zoning, a county may not require, enforce, or incorporate into the zoning regulations or permit requirements any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 153A-340(*l*) that are not voluntarily offered by the petitioner, street improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in excess of those allowed in G.S. 136-18(29), or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to county ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

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

…."

SECTION 16. G.S. 160A-307 reads as rewritten:

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

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

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

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

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

SECTION 17.(a) G.S. 153A-346 reads as rewritten:

"**§ 153A-346. Conflict with other laws.**

…

(b) When adopting regulations under this Part, a county may not use a definition of building, dwelling, dwelling unit, bedroom, or sleeping unit that is ~~more expansive than~~ inconsistent with any definition of the same in another statute or in a rule adopted by a State ~~agency.~~agency, including the State Building Code Council."

SECTION 17.(b) G.S. 160A-390 reads as rewritten:

"**§ 160A-390. Conflict with other laws.**

…

(b) When adopting regulations under this Part, a city may not use a definition of building, dwelling, dwelling unit, bedroom, or sleeping unit that is ~~more expansive than~~ inconsistent with any definition of the same in another statute or in a rule adopted by a State ~~agency.~~agency, including the State Building Code Council."

SECTION 18. Sections 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 17 of this act clarify and restate the intent of existing law and apply to ordinances adopted before, on, and after the effective date. The remainder of this act is effective when it becomes law and applies to zoning map amendment applications submitted and appeals filed on or after that date.