

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE DRS35267-LR-63A (3/11)

Short Title: Model Airport Zoning Act Amendments.

(Public)

Sponsors: Senator Rand.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE MODEL AIRPORT ZONING ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 63-1(a) reads as rewritten:

5 "(a) Definitions. – For the purpose of this Chapter the following words, terms, and
6 phrases shall have the meanings herein given, unless otherwise specifically defined, or unless
7 another intention clearly appears, or the context otherwise requires:

8 (1) "Aeronautics" means transportation by aircraft; the operation, construction,
9 repair, or maintenance of aircraft, aircraft power plants and accessories,
10 including the repair, packing, and maintenance of parachutes; the design,
11 establishment, construction, extension, operation, improvement, repair, or
12 maintenance of airports, restricted landing areas, or other air navigation
13 facilities, and air instruction.

14 (2) "Aeronautics instructor" means any individual engaged in giving instruction
15 or offering to give instruction in aeronautics, either in flying or ground
16 subjects, or both, for hire or reward, without advertising such occupation,
17 without calling his or her facilities an "air school" or anything equivalent
18 thereto, and without employing or using other instructors. It does not include
19 any instructor in any public school or university of this State, or any
20 institution of higher learning duly accredited and approved for carrying on
21 collegiate work, while engaged in his or her duties as such instructor.

22 (3) "Aircraft" means any contrivance now known, or hereafter invented, used or
23 designed for navigation of or flight in the air.

24 (4) "Air instruction" means the imparting of aeronautical information by any
25 aeronautics instructor or in or by any air school or flying club.

26 (5) "Airman" means any individual who engages, as the person in command, or
27 as pilot, mechanic, or member of the crew, in the navigation of aircraft while
28 underway and (excepting individuals employed outside the United States,
29 any individual employed by a manufacturer of aircraft, aircraft engines,
30 propellers, or appliances to perform duties as inspector or mechanic in
31 connection therewith, and any individual performing inspection or
32 mechanical duties in connection with aircraft owned or operated by him) any
33 individual who is directly in charge of the inspection, maintenance,
34 overhauling, or repair of aircraft engines, propellers, or appliances; and any



- 1 individual who serves in the capacity of aircraft dispatcher or air traffic
2 control tower operator.
- 3 (6) "Air navigation" means the operation or navigation of aircraft in the air
4 space over this State, or upon any airport or restricted landing area within
5 this State.
- 6 (7) "Air navigation facility" means any facility other than one owned or
7 controlled by the federal government, used in, available for use in, or
8 designed for use in aid of air navigation, including airports, restricted
9 landing areas, and any structures, mechanisms, lights, beacons, marks,
10 communicating systems, or other instrumentalities or devices used or useful
11 as an aid, or constituting an advantage or convenience to the safe taking off,
12 navigation, and landing of aircraft, or the safe and efficient operation or
13 maintenance of an airport or restricted landing area, and any combination of
14 any or all of such facilities.
- 15 (8) "Airport" means any area of land or water, except a restricted landing area,
16 which is designed for the landing and take off of aircraft, whether or not
17 facilities are provided for the shelter, servicing, or repair of aircraft, or for
18 receiving or discharging passengers or cargo, and all appurtenant areas used
19 or suitable for airport buildings or other airport facilities, and all appurtenant
20 rights-of-way, whether heretofore or hereafter established.
- 21 (9) "~~Airport hazard" means any structure, object of natural growth, or use of~~
22 ~~land, which obstructs the air space required for the flight of aircraft in~~
23 ~~landing or taking off at any airport or restricted landing area or is otherwise~~
24 ~~hazardous to such landing or taking off.~~ means any structure or tree or use of
25 land which would exceed the federal obstruction standards as contained in
26 14 C.F.R. 77.21, 14 C.F.R. 77.23, 14 C.F.R. 77.25, 14 C.F.R. 77.28, and 14
27 C.F.R. 77.29 and which obstructs the airspace required for the flight of
28 aircraft in taking off, maneuvering, or landing or is otherwise hazardous to
29 such taking off, maneuvering, or landing of aircraft and for which no person
30 has previously obtained a permit or variance pursuant to G.S. 63-32.
- 31 (9a) "Airport hazard area" means any area of land or water upon which an airport
32 hazard might be established if not prevented as provided in this Chapter.
- 33 (9b) "Airport land use compatibility zoning" means airport zoning regulations
34 restricting the use of land adjacent to or in the immediate vicinity of airports
35 in the manner enumerated in G.S. 63-31 to activities and purposes
36 compatible with the continuation of normal airport operations including
37 landing and takeoff of aircraft in order to promote public health, safety, and
38 general welfare.
- 39 (9c) "Airport layout plan" means a detailed, scale engineering drawing, including
40 pertinent dimensions, of an airport's current and planned facilities, their
41 locations, and runway usage.
- 42 (10) "Airport protection privileges" means easements through, or other interests
43 in, air space over land or water, interests in airport hazards outside the
44 boundaries of airports or restricted landing areas, and other protection
45 privileges, the acquisition or control of which is necessary to insure safe
46 approaches to the landing areas of airports and restricted landing areas and
47 the safe and efficient operation thereof.
- 48 (11) "Air school" means any person engaged in giving or offering to give
49 instruction in aeronautics, either in flying or ground subjects, or both, for or
50 without hire or reward, and advertising, representing, or holding himself out
51 as giving or offering to give such instruction. It does not include any public

