

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE BILL 1049

Short Title: Model Airport Zoning Act Amendments. (Public)

Sponsors: Senator Rand.

Referred to: Commerce.

March 31, 2009

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
35 individual who serves in the capacity of aircraft dispatcher or air traffic
36 control tower operator.



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

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

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

51 **"§ 63-30. Airport hazards not in public interest.**

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

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

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

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

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

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

25 "**§ 63-31. Adoption of airport zoning regulations.**

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

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

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

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

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

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

14 (a) Adoption of Zoning Regulations. –

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

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

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

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

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

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

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

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

49 d. Consideration of the criteria in G.S. 63-32, when determining
50 whether to issue or deny a variance; and

1 e. That no variance shall be approved solely on the basis that such
2 proposed structure will not exceed federal obstruction standards as
3 contained in 14 C.F.R. 77.21, 14 C.F.R. 77.23, 14 C.F.R. 77.25, 14
4 C.F.R. 77.28, or 14 C.F.R. 77.29, or any other federal aviation
5 regulation.

6 f. The Department shall issue copies of the federal obstruction
7 standards as contained in 14 C.F.R. 77.21, 14 C.F.R. 77.23, 14
8 C.F.R. 77.25, 14 C.F.R. 77.28, and 14 C.F.R. 77.29 to each political
9 subdivision having airport hazard areas and, in cooperation with
10 political subdivisions of the State, shall issue appropriate airport
11 zoning maps depicting within each county the maximum allowable
12 height of any structure or tree. Material distributed pursuant to this
13 subsection shall be at no cost to authorized recipients.

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

20 (1) Whether sanitary landfills are located within the following areas:

21 a. Within 10,000 feet from the nearest point of any runway used or
22 planned to be used by turbojet or turboprop aircraft.

23 b. Within 5,000 feet from the nearest point of any runway used only by
24 piston-type aircraft.

25 c. Outside the perimeters defined in sub-subdivisions a. and b. of this
26 subdivision, but still within the lateral limits of the civil airport
27 imaginary surfaces defined in 14 C.F.R. 77.25. Case-by-case review
28 of such landfills is advised.

29 (2) Whether any landfill is located and constructed so that it attracts or sustains
30 hazardous bird movements from feeding, water, or roosting areas into, or
31 across, the runways or approach and departure patterns of aircraft. The
32 political subdivision shall request from the airport authority or other
33 governing body operating the airport a report on such bird feeding or
34 roosting areas that at the time of the request are known to the airport. In
35 preparing its report, the authority, or other governing body, shall consider
36 whether the landfill will incorporate bird management techniques or other
37 practices to minimize bird hazards to airborne aircraft. The airport authority
38 or other governing body shall respond to the political subdivision no later
39 than 30 days after receipt of such request.

40 (3) Where an airport authority or other governing body operating a publicly
41 owned, public-use airport has conducted a noise study in accordance with
42 the provisions of 14 C.F.R. 150, neither residential construction nor any
43 educational facility, with the exception of aviation school facilities, shall be
44 permitted within the area contiguous to the airport defined by an outer noise
45 contour that is considered incompatible with that type of construction by 14
46 C.F.R. 150, Appendix A or an equivalent noise level as established by other
47 types of noise studies.

48 (4) Where an airport authority or other governing body operating a publicly
49 owned, public-use airport has not conducted a noise study, neither residential
50 construction nor any educational facility, with the exception of aviation
51 school facilities, shall be permitted within an area contiguous to the airport

1 measuring the length of the longest runway on either side of and at the end
2 of each runway centerline.

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

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

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

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

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

27 **"§ 63-31.1. Airport zoning requirements.**

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

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

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

46 (d) Adoption of Airport Master Plan and Notice to Affected Local Governments. – An
47 airport master plan shall be prepared by each publicly owned and operated airport licensed by
48 the Department under this Chapter. The authorized entity having responsibility for governing
49 the operation of the airport, when either requesting from or submitting to a State or federal
50 governmental agency with funding or approval jurisdiction a "finding of no significant impact,"
51 an environmental assessment, a site-selection study, an airport master plan, or any amendment

1 to an airport master plan, shall submit simultaneously a copy of said request, submittal,
2 assessment, study, plan, or amendments by certified mail to all affected local governments. For
3 the purposes of this subsection, "affected local government" is defined as any city or county
4 having jurisdiction over the airport.

