

# Legal and Legislative Update

NCPPA Conference

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# Introduction to Zoning and Development

## Land Subdivision Regulation in North Carolina

2015

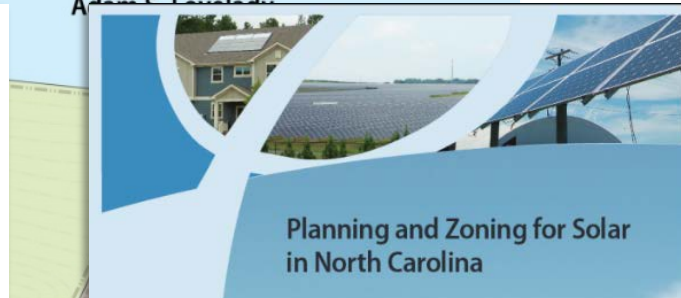
### Reshaping Suburban Spaces



Lessons from North Carolina

Adam S. Lovelady

### Planning and Zoning for Solar in North Carolina



# UASI- JUDICIAL HANDBOOK A GUIDE FOR BOARDS MAKING DEVELOPMENT REGULATION DECISIONS

DAVID OWENS • ADAM LOVELADY



PLANNING AND ZONING LAW BULLETIN

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## 2018 North Carolina Legislation Related to Planning and Development Regulation

Adam S. Lovelady and David W. Owens

The 2018 session of the North Carolina General Assembly convened on May 16, 2018, and adjourned on June 29. The Assembly will reconvene on November 27. The relatively brief 2018 session considered budget amendments, bills that passed one but not both houses of the legislature in 2017, bills from study committees, constitutional amendment proposals, and various other matters deemed appropriate by the legislative leadership. A list of the bills related to planning and development regulation that were eligible for consideration, including actions taken on them, and links to copies of key bills and enacted legislation are available at the School of Government's Planning and Development microsite, <https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation/2018-bill-list>.

### Zoning

No major changes were made to the zoning enabling statutes in 2018. However, several modest refinements were made that affect zoning.

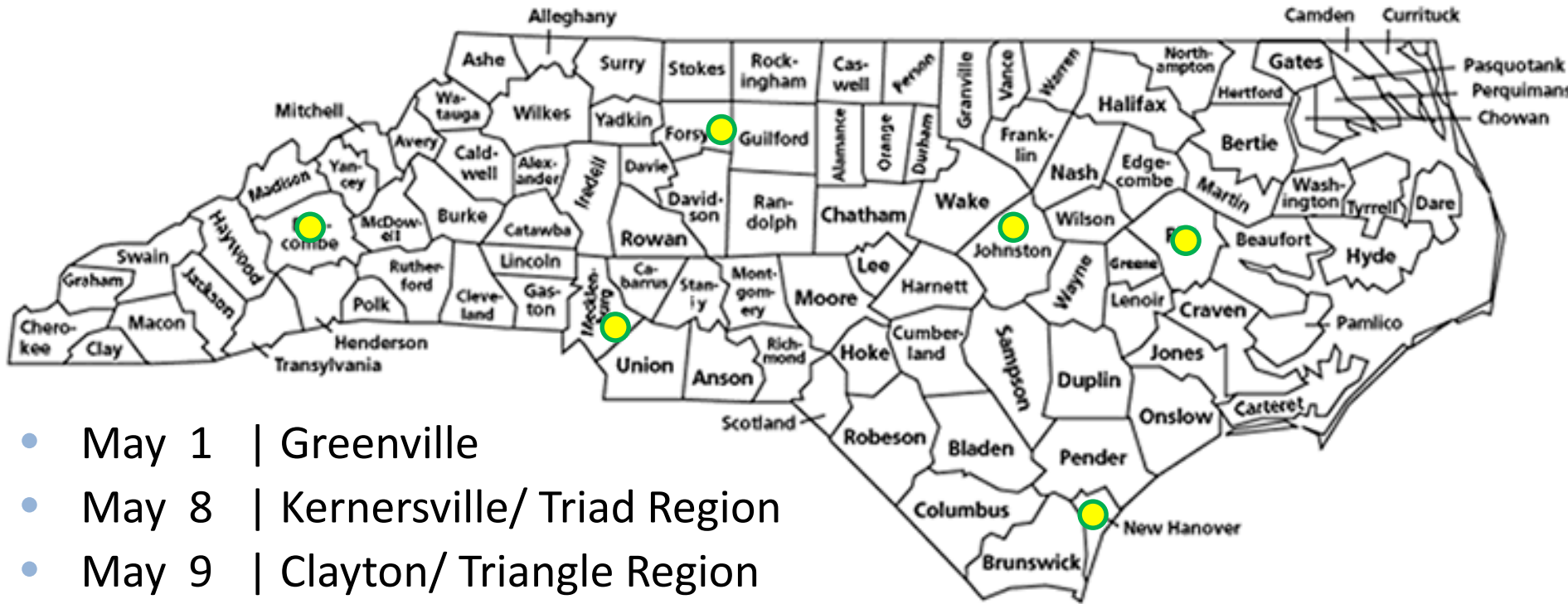
### Costs for Street Improvements Related to Schools

The 2018 budget act, [Session Law \(S.L.\) 2018-5](#) (SB 99), amends the municipal zoning statutes to limit the use of zoning to address street capacity issues related to schools. Section 160A-383(d) of the North Carolina General Statutes (hereinafter G.S.) is amended to add a provision that a city may not deny a "zoning or rezoning request" for a school based on consideration of the level of service of a road abutting or near the school.