- 1 school or university of this State, or any institution of higher learning duly
2 accredited and approved for carrying on collegiate work.
- 3 (12) "Civil aircraft" means any aircraft other than a public aircraft.
- 4 (12a) "Department" means the North Carolina Department of Transportation,
5 Division of Aviation.
- 6 (13) "Flying club" means any person other than an individual which, neither for
7 profit nor reward, owns, leases, or uses one or more aircraft for the purpose
8 of instruction or pleasure, or both.
- 9 (14) "Municipality" means any county, city, or town of this State, and any other
10 political subdivision, public corporation, authority, or district in this State,
11 which is or may be authorized by law to acquire, establish, construct,
12 maintain, improve, and operate airports and other air navigation facilities.
- 13 (15) "Navigable air space" means air space above the minimum altitudes of flight
14 prescribed by the laws of this State, or by regulations of the Commission
15 consistent therewith.
- 16 (15a) "Obstruction" means any existing or proposed manmade object or object of
17 natural growth or terrain that violates the standards contained in 14 C.F.R.
18 77.21, 14 C.F.R. 77.23, 14 C.F.R. 77.25, 14 C.F.R. 77.28, and 14 C.F.R.
19 77.29.
- 20 (16) "Operation of aircraft" or "operation aircraft" means the use of aircraft for
21 the purpose of air navigation and includes the navigation or piloting of
22 aircraft. Any person who causes or authorizes the operation of aircraft,
23 whether with or without the right of legal control (in the capacity of owner,
24 lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the
25 operation of aircraft within the meaning of the statutes of this State.
- 26 (17) "Person" means any individual, firm, partnership, corporation, company,
27 association, joint stock association, or body politic; and includes any trustee,
28 receiver, assignee, or other similar representative thereof.
- 29 (17a) "Political subdivision" means any county, city, town, village, or other
30 subdivision or agency thereof, or any district, port commission, port
31 authority, or other such agency authorized to establish or operate airports in
32 the State.
- 33 (18) "Public aircraft" means an aircraft used exclusively in the service of any
34 government or of any political subdivision thereof, including the government
35 of any state, territory, or possession of the United States, or the District of
36 Columbia, but not including any government owned aircraft engaged in
37 carrying persons or property for commercial purposes.
- 38 (19) "Restricted area" means any area of land, water, or both, which is used or is
39 made available for the landing and take off of aircraft, the use of which shall,
40 except in case of emergency, be only as provided from time to time by the
41 Commission.
- 42 (19a) "Runway clear zone" means a runway clear zone as defined in 14 C.F.R.
43 151.9(b).
- 44 (20) "State" or "this State" means the State of North Carolina.
- 45 (21) "State airway" means a route in the navigable air space over and above the
46 lands or water of this State designated by the Commission as a route suitable
47 for air navigation.
- 48 (21a) "Structure" means any object, constructed or installed by persons, including,
49 but without limitation thereof, buildings, towers, smokestacks, utility poles,
50 and overhead transmission lines.
- 51 (22) "Tree" includes any plant of the vegetable kingdom."