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

7 **"§ 63-31.2. Guidelines regarding land use near airports.**

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

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

13 **"§ 63-32. Permits, new structures, etc., and variances.**

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

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

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

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

50 (1) In order to prevent the erection of structures dangerous to air navigation,
51 subject to the provisions of subdivisions (2), (3), and (4) of this subsection,

1 each person shall secure from the Department a permit for the erection,
2 alteration, or modification of any structure the result of which would exceed
3 the federal obstruction standards as contained in 14 C.F.R. 77.21, 14 C.F.R.
4 77.23, 14 C.F.R. 77.25, 14 C.F.R. 77.28, and 14 C.F.R. 77.29. However,
5 permits from the Department will be required only within an airport hazard
6 area where federal standards are exceeded and if the proposed construction
7 is within a 10-nautical-mile radius of the geographical center of a publicly
8 owned or operated airport, a military airport, or an airport licensed by the
9 State for public use.

10 (2) Affected airports will be considered as having those facilities which are
11 shown on the airport master plan, or an airport layout plan submitted to the
12 Federal Aviation Administration Airport District Office or comparable
13 military documents, and will be so protected. Planned or proposed
14 public-use airports which are the subject of a notice or proposal submitted to
15 the Federal Aviation Administration or to the Department shall also be
16 protected.

17 (3) Permit requirements of subdivision (1) of this subsection shall not apply to
18 projects which received construction permits from the Federal
19 Communications Commission for structures exceeding federal obstruction
20 standards prior to January 1, 2009, provided such structures now exist; nor
21 shall it apply to previously approved structures now existing, or any
22 necessary replacement or repairs to such existing structures, so long as the
23 height and location is unchanged.

24 (4) When political subdivisions have adopted adequate airspace protection in
25 compliance with G.S. 63-31, and the regulations are on file with the
26 Department, a permit for the structure shall not be required from the
27 Department.

28 (5) The Department shall, within 30 days of the receipt of an application for a
29 permit, issue or deny a permit for the erection, alteration, or modification of
30 any structure the result of which would exceed federal obstruction standards
31 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.
32 77.28, and 14 C.F.R. 77.29.

33 (6) In determining whether to issue or deny a permit, the Department shall
34 consider the following:

- 35 a. The nature of the terrain and height of existing structures.
- 36 b. Public and private interests and investments.
- 37 c. The character of flying operations and planned developments of
38 airports.
- 39 d. Federal airways as designated by the Federal Aviation
40 Administration.
- 41 e. Whether the construction of the proposed structure would cause an
42 increase in the minimum descent altitude or the decision height at the
43 affected airport.
- 44 f. Technological advances.
- 45 g. The safety of persons on the ground and in the air.
- 46 h. Land-use density.
- 47 i. The safe and efficient use of navigable airspace.
- 48 j. The cumulative effects on navigable airspace of all existing
49 structures, proposed structures identified in the applicable
50 jurisdictions' comprehensive plans, and all other known proposed
51 structures in the area.

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

4 (8) The Department shall not approve a permit for the erection of a structure
5 unless the applicant submits both documentation showing compliance with
6 the federal requirement for notification of proposed construction and a valid
7 aeronautical evaluation, and no permit shall be approved solely on the basis
8 that such proposed structure will not exceed federal obstruction standards as
9 contained in 14 C.F.R. 77.21, 14 C.F.R. 77.23, 14 C.F.R. 77.25, 14 C.F.R.
10 77.28, or 14 C.F.R. 77.29, or any other federal aviation regulation.

11 (b) Permits. –

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

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

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

51 (c) Variances. –

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

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

29 (d) Obstruction Marking and Lighting. –

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

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

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

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

43 **"§ 63-32.1. Comprehensive zoning regulations; most stringent to prevail where conflicts**
44 **occur.**

45 (a) Incorporation. – In the event that a political subdivision has adopted, or hereafter
46 adopts, a comprehensive zoning ordinance regulating, among other things, the height of
47 buildings, structures, and natural objects, and uses of property, any airport zoning regulations
48 applicable to the same area or portion thereof may be incorporated in and made a part of the
49 comprehensive zoning regulations, and be administered and enforced in connection therewith.

50 (b) Conflict. – In the event of conflict between any airport zoning regulations adopted
51 under this Chapter and any other regulations applicable to the same area, whether the conflict

1 be with respect to the height of structures or trees, the use of land, or any other matter, and
2 whether the regulations were adopted by the political subdivision which adopted the airport
3 zoning regulations or by some other political subdivision, the more stringent limitation or
4 requirement shall govern and prevail."

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

6 "**§ 63-35. Enforcement and remedies.**

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

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

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

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