

1 HB739
2 120974-2
3 By Representatives McMillan, Davis, Shiver, Faust and Baker
4 (A) (N & P)
5 RFD: Baldwin County Legislation
6 First Read: 23-MAR-10

1 ~~commission shall run concurrently with their existing terms on~~
2 ~~the county planning commission. A minimum of eight members of~~
3 ~~the planning commission shall be qualified electors from the~~
4 ~~unincorporated areas of Baldwin County~~ nine regular members,
5 each of whom shall be a qualified elector and an actual
6 resident of the county. One and only one regular member of the
7 planning commission may be a qualified elector of the county
8 who resides in the corporate limits of a municipality in the
9 county. All regular members shall be appointed by the Baldwin
10 County Commission for a term of four years. Upon the
11 affirmative vote of a majority of the qualified electors in a
12 district election held pursuant to Section 45-2-261.07, the
13 membership of the planning commission shall be increased by
14 appointment by the county commission of a qualified elector
15 from that district for a temporary one-time term of three
16 years. In the event of any vacancy on the planning commission,
17 such vacancy shall be filled by appointment of the Baldwin
18 County Commission. The Baldwin County Commission may remove
19 any member for cause upon written charges and after a public
20 hearing. All members shall serve without compensation, and no
21 member shall be a county officer or employee; however,
22 reasonable and necessary expenses of the members of the
23 planning commission shall be paid from the General Fund of
24 Baldwin County.

25 "§45-2-261.02.

1 "The jurisdiction of the planning commission for
2 planning and zoning by district pursuant to Section
3 45-2-261.07 shall apply to all unincorporated areas of Baldwin
4 County. The planning commission shall not have authority over
5 removal of natural resources growing on, placed on, or
6 naturally existing on or under private lands or properties. ~~In
7 any district which has adopted a zoning ordinance, undeveloped
8 land or land zoned or used for agricultural purposes or timber
9 growing shall automatically be rezoned for single family use
10 upon the request by the owner.~~ Provided further, that any
11 owner of record of real property upon the date of the adoption
12 by the Baldwin County Commission of the zoning ordinance for
13 the district in which the property is located shall
14 automatically obtain a variance, if needed, for a single
15 family dwelling notwithstanding the type of dwelling to be
16 placed or constructed on the property. Notwithstanding any
17 provisions, rules, or regulations to the contrary, for the
18 purposes of filing any application required by the ordinances
19 and zoning regulations promulgated hereunder, any owner of
20 record or holder of any interest in the real property made the
21 subject of such application shall have standing and be
22 authorized and entitled to file such application and request
23 action authorized by such ordinances and zoning regulations in
24 order to exercise his or her rights in the subject property.
25 The Baldwin County Commission may enter into agreements with
26 municipalities for planning purposes with the extraterritorial

1 planning jurisdiction of the municipalities. The county
2 commission may designate the planning commission to administer
3 subdivision regulations adopted pursuant to the provisions of
4 Sections 11-19-1 to 11-19-24, inclusive, and 11-24-1 to
5 11-24-7, inclusive, and Act 1094 of the 1973 Regular Session
6 (Acts 1973, p. 1860).

7 "§45-2-261.07.

8 "The Baldwin County Commission shall not exercise
9 its planning and zoning powers and jurisdiction in any
10 district established hereunder until the majority of the
11 qualified electors of the district voting in an election shall
12 have voted their desire to come within the planning and zoning
13 authority of the Baldwin County Commission. The election shall
14 be held if 10 percent of the qualified electors in any
15 district submit a written petition to the county commission
16 expressing a desire to be subject to the planning and zoning
17 jurisdiction of the Baldwin County Commission under authority
18 of this subpart ~~or upon a resolution of the county commission.~~
19 For the purposes of the establishment of districts after the
20 effective date of the act amending this section, a district
21 shall correspond to a voting precinct or precincts in the
22 county unless the county governing body determines that the
23 use of voting precinct boundaries is not feasible. A party or
24 parties seeking to file a petition shall notify the county
25 governing body in writing that the parties will petition for
26 the formation of a district and the proposed boundaries of the