1 **SECTION 2.** G.S. 63-30 reads as rewritten:

2 "**§ 63-30. Airport hazards not in public interest.**

3 (a) It is hereby found ~~and declared~~ that an airport hazard endangers the lives and
4 property of users of the airport and of occupants of land in its vicinity, and also, if of the
5 obstruction type, in effect reduces the size of the area available for the landing, taking off ~~and~~
6 ~~or~~ maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the
7 public investment therein, ~~and is therefore not in the interest of the public health, public safety,~~
8 ~~or general welfare therein.~~ It is further found that certain activities and uses of land in the
9 immediate vicinity of airports as enumerated in G.S. 63-31 are not compatible with normal
10 airport operations, and may, if not regulated, also endanger the lives of the participants,
11 adversely affect their health, or otherwise limit the accomplishment of normal activities.
12 Accordingly, it is hereby declared:

13 (1) That the creation or establishment of an airport hazard and the incompatible
14 use of land in airport vicinities are public nuisances and injure the
15 community served by the airport in question;

16 (2) That it is therefore necessary in the interest of the public health, public
17 safety, and general welfare that the creation or establishment of airport
18 hazards and incompatible land uses be prevented; and

19 (3) That this should be accomplished, to the extent legally possible, by the
20 exercise of the police power, without compensation.

21 (b) It is further declared that the limitation of land uses incompatible with normal
22 airport operations, the prevention of the creation or establishment of airport hazards, and the
23 elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards
24 are public purposes for which political subdivisions may raise and expend public funds and
25 acquire land or property interests therein, or air rights thereover."

26 **SECTION 3.** G.S. 63-31 reads as rewritten:

27 "**§ 63-31. Adoption of airport zoning regulations.**

28 (a) ~~Every political subdivision may adopt, administer, and enforce, under the police~~
29 ~~power and in the manner and upon the conditions hereinafter prescribed, airport zoning~~
30 ~~regulations, which regulations shall divide the area surrounding any airport within the~~
31 ~~jurisdiction of said political subdivision into zones, and, within such zones, specify the land~~
32 ~~uses permitted, and regulate and restrict the height to which structures and trees may be erected~~
33 ~~or allowed to grow. In adopting or revising any such zoning regulations, the political~~
34 ~~subdivision shall consider, among other things, the character of the flying operations expected~~
35 ~~to be conducted at the airport, the nature of the terrain, the height of existing structures and~~
36 ~~trees above the level of the airport, the possibility of lowering or removing existing~~
37 ~~obstructions, and the views of the agency of the federal government charged with the fostering~~
38 ~~of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the~~
39 ~~airport.~~

40 (b) ~~In the event that a political subdivision has adopted, or hereafter adopts, a general~~
41 ~~zoning ordinance regulating, among other things, the height of buildings, any airport zoning~~
42 ~~regulations adopted for the same area or portion thereof under this Article may be incorporated~~
43 ~~in and made a part of such general zoning regulations, and be administered and enforced in~~
44 ~~connection therewith, but such general zoning regulations shall not limit the effectiveness or~~
45 ~~scope of the regulations adopted under this Article.~~

46 (c) ~~Any two or more political subdivisions may agree, by ordinance duly adopted, to~~
47 ~~create a joint board and delegate to said board the powers herein conferred to promulgate,~~
48 ~~administer and enforce airport zoning regulations to protect the aerial approaches of any airport~~
49 ~~located within the corporate limits of any one or more of said political subdivisions. Such joint~~
50 ~~board shall have as members two representatives appointed by the chief executive officer of~~

1 each political subdivision participating in the creation of said board and a chairman elected by a
2 majority of the members so appointed.

3 (d) ~~The jurisdiction of each political subdivision is hereby extended to the~~
4 ~~promulgating, adopting, administering and enforcement of airport zoning regulations to protect~~
5 ~~the approaches of any airport or landing field which is owned by said political subdivision,~~
6 ~~although the area affected by the zoning regulations may be located outside the corporate limits~~
7 ~~of said political subdivision. In case of conflict with any airport zoning or other regulations~~
8 ~~promulgated by any political subdivision, the regulations adopted pursuant to this section shall~~
9 ~~prevail.~~

10 (e) ~~All airport zoning regulations adopted under this Article shall be reasonable, and~~
11 ~~none shall require the removal, lowering, or other change or alteration of any structure or tree~~
12 ~~not conforming to the regulations when adopted or amended, or otherwise interfere with the~~
13 ~~continuance of any nonconforming use, except as provided in G.S. 63-32, subsection (a).~~

14 (f) ~~A political subdivision may not adopt an airport zoning regulation in violation of~~
15 ~~G.S. 63A-18.~~

16 (a) Adoption of Zoning Regulations. -

17 (1) In order to prevent the creation or establishment of airport hazards, every
18 political subdivision of the State having an airport within its territorial limits
19 shall, by July 1, 2010, adopt, administer, and enforce, under the police power
20 and in the manner and upon the conditions hereinafter prescribed, airport
21 zoning regulations to protect the airport.

