

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1017
Committee Substitute Favorable 5/9/91
Senate Judiciary I Committee Substitute Adopted 6/20/91

Short Title: Cities' Subpoena/Stop Order/Zoning.

(Public)

Sponsors:

Referred to:

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SUBPOENA POWER TO ALL MUNICIPALITIES, TO PROVIDE FOR THE APPEAL FROM A STOP ORDER ISSUED FOR VIOLATION OF A ZONING ORDINANCE, AND TO AMEND THE STATUTE RELATING TO VOTING REQUIREMENTS FOR ZONING DECISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-80(c) is repealed.

Sec. 2. G.S. 160A-388 is amended by adding a new subsection to read:

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

Sec. 3. G.S. 160A-421 reads as rewritten:

"§ 160A-421. Stop orders.

(a) Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial

1 violation of any State or local building law, in a manner that endangers life or property,
2 the appropriate inspector may order the specific part of the work that is in violation or
3 presents such a hazard to be immediately stopped. The stop order shall be in writing,
4 directed to the person doing the work, and shall state the specific work to be stopped,
5 the specific reasons therefor, and the conditions under which the work may be resumed.

6 (b) The owner or builder may appeal from a stop order involving alleged
7 violation of the State Building Code or any approved local modification thereof to the
8 North Carolina Commissioner of Insurance or his designee within a period of five days
9 after the order is issued. Notice of appeal shall be given in writing to the Commissioner
10 of Insurance or his designee, with a copy to the local inspector. The Commissioner of
11 Insurance or his designee shall promptly conduct an investigation and the appellant and
12 the inspector shall be permitted to submit relevant evidence. The Commissioner of
13 Insurance or his designee shall as expeditiously as possible provide a written statement
14 of the decision setting forth the facts found, the decision reached, and the reasons for the
15 decision. Pending the ruling by the Commissioner of Insurance or his designee on an
16 appeal no further work shall take place in violation of a stop order. In the event of
17 dissatisfaction with the decision, the person affected shall have the options of:

18 (1) Appealing to the Building Code Council, or

19 (2) Appealing to the Superior Court as provided in G.S. 143-141.

20 (c) The owner or builder may appeal from a stop order involving alleged
21 violation of a local zoning ordinance by giving notice of appeal in writing to the board
22 of adjustment. The appeal shall be heard and decided within the period established by
23 the ordinance, or if none is specified, within a reasonable time. No further work shall
24 take place in violation of a stop order pending a ruling.

25 (d) Violation of a stop order shall constitute a misdemeanor."

26 Sec. 4. G.S. 160A-385(a) reads as rewritten:

27 "(a) Zoning regulations and restrictions and zone boundaries may from time to
28 time be amended, supplemented, changed, modified or repealed. In case, however, of a
29 protest against such change, signed by the owners of twenty percent (20%) or more
30 either of the area of the lots included in a proposed change, or of those immediately
31 adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet
32 therefrom, or of those directly opposite thereto extending 100 feet from the street
33 frontage of the opposite lots, an amendment shall not become effective except by
34 favorable vote of ~~three-fourths~~ three-fourths of all the members of the city council. The
35 foregoing provisions concerning protests shall not be applicable to any amendment
36 which initially zones property added to the territorial coverage of the ordinance as a
37 result of annexation or ~~otherwise~~ otherwise, or to an amendment to an adopted special
38 use district or conditional use district if the amendment does not change the types of
39 uses that are permitted within the district or increase the approved density for residential
40 development, or increase the total approved size of nonresidential development, or
41 reduce the size of any buffers or screening approved for the special use or conditional
42 use district."

1 Sec. 5. Section 4 of this act is effective upon ratification, applies to zoning
2 decisions made on or after that date, and does not affect pending litigation. The
3 remainder of this act is effective upon ratification.