G.S. 160A-307.1 is amended to provide that no "zoning, rezoning, or permit request" may be conditioned upon waiving or reducing the limits set forth in that section on imposing road improvement costs on schools. G.S. 160A-307.1 says a city's requirements for street improvements related to schools can only address safe ingress and egress from the school. It further provides that curb cut regulations do not apply to schools, that the subdivision statute limits on exactions for street improvements apply to schools, that a school cannot be required to

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# Board Training



- May 1 | Greenville
- May 8 | Kernersville/ Triad Region
- May 9 | Clayton/ Triangle Region
- May 14 | Matthews/ Charlotte Region
- May 15 | Asheville
- May 16 | Wilmington
- Fee: \$60, Time: 1:00 – 4:30 pm



I. Permitting Fees

II. Administering the Ordinance

III. Inspections

IV. Zoning Enforcement





## § 160A-414. Financial support.

[Cities and counties] shall have power to fix reasonable fees for issuance of permits, inspections, and other services of the inspection department.

*All fees collected under the authority set forth in this section shall be used for support of the administration and activities of the inspection department and for no other purpose.*

## § 159-33.1 (S.L. 2018-5)

The finance officer of each unit and public authority shall submit to the secretary on January 1 and July 1 of each year . . . a statement of financial information [including]

. . .

*the total revenues received from building inspections, by type, and the total expenditures paid from all revenues received, by type.*

# Hurricane Florence Disaster Recovery Act (SB3)

- moratorium on fees associated with permits, inspections, or certificates of occupancy for any commercial or residential projects
- In declared disaster areas
- Retroactive to September 13, 2018
- Applies through December 31, 2018
- Post notice of availability of refunds

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# INTERPRETATION

# Interpreting an Ordinance

- Start with the ordinance
- Consider the interpretive guidance
- Consider the definitions/ Use the dictionary
- Contrast with other provisions
- Interpret for logical meaning (avoid absurd outcomes)
- Consider the intent language

# Educational Facility

- “Includes elementary schools, secondary schools, community colleges, colleges, and universities. Also includes any property owned by those facilities used for educational purposes.”
- School district’s central office
  - Board meetings
  - administrative personnel
  - Professional development training
  - Student testing
  - Spelling bee
- Is the school district’s central office an “educational facility”?

# Educational Facility

- “Includes elementary schools, secondary schools, community colleges, colleges, and universities. Also includes any property owned by those facilities used for educational purposes.”
- *expressio unius est exclusio alterius*  
(the expression of one thing implies the exclusion of another)

# Educational Facility

- “Includes elementary schools, secondary schools, community colleges, colleges, and universities. Also includes any property owned by those facilities used for educational purposes.”
- *Avoid absurd outcomes*
- But, court lack a license to engage in the legislative function of rewriting this sentence



# Educational Facility

- “Includes elementary schools, secondary schools, community colleges, colleges, and universities. Also includes any property owned by [the owners of] those facilities used for educational purposes.”
- Judge Dillon: second sentence lacks meaning, but intent is clear
- Even so, its not used for educational purposes

# TYPES OF DECISIONS

	Administrative	Quasi-Judicial
Standards	Objective; based on clear standards in the ordinance	Subjective; require judgment and discretion
Example	15 foot setback; Lot size minimum; Technical engineering specs	Unnecessary hardship; In harmony with the area; Consistent with applicable plans
Decision-maker	Staff person, staff committee, or board	Board (appointed or elected)



# Butterworth v. City of Asheville

Code allowed modification of street standards  
when

*strict compliance with the standards would cause  
unusual and unnecessary hardship*

# Administrative Modification

- Allowed with specific, neutral, and objective criteria for such modifications
- Examples
  - a deviation up to ten percent or 24 inches from the approved setback
  - a reduction of no more than 25 percent in the number of parking spaces required



# MAKING CHANGES



# Temporary Housing Considerations

- Housing Types
- Location(s)
- Time Frame
- Dimensional and Design Standards
- Administrative Modification
- Utility Connection(s)
- Flood Hazards
- Permitting and Administration

# Quick Amendments for Temporary Housing

- Meeting Notice
- Zoning Amendment Notice
- Joint Public Hearing
  - Planning Board Comment
  - Consistency Statement

# Coates' Canons: NC Local Government Law

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## Temporary Housing and Zoning Amendments

This entry was posted on October 5th, 2018 and is filed under [Administration & Enforcement](#), [Affordable Housing & Minimum Housing Codes](#), [Community & Economic Development](#), [Community Development & Redevelopment](#), [Emergency Management](#), [Land Use & Code Enforcement](#), [Zoning](#).



### About the author

**Adam Lovelady**[View Other Posts](#)

As communities begin the long recovery process in the wake of Hurricane Florence, many residents will need temporary housing. One challenge, though, is the zoning ordinance. Most zoning ordinances strictly limit manufactured homes and recreational vehicles (RVs). As the Federal Emergency Management Agency (FEMA) looks to deploy temporary housing and as residents look for housing alternatives, local governments may need to amend zoning ordinances temporarily. This blog outlines policy considerations for permitting temporary housing, as well as the process for quickly acting on a zoning ordinance amendment.

FEMA and the North Carolina Housing Task Force have developed a strategy to deploy both RVs (travel trailers) and manufactured homes as part of the overall recovery effort. According to Tracy

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### BLOG TOPICS

- [+] Animal Services (12)
- [+] Board Structure & Procedures (92)
- [+] Community & Economic Development (51)
  - Affordable