1 district. The judge of probate within 15 days shall give a
2 preliminary estimate of the number of signatures needed to
3 call the election. The county governing body shall notify the
4 principal party in writing within 30 days of written
5 notification by petitioners of intent to request a referendum,
6 by U.S. mail, return receipt requested, that the proposed
7 district is acceptable for planning, zoning, and voting
8 purposes and shall furnish forms to the petitioner for use in
9 seeking the number of signatures required to call an election.
10 The parties shall have 120 days thereafter to obtain the
11 necessary signatures and file the petition. The county
12 commission and the Judge of Probate of Baldwin County shall
13 certify or reject the accuracy of the petition no later than
14 45 days after receiving the petition, ~~or in the case of an~~
15 ~~election to be held by resolution of the county commission,~~
16 ~~the county commission shall certify the adoption of its~~
17 ~~resolution to the judge of probate.~~ If the number of
18 signatures is not sufficient, the parties shall have another
19 60 days to complete the petition and have it certified. If the
20 petition is not certified, a petition for the proposed
21 district may not be refiled for one year after the final
22 denial of certification. Upon certification, the county
23 commission shall then instruct the Judge of Probate of Baldwin
24 County to provide for an election within that district no
25 later than 90 days after the certification. Notice of the
26 election shall be published four times during the 30-day

1 period immediately preceding the date of the election in a
2 newspaper of general circulation in Baldwin County. In
3 addition, the county commission shall notify by U.S. mail each
4 elector in a district of the election and the process to
5 obtain additional information. The notification shall state
6 the date of the election and the polling place or places for
7 voting. The judge of probate shall conduct the election. All
8 costs for the notification and election shall be paid from the
9 General Fund of Baldwin County. If a majority of the qualified
10 electors in a district vote in the negative in the election,
11 then the district shall not be subject to the zoning and
12 planning jurisdiction of the Baldwin County Commission, and
13 the qualified electors of the district shall not be eligible
14 to petition for another election until one year from the date
15 of the last election. If a majority of the qualified electors
16 in a district vote in the affirmative, then the district shall
17 be subject to the zoning and planning jurisdiction of the
18 Baldwin County Commission.

19 "§45-2-261.10.

20 "The Baldwin County Commission shall provide for the
21 appointment of boards of adjustment and the regulations and
22 ordinances adopted pursuant to the authority of this subpart
23 shall provide that the boards of adjustment, in appropriate
24 cases and subject to appropriate conditions and safeguards,
25 may make special exceptions to the terms of the ordinances and
26 regulations in harmony with their general purposes and

1 interests and in accordance with general or specific rules
2 therein contained. Four district boards of adjustment shall be
3 appointed by the Baldwin County Commission with the same
4 boundaries as the county commission districts as currently
5 provided for by law on April 26, 2006. If a planning district
6 is in more than one commission district, the board of
7 adjustment for the planning district shall be the board of
8 adjustment for the county commission district which contains
9 the greatest part of the planning district. Each board of
10 adjustment shall consist of not less than three and not more
11 than the same number of regular members as the number of
12 planning districts within the jurisdiction of a board of
13 adjustment. Each member of a board of adjustment shall be a
14 qualified elector of a planning district within the territory
15 of the respective board of adjustment. The board of adjustment
16 for each county commission district shall be composed of at
17 least one member from each planning district and shall reflect
18 as nearly as practical the diversity of land use in the
19 commission district. The initial appointment of members to
20 boards of adjustment and the alternates provided by Act
21 2006-609 shall be from nominations by the boards of adjustment
22 of the local planning districts on April 26, 2006. ~~No more~~
23 ~~than 25 percent of the members~~ Not more than one member of a
24 board of adjustment shall be directly engaged in real estate
25 sales, development, or construction or any directly related
26 field. The county commission shall consider the size of the

1 territory which has formed planning districts under a board of
2 adjustment district in determining the size of a board of
3 adjustment. Each regular member shall be appointed for a term
4 of three years in such a manner to serve staggered terms. A
5 regular member shall continue service until a successor is
6 duly appointed. The members of each board of adjustment shall
7 elect a chair. In addition to the regular members provided for
8 in this section, one alternate member for each regular member
9 shall be appointed to serve on each board of adjustment only
10 in the absence of the regular member for the place for which
11 he or she was appointed an alternate and while serving shall
12 have and exercise authority of a regular member. The alternate
13 member shall have the same qualifications as a regular member
14 and shall serve for a term concurrent with the regular member
15 for the district. Members of each board of adjustment may be
16 removed for cause by the Baldwin County Commission upon
17 written charges and after a public hearing. Vacancies shall be
18 filled for the unexpired term of any member whose term becomes
19 vacant. Each board of adjustment for each district shall adopt
20 bylaws in accordance with the provisions of any ordinance or
21 regulation promulgated pursuant to this subpart. Meetings of
22 each board of adjustment shall be held at the call of the
23 chair of the board and at such other times as each board may
24 determine, provided that no board of adjustment shall meet
25 less than once every three months on a day to be determined by
26 the board. The chair, or in his or her absence, the acting

1 chair may administer oaths and compel the attendance of
2 witnesses. All meetings of the boards of adjustment shall be
3 open to the public. The board shall keep minutes of its
4 proceedings showing the vote of each member upon each
5 question, or, if absent or failing to vote, indicating that
6 fact, and shall keep records of its examinations and of other
7 official actions, all of which shall immediately be filed in
8 the office of the board and shall be a public record.

