GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 507
Mar 28, 2017
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH20032-RW-10A* (03/15)

Short Title:	Land-Use Regulatory Changes.	(Public)
Sponsors:	Representatives Jordan, J. Bell, Conrad, and W. Richardson (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO 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 permit applicant submits a permit application for any type of development and a rule or ordinance ~~changes~~changes, including an amendment to a zoning map or text of any applicable land development regulation as defined in G.S. 160A-400.21 or a change to a State agency regulation affecting the development of property, between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit. The permit applicant shall not be required to wait for a pending rule or ordinance to be adopted in order to choose which version of the rule or ordinance applies to the permit.

(b) This section applies to all development permits issued by the State and by local governments. For purposes of development permits issued by local governments, the definitions contained in G.S. 160A-400.21 shall be applicable.

(c) Repealed by Session Laws 2015 246, s. 5(a), effective September 23, 2015.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, 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. If any State agency or local government takes action that is inconsistent with, or in violation of, this section, the permit applicant shall be entitled to any damages that can be demonstrated as a result of the State agency or local government's actions."

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

"**§ 160A-360.1. Permit choice.**

If a rule or ~~ordinance~~ordinance, including an amendment to a zoning map or text of any applicable land development regulation as defined in G.S. 160A-400.21, changes between the time a development permit application is submitted and a development permit decision is made, then G.S. 143-755 shall apply."

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

"**§ 153A-320.1. Permit choice.**

If a rule or ~~ordinance~~ordinance, including an amendment to a zoning map or text of any applicable land development regulation as defined in G.S. 160A-400.21, changes between the time a development permit application is submitted and a development permit decision is made, then G.S. 143-755 shall apply."

SECTION 4. G.S. 160A-400.21 reads as rewritten:

"**§ 160A-400.21. Definitions.**

The following definitions apply in this Part:

…

(4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, site plan, or any other official action of local government having the effect of permitting the development of property.

…."

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

"**§ 160A-385. Changes.**

(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 land development regulations, as defined in G.S. 160A-400.21, including zoning ~~ordinances~~ordinances, subdivision ordinances, or unified development ordinances, 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)~~(i) uses of buildings or land, or subdivisions of land, for which a development permit, as defined in G.S. 160A-400.21, has been issued that authorizes the use or subdivision of land or (ii) buildings, or uses thereof, for which a building permit has been issued pursuant to this Chapter. The statutory vesting granted by this subsection commences when the applicable application for either such development permit or building permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations so long as the permit remains valid and unexpired 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. Amendments shall also not be applicable or enforceable without the written consent of the owner if 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.~~thereto or if a vested right is established by the terms of a development agreement authorized by Part 3D of this Article. The establishment of a vested right under one subsection does not preclude vesting under one or more other subsections or

vesting by application of common law principles. A vested right, once established as provided for in this subsection, 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 application, except where a change in State or federal law mandating local government enforcement occurs after the application is submitted that has a fundamental and retroactive effect on such development or use.

(c) Amendments in land development regulations, as defined in G.S. 160A-400.21, including zoning ordinances, subdivision ordinances, ~~and~~or unified development ~~ordinances~~ ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development as ~~defined in G.S. 160A-385.1(b)(7).~~provided for in this subsection. 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.~~the applicable application for a development permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations, so long as the permit remains valid and unexpired pursuant to law. A right which has been vested as provided for in this subsection 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. For purposes of this subsection, a "multi-phased development" shall mean a development containing 25 acres or more that (i) is submitted for development permit approval to occur in more than one phase and (ii) is subject to a master development plan with committed elements, showing the type and intensity of use of each phase."

SECTION 6. 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 7. G.S. 153A-344 reads as rewritten:

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

…

(b) Amendments in land development regulations, as defined in G.S. 153A-349.2, including zoning ~~ordinances~~ordinances, subdivision ordinances, or unified development ordinances, 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)~~(i) uses of buildings or land, or subdivisions of land, for which a development permit, as defined in G.S.153A-349.2, has been issued that authorizes the use or subdivision of land or (ii) buildings, or uses thereof, for which a building permit has been issued pursuant to this Chapter. The statutory vesting granted by this subsection commences when the applicable application for either such development permit or building permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations so long as the permit remains valid and unexpired 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. Amendments shall also not be

applicable or enforceable without the written consent of the owner if a vested right has been established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired pursuant ~~to G.S. 153A-344.1.~~thereto or if a vested right is established by the terms of a development agreement authorized by Part 3A of this Article. The establishment of a vested right under one subsection does not preclude vesting under one or more other subsections or vesting by application of common law principles. A vested right, once established as provided for in this subsection, 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 application, except where a change in State or federal law mandating local government enforcement occurs after the application is submitted that has a fundamental and retroactive effect on such development or use.

(b1) Amendments in land development regulations, as defined in G.S. 153A-349.2, including zoning ordinances, subdivision ordinances, ~~and~~or unified development ~~ordinances~~ ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development ~~as defined in G.S. 153A-344.1(b)(7).~~as provided in this subsection. 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.~~the applicable application for a development permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations, so long as the permit remains valid and unexpired pursuant to law. A right which has been vested as provided for in this subsection 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. For purposes of this subsection, a "multi-phased development" shall mean a development containing 25 acres or more that (i) is submitted for development permit approval to occur in more than one phase and (ii) is subject to a master development plan with committed elements, showing the type and intensity of use of each phase."