22 (2) Where an airport is owned or controlled by a political subdivision and any
23 airport hazard area appertaining to such airport is located wholly or partly
24 outside the territorial limits of said political subdivision, the political
25 subdivision owning or controlling the airport and the political subdivision
26 within which the airport hazard area is located, shall either:

27 a. By interlocal agreement adopt, administer, and enforce airport zoning
28 regulations applicable to the airport hazard area in question; or

29 b. By ordinance or resolution duly adopted, create a joint airport zoning
30 board, which board shall have the same power to adopt, administer,
31 and enforce airport zoning regulations applicable to the airport
32 hazard area in question as that vested in subdivision (a)(1) of this
33 section in the political subdivision within which such area is located.
34 Each such joint board shall have as members two representatives
35 appointed by each political subdivision participating in its creation
36 and in addition a chair elected by a majority of the members so
37 appointed. However, the airport manager or managers of the affected
38 political subdivisions shall serve on the board in a nonvoting
39 capacity.

40 (3) Airport zoning regulations adopted under subdivision (1) of this subsection
41 shall, as a minimum, require:

42 a. A variance for the erection, alteration, or modification of any
43 structure which would cause the structure to exceed the federal
44 obstruction standards as contained in 14 C.F.R. 77.21, 14 C.F.R.
45 77.23, 14 C.F.R. 77.25, 14 C.F.R. 77.28, and 14 C.F.R. 77.29;

46 b. Obstruction marking and lighting for structures as specified in
47 G.S. 63-32;

48 c. Documentation showing compliance with the federal requirement for
49 notification of proposed construction and a valid aeronautical
50 evaluation submitted by each person applying for a variance;

- 1 d. Consideration of the criteria in G.S. 63-32, when determining
2 whether to issue or deny a variance; and
3 e. That no variance shall be approved solely on the basis that such
4 proposed structure will not exceed federal obstruction standards as
5 contained in 14 C.F.R. 77.21, 14 C.F.R. 77.23, 14 C.F.R. 77.25, 14
6 C.F.R. 77.28, or 14 C.F.R. 77.29, or any other federal aviation
7 regulation.
8 f. The Department shall issue copies of the federal obstruction
9 standards as contained in 14 C.F.R. 77.21, 14 C.F.R. 77.23, 14
10 C.F.R. 77.25, 14 C.F.R. 77.28, and 14 C.F.R. 77.29 to each political
11 subdivision having airport hazard areas and, in cooperation with
12 political subdivisions of the State, shall issue appropriate airport
13 zoning maps depicting within each county the maximum allowable
14 height of any structure or tree. Material distributed pursuant to this
15 subsection shall be at no cost to authorized recipients.

16 (b) In the manner provided in subsection (a) of this section, interim airport land-use
17 compatibility zoning regulations shall be adopted. When political subdivisions have adopted
18 land development regulations which address the use of land in the manner consistent with the
19 provisions herein, adoption of airport land-use compatibility regulations pursuant to this
20 subsection shall not be required. Interim airport land-use compatibility zoning regulations shall
21 consider the following:

- 22 (1) Whether sanitary landfills are located within the following areas:
23 a. Within 10,000 feet from the nearest point of any runway used or
24 planned to be used by turbojet or turboprop aircraft.
25 b. Within 5,000 feet from the nearest point of any runway used only by
26 piston-type aircraft.
27 c. Outside the perimeters defined in sub-subdivisions a. and b. of this
28 subdivision, but still within the lateral limits of the civil airport
29 imaginary surfaces defined in 14 C.F.R. 77.25. Case-by-case review
30 of such landfills is advised.
31 (2) Whether any landfill is located and constructed so that it attracts or sustains
32 hazardous bird movements from feeding, water, or roosting areas into, or
33 across, the runways or approach and departure patterns of aircraft. The
34 political subdivision shall request from the airport authority or other
35 governing body operating the airport a report on such bird feeding or
36 roosting areas that at the time of the request are known to the airport. In
37 preparing its report, the authority, or other governing body, shall consider
38 whether the landfill will incorporate bird management techniques or other
39 practices to minimize bird hazards to airborne aircraft. The airport authority
40 or other governing body shall respond to the political subdivision no later
41 than 30 days after receipt of such request.
42 (3) Where an airport authority or other governing body operating a publicly
43 owned, public-use airport has conducted a noise study in accordance with
44 the provisions of 14 C.F.R. 150, neither residential construction nor any
45 educational facility, with the exception of aviation school facilities, shall be
46 permitted within the area contiguous to the airport defined by an outer noise
47 contour that is considered incompatible with that type of construction by 14
48 C.F.R. 150, Appendix A or an equivalent noise level as established by other
49 types of noise studies.
50 (4) Where an airport authority or other governing body operating a publicly
51 owned, public-use airport has not conducted a noise study, neither residential

1 construction nor any educational facility, with the exception of aviation
2 school facilities, shall be permitted within an area contiguous to the airport
3 measuring the length of the longest runway on either side of and at the end
4 of each runway centerline.

5 (c) In the manner provided in subsection (a) of this section, airport zoning regulations
6 shall be adopted which restrict new incompatible uses, activities, or construction within runway
7 clear zones, including uses, activities, or construction in runway clear zones which are
8 incompatible with normal airport operations or endanger public health, safety, and welfare by
9 resulting in congregations of people, emissions of light or smoke, or attraction of birds. The
10 regulations shall prohibit the construction of an educational facility of a public or private school
11 at either end of a runway of a publicly owned, public-use airport within an area which extends
12 five miles in a direct line along the centerline of the runway, and which has a width measuring
13 one-half the length of the runway. Exceptions approving construction of an educational facility
14 within the delineated area shall only be granted when the political subdivision administering
15 the zoning regulations makes specific findings detailing how the public policy reasons for
16 allowing the construction outweigh health and safety concerns prohibiting such a location.

17 (d) The procedures outlined in subsections (a), (b), and (c) of this section for the
18 adoption of the regulations are supplemental to any existing procedures utilized by political
19 subdivisions of the State in the adoption of the regulations.

20 (e) The Department shall provide technical assistance to any political subdivision of the
21 State requesting assistance in the preparation of an airport zoning code. A copy of all local
22 airport zoning codes, rules, and regulations, and amendments and proposed and granted
23 variances thereto, shall be filed with the Department.

24 (f) Nothing in subsection (b) or (c) of this section shall be construed to require the
25 removal, alteration, sound conditioning, or other change, or to interfere with the continued use
26 or adjacent expansion of any educational structure or site in existence on July 1, 2009."

27 **SECTION 4.** Article 4 of Chapter 63 of the General Statutes is amended by adding
28 a new section to read:

29 **"§ 63-31.1. Airport zoning requirements.**

30 (a) Reasonableness. – All airport zoning regulations adopted under this Article shall be
31 reasonable and none shall impose any requirement or restriction which is not reasonably
32 necessary to effectuate the purposes of this Article. In determining what regulations it may
33 adopt, each political subdivision and joint airport zoning board shall consider, among other
34 things, the character of the flying operations expected to be conducted at the airport, the nature
35 of the terrain within the airport hazard area and runway clear zones, the character of the
36 neighborhood, the uses to which the property to be zoned is put and adaptable, and the impact
37 of any new use, activity, or construction on the airport's operating capability and capacity.

38 (b) Independent Justification. – The purpose of all airport zoning regulations adopted
39 under this Article is to provide both airspace protection and land-use compatible with airport
40 operations. Each aspect of this purpose requires independent justification in order to promote
41 the public interest in safety, health, and general welfare. Specifically, construction in a runway
42 clear zone which does not exceed airspace height restrictions is not evidence per se that such
43 use, activity, or construction is compatible with airport operations.

44 (c) Nonconforming Uses. – No airport zoning regulations adopted under this Chapter
45 shall require the removal, lowering, or other change or alteration of any structure or tree not
46 conforming to the regulations when adopted or amended, or otherwise interfere with the
47 continuance of any nonconforming use, except as provided in G.S. 63-32.

48 (d) Adoption of Airport Master Plan and Notice to Affected Local Governments. – An
49 airport master plan shall be prepared by each publicly owned and operated airport licensed by
50 the Department under this Chapter. The authorized entity having responsibility for governing
51 the operation of the airport, when either requesting from or submitting to a State or federal

1 governmental agency with funding or approval jurisdiction a "finding of no significant impact,"
2 an environmental assessment, a site-selection study, an airport master plan, or any amendment
3 to an airport master plan, shall submit simultaneously a copy of said request, submittal,
4 assessment, study, plan, or amendments by certified mail to all affected local governments. For
5 the purposes of this subsection, "affected local government" is defined as any city or county
6 having jurisdiction over the airport.

7 **SECTION 5.** Article 4 of Chapter 63 of the General Statutes is amended by adding
8 a new section to read:

9 **"§ 63-31.2. Guidelines regarding land use near airports.**

10 The Department shall adopt by rule recommended guidelines regarding compatible land
11 uses in the vicinity of airports. These guidelines shall utilize acceptable and established
12 quantitative measures, such as the Air Installation Compatible Use Zone standards, the General
13 Statutes of North Carolina, and applicable Federal Aviation Administration documents."

14 **SECTION 6.** G.S. 63-32 reads as rewritten:

15 **"§ 63-32. Permits, new structures, etc., and variances.**

16 (a) ~~Permits.—Where advisable to facilitate the enforcement of zoning regulations~~
17 ~~adopted pursuant to this Article, a system may be established by any political subdivision for~~
18 ~~the granting of permits to establish or construct new structures and other uses and to replace~~
19 ~~existing structures and other uses or make substantial changes therein or substantial repairs~~
20 ~~thereof. In any event, before any nonconforming structure or tree may be replaced, substantially~~
21 ~~altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from~~
22 ~~the administrative agency authorized to administer and enforce the regulations, authorizing~~
23 ~~such replacement, change or repair. No such permit shall be granted that would allow the~~
24 ~~structure or tree in question to be made higher or become a greater hazard to air navigation than~~
25 ~~it was when the applicable regulation was adopted; and whenever the administrative agency~~
26 ~~determines that a nonconforming structure or tree has been abandoned or more than eighty~~
27 ~~percent (80%) torn down, destroyed, deteriorated, or decayed: (i) no permit shall be granted~~
28 ~~that would allow said structure or tree to exceed the applicable height limit or otherwise~~
29 ~~deviate from the zoning regulations; and (ii) whether application is made for a permit under this~~
30 ~~paragraph or not, the said agency may by appropriate action compel the owner of the~~
31 ~~nonconforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip~~
32 ~~such object as may be necessary to conform to the regulations or, if the owner of the~~
33 ~~nonconforming structure or tree shall neglect or refuse to comply with such order for 10 days~~
34 ~~after notice thereof, the said agency may proceed to have the object so lowered, removed,~~
35 ~~reconstructed, or equipped. Except as indicated, all applications for permits for replacement,~~
36 ~~change or repair of nonconforming uses shall be granted.~~

37 (b) ~~Variances.—Any person desiring to erect any structures, or increase the height of~~
38 ~~any structure, or permit the growth of any tree, or otherwise use his property, in violation of~~
39 ~~airport zoning regulations adopted under this Article, may apply to the board of appeals, as~~
40 ~~provided in G.S. 63-33, subsection (c), for a variance from the zoning regulations in question.~~
41 ~~Such variances shall be allowed where a literal application or enforcement of the regulations~~
42 ~~would result in practical difficulty or unnecessary hardship and the relief granted would not be~~
43 ~~contrary to the public interest but do substantial justice and be in accordance with the spirit of~~
44 ~~the regulations and this Article.~~

45 (c) ~~Obstruction Marking and Lighting.—In granting any permit or variance under this~~
46 ~~section, the administrative agency or board of appeals may, if it deems such action advisable to~~
47 ~~effectuate the purposes of this Article and reasonable in the circumstances, so condition such~~
48 ~~permit or variance as to require the owner of the structure or tree in question to permit the~~
49 ~~political subdivision, at its own expense, to install, operate, and maintain suitable obstruction~~
50 ~~markers and obstruction lights thereon.~~

51 (a) Permit Required for Structures Exceeding Federal Obstruction Standards. —

- 1 (1) In order to prevent the erection of structures dangerous to air navigation,
2 subject to the provisions of subdivisions (2), (3), and (4) of this subsection,
3 each person shall secure from the Department a permit for the erection,
4 alteration, or modification of any structure the result of which would exceed
5 the federal obstruction standards as contained in 14 C.F.R. 77.21, 14 C.F.R.
6 77.23, 14 C.F.R. 77.25, 14 C.F.R. 77.28, and 14 C.F.R. 77.29. However,
7 permits from the Department will be required only within an airport hazard
8 area where federal standards are exceeded and if the proposed construction
9 is within a 10-nautical-mile radius of the geographical center of a publicly
10 owned or operated airport, a military airport, or an airport licensed by the
11 State for public use.
- 12 (2) Affected airports will be considered as having those facilities which are
13 shown on the airport master plan, or an airport layout plan submitted to the
14 Federal Aviation Administration Airport District Office or comparable
15 military documents, and will be so protected. Planned or proposed
16 public-use airports which are the subject of a notice or proposal submitted to
17 the Federal Aviation Administration or to the Department shall also be
18 protected.
- 19 (3) Permit requirements of subdivision (1) of this subsection shall not apply to
20 projects which received construction permits from the Federal
21 Communications Commission for structures exceeding federal obstruction
22 standards prior to January 1, 2009, provided such structures now exist; nor
23 shall it apply to previously approved structures now existing, or any
24 necessary replacement or repairs to such existing structures, so long as the
25 height and location is unchanged.
- 26 (4) When political subdivisions have adopted adequate airspace protection in
27 compliance with G.S. 63-31, and the regulations are on file with the
28 Department, a permit for the structure shall not be required from the
29 Department.
- 30 (5) The Department shall, within 30 days of the receipt of an application for a
31 permit, issue or deny a permit for the erection, alteration, or modification of
32 any structure the result of which would exceed federal obstruction standards
33 as contained in 14 C.F.R. 77.21, 14 C.F.R. 77.23, 14 C.F.R. 77.25, 14 C.F.R.
34 77.28, and 14 C.F.R. 77.29.
- 35 (6) In determining whether to issue or deny a permit, the Department shall
36 consider the following:
- 37 a. The nature of the terrain and height of existing structures.
38 b. Public and private interests and investments.
39 c. The character of flying operations and planned developments of
40 airports.
41 d. Federal airways as designated by the Federal Aviation
42 Administration.
43 e. Whether the construction of the proposed structure would cause an
44 increase in the minimum descent altitude or the decision height at the
45 affected airport.
46 f. Technological advances.
47 g. The safety of persons on the ground and in the air.
48 h. Land-use density.
49 i. The safe and efficient use of navigable airspace.
50 j. The cumulative effects on navigable airspace of all existing
51 structures, proposed structures identified in the applicable

jurisdictions' comprehensive plans, and all other known proposed structures in the area.

(7) When issuing a permit under this section, the Department shall, as a specific condition of such permit, require the obstruction marking and lighting of the permitted structure as provided in G.S. 63-32.

(8) The Department shall not approve a permit for the erection of a structure unless the applicant submits both documentation showing compliance with the federal requirement for notification of proposed construction and a valid aeronautical evaluation, and no permit shall be approved solely on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. 77.21, 14 C.F.R. 77.23, 14 C.F.R. 77.25, 14 C.F.R. 77.28, or 14 C.F.R. 77.29, or any other federal aviation regulation.

(b) Permits. –

(1) Any airport zoning regulations adopted under this Article shall require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or would permit a nonconforming structure or tree or nonconforming use to be made or become higher or to become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

(2) Whenever the administrative agency determines that a nonconforming use or nonconforming structure or tree has been abandoned or is more than eighty percent (80%) torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and, whether application is made for a permit under this subsection or not, the said agency may by appropriate action, compel the owner of the nonconforming structure or tree, at his or her own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the said agency may report the violation to the political subdivision involved therein, which subdivision, through its appropriate agency, may proceed to have the object so lowered, removed, reconstructed, or equipped, and assess the cost and expense thereof upon the object or the land whereon it is or was located, and, unless the assessment is paid within 90 days from the service of notice thereof on the owner or the owner's agent, of the object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of six percent (6%) per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens.

1 (3) Except as provided herein, applications for permits shall be granted,
2 provided the matter applied for meets the provisions of this Chapter and the
3 regulations adopted and in force hereunder.

4 (c) Variances. –

5 (1) Any person desiring to erect any structure, increase the height of any
6 structure, permit the growth of any tree, or otherwise use his or her property
7 in violation of the airport zoning regulations adopted under this Chapter or
8 any land development regulation pertaining to airport land-use compatibility,
9 may apply to the board of adjustment for a variance from the zoning
10 regulations in question. At the time of filing the application, the applicant
11 shall forward to the Department by certified mail, return receipt requested, a
12 copy of the application. The Department shall have 45 days from receipt of
13 the application to comment and to provide its comments or waiver of that
14 right to the applicant and the board of adjustment. The Department shall
15 include its explanation for any objections stated in its comments. If the
16 Department fails to provide its comments within 45 days of receipt of the
17 application, its right to comment is waived. The board of adjustment may
18 proceed with its consideration of the application only upon the receipt of the
19 Department's comments or waiver of that right as demonstrated by the filing
20 of a copy of the return receipt with the board. Noncompliance with this
21 section shall be grounds to appeal pursuant to G.S. 63-33 and to apply for
22 judicial relief pursuant to G.S. 63-34. The variances may only be allowed
23 where a literal application or enforcement of the regulations would result in
24 practical difficulty or unnecessary hardship and where the relief granted
25 would not be contrary to the public interest but would do substantial justice
26 and be in accordance with the spirit of the regulations and this Chapter.
27 However, any variance may be allowed subject to any reasonable conditions
28 that the board of adjustment may deem necessary to effectuate the purposes
29 of this Article.

30 (2) The Department shall have the authority to appeal any variance granted
31 under this Chapter pursuant to G.S. 63-33 and to apply for judicial relief
32 pursuant to G.S. 63-34.

33 (d) Obstruction Marking and Lighting. –

34 (1) In granting any permit or variance under this section, the administrative
35 agency or board of adjustment shall require the owner of the structure or tree
36 in question to install, operate, and maintain thereon, at his or her own
37 expense, such marking and lighting as may be necessary to indicate to
38 aircraft pilots the presence of an obstruction.

39 (2) The marking and lighting shall conform to the specific standards established
40 by rule by the Department.

41 (3) Existing structures not in compliance on July 1, 2009, shall be required to
42 comply whenever the existing marking requires refurbishment, whenever the
43 existing lighting requires replacement, or within five years of July 1, 2009,
44 whichever occurs first."

45 **SECTION 7.** Article 4 of Chapter 63 of the General Statutes is amended by adding
46 a new section to read:

47 **"§ 63-32.1. Comprehensive zoning regulations; most stringent to prevail where conflicts**
48 **occur.**

49 (a) Incorporation. – In the event that a political subdivision has adopted, or hereafter
50 adopts, a comprehensive zoning ordinance regulating, among other things, the height of
51 buildings, structures, and natural objects, and uses of property, any airport zoning regulations

1 applicable to the same area or portion thereof may be incorporated in and made a part of the
2 comprehensive zoning regulations, and be administered and enforced in connection therewith.

3 (b) Conflict. – In the event of conflict between any airport zoning regulations adopted
4 under this Chapter and any other regulations applicable to the same area, whether the conflict
5 be with respect to the height of structures or trees, the use of land, or any other matter, and
6 whether the regulations were adopted by the political subdivision which adopted the airport
7 zoning regulations or by some other political subdivision, the more stringent limitation or
8 requirement shall govern and prevail."

9 **SECTION 8.** G.S. 63-35 reads as rewritten:

10 "**§ 63-35. Enforcement and remedies.**

11 (a) Each violation of this Article or of any regulations, order, or ruling promulgated or
12 made pursuant to this Article, shall constitute a Class 3 misdemeanor, and each day a violation
13 continues to exist shall constitute a separate offense.

14 (b) In addition, the political subdivision within which the property is located may
15 institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate
16 any violation of this Article, or of airport zoning regulations adopted under this Article, or of
17 any order or ruling made in connection with their administration or enforcement, and the court
18 shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or
19 otherwise, as may be proper under all the facts and circumstances of the case, in order fully to
20 effectuate the purposes of this Article and of the regulations adopted and orders and rulings
21 made pursuant thereto.

22 (c) The Department may institute a civil action for injunctive relief to prevent violation
23 of the provisions of this Chapter."

24 **SECTION 9.** This act is effective when it becomes law.