9 "§45-2-261.13.

10 "(a) Any party aggrieved by a final judgment or
11 decision of a board of adjustment may, except a decision on
12 the approval or disapproval of a platted subdivision, within
13 15 days thereafter, may appeal therefrom to the Circuit Court
14 of Baldwin County, Alabama, by filing with the circuit court
15 and the board of adjustment a written notice of appeal
16 specifying the judgment or decision from which the appeal is
17 taken. In case of the appeal, the board of adjustment shall
18 cause a transcript of the proceedings and the action to be
19 certified to the court to which the appeal is taken.

20 "(b) Any party aggrieved by a final judgment or
21 decision of a board of adjustment on the decision on the final
22 approval or disapproval of a platted subdivision, within 15
23 days thereafter, may appeal therefrom to the county
24 commission. Any party aggrieved by the final judgment or
25 decision of the county commission within 15 days thereafter,
26 may appeal therefrom to the Circuit Court of Baldwin County,

1 Alabama, by filing with the circuit court and the county
2 commission a written notice of appeal specifying the judgment
3 or decision from which the appeal is taken. In case of an
4 appeal to circuit court, the county commission shall cause a
5 transcript of the proceedings and the action to be certified
6 to the court to which the appeal is taken.

7 "§45-2-261.17.

8 "The authority of the Baldwin County Commission
9 under this subpart shall not conflict with present or future
10 regulations or policies of the Alabama Department of Health.
11 ~~No~~ Except as expressly set forth in this subpart, no provision
12 of this subpart shall infringe upon the existing authority of
13 the Baldwin County ~~Planning~~ Commission to regulate the
14 development of subdivisions under Act 1094 of the 1973 Regular
15 Session (Acts 1973, p. 1860), and any amendments thereto, or
16 any additional power or authority granted to the Baldwin
17 County Commission by local legislative act. Notwithstanding
18 any authority otherwise conferred by this subpart or any local
19 act applicable to Baldwin County, after June 15, 1973, once a
20 subdivision has been approved in accordance with the
21 subdivision regulations applicable to the subdivision at the
22 time of approval, the Baldwin County Commission and the
23 Baldwin County Planning Commission shall have no authority to
24 impose, by amendment to any subdivision regulations, zoning
25 regulations, or otherwise, any new or additional front, side,
26 rear, or wetland setback requirements on any lot contained

1 within a previously approved subdivision which would increase
2 the setback requirements or impose a more restrictive setback
3 requirement on the use of the lot. After June 15, 1973, all
4 subdivisions and lots approved in accordance with the
5 applicable subdivision regulations prior to the date the
6 Baldwin County zoning regulations become applicable to the
7 subdivision or lot, or prior to the amendment of any
8 applicable zoning regulations, shall not be subject to any new
9 or additional front, side, rear, or wetland setback
10 requirements which would increase the setback requirements or
11 impose a more restrictive setback requirement on the use of
12 the lot, and the lot shall not be deemed a nonconforming lot
13 for the purposes of any zoning or subdivision regulations and
14 may be used and improved without regard to the new or
15 additional requirements and without any limitation applicable
16 thereto based on any nonconformity with subsequently enacted
17 regulations. No provision of this subpart shall affect any
18 existing statute or regulation promulgated pursuant to any law
19 creating historic or preservation districts within Baldwin
20 County; however, historic or preservation districts are
21 subject to the provisions of this subpart.

22 "§45-2-261.40.

23 "(a) The Baldwin County Commission may appoint real
24 estate agents or other persons in the real estate field to the
25 Baldwin County Planning Commission. The appointed real estate
26 agents or other persons in the real estate field to the

1 Baldwin County Planning Commission shall not exceed ~~25 percent~~
2 ~~of the composition~~ three members of such commission.

3 "(b) The operation of this section shall be
4 retroactive to January 1, 1976."

5 Section 2. All laws or parts of laws which conflict
6 with this act are repealed.

7 Section 3. This act shall become effective on June
8 1, 2010, following its passage and approval by the Governor,
9 or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Baldwin County
Legislation 23-MAR-10

Read for the second time and placed
on the calendar with 1 substitute
and 30-MAR-10

Read for the third time and passed
as amended 01-APR-10

Yeas 57, Nays 0, Abstains 27

Greg Pappas
Clerk