SECTION 8. 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 9. 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. 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. ~~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.~~

(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 10. 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. 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. ~~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.~~

(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 11. 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, or other remedies.**

(a) Action for Relief Authorized. – Any landowner, permit applicant, or tenant aggrieved by a final and binding decision of an administrative official involving the application or enforcement of a city or county zoning or unified development ordinance or any other ordinance that regulates land use or development may, in lieu of an appeal to a board of adjustment prescribed by Chapter 153A or Chapter 160A of the General Statutes, maintain an original action in superior court for declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity, where any of the following claims or defenses are asserted by the aggrieved party:

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

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

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

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

In any action brought pursuant to this subsection, and notwithstanding G.S. 160A-388(b1), the aggrieved party may, in addition to the above, join any other available claims or defenses, arising from or relating to the final decision of the administrative official, including, without

limitation, claims or defenses relating to the interpretation or application of the ordinance. The burden of proof to show a violation of a city or county zoning or unified development ordinance or any other ordinance that regulates land-use or development rests with the party seeking to enforce such ordinance.

(b) 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.

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

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

SECTION 12. 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 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 13. 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.~~section, including an error related to the claims or defenses in subdivision (k)(4) 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 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.

(4) The petitioner may assert and the court shall determine de novo, based on the record, as supplemented in accordance with subsection (j) of this section, any of the following claims or defenses:

a. That the ordinance, either on its face or as applied by the final decision of the administrative official, violates the United States or North Carolina Constitutions.

b. That the ordinance or the final decision of the administrative official is invalid or unenforceable on grounds of ultra vires or preemption, or is otherwise in excess of authority.

c. That the ordinance or the final decision of the administrative official violates common law or statutory vested rights of the petitioner.

(5) In order to raise any claim or defense listed in subdivision (4) of this subsection, to the extent that they do not involve some act of the decision-making board itself or any of its members, the claim or defense shall be made known to the decision-making board at the hearing.

(*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 14. 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 unlawful conditions.**

A city or county may not assert before a board of adjustment or in any civil action the defenses of estoppel, waiver, release, acceptance, or other similar grounds 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. 160A-400.21 while said landowner or permit applicant challenges conditions imposed on said development."

SECTION 15. 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 16. G.S. 160A-372 reads as rewritten:

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

…

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

…

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

(1) The term "performance guarantee" shall mean any of the following forms of guarantee:

a. Surety bond issued by any company authorized to do business in this State.

b. Letter of credit issued by any financial institution licensed to do business in this State.

c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

(2) The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city or county that the improvements for which the performance guarantee is being required are

complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

(3) The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained. At the election of the developer, one hundred twenty-five percent (125%) of the reasonably estimated cost of completion may be conclusively determined by a report provided under seal by an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes. This report may contain unit pricing information provided by a general contractor, licensed under Chapter 87 of the General Statutes, or any other competent source that the architect or engineer certifies, under seal, as accurate. The reasonably estimated cost of completion shall include all costs of inflation and costs of administration and enforcement, no matter how such related fees or charges are denominated.

(4) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

(5) The developer shall have the option to post one form of a performance guarantee as provided for in subdivision (1) of this subsection, in lieu of multiple bonds, letters of credit or other equivalent security, for all development matters related to the same project requiring performance guarantees, including, without limitation, subdivision, erosion control, and stormwater.

(6) No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

a. The local government to whom such performance guarantee is provided.

b. The developer at whose request or for whose benefit such performance guarantee is given.

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

SECTION 17. G.S. 153A-331 reads as rewritten:

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

…

(e) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees ~~to assure successful completion of required improvements~~either at the time the plat is recorded as provided in subsection (b) of this ~~section.~~section or at a time subsequent to the recording of the plat to assure successful completion of required improvements. In the event a county fails to adopt an ordinance setting

forth performance guarantees in compliance with subsection (g) of this section, a county shall not be authorized to require the successful completion of required improvements prior to a plat being recorded. For any specific development, the type and term of performance ~~guarantee from the range specified by the county~~ guarantee, or any extension of the performance guarantee, shall be at the election of the ~~developer.~~developer, provided that any performance guarantee or extension be available to assure the successful completion of the improvements for which it is required. The developer shall be allowed, without limitation, to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.

…."

SECTION 18. 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 19. 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 20. G.S. 153A-352 reads as rewritten:

"**§ 153A-352. Duties and responsibilities.**

…

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

…."

SECTION 21. G.S. 160A-412 reads as rewritten:

"**§ 160A-412. Duties and responsibilities.**

…

(b) Except as provided in G.S. 160A-424, a city may not adopt a new local ordinance or resolution or any other policy or enforce an existing local ordinance, resolution, or policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a city and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the city to require inspections upon unforeseen or unique circumstances that require immediate action. In performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector

shall inform the permit holder of instances in which the work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings.

…."

SECTION 22. G.S. 160A-37 reads as rewritten:

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

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:

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

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

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 may not require the applicant to acquire right-of-way from property not owned by the applicant."

SECTION 23. G.S. 160A-385(c), as enacted by Section 5 of this act, and G.S. 153A-344(b1), as enacted by Section 7 of this act, are effective with respect to phased development approvals that are valid and unexpired on the effective date of this act. The remainder of this act is effective when it becomes law and applies to permits previously issued that remain valid and unexpired on the date this act becomes law and to permit actions filed, actions filed in court, and claims and defenses asserted on or after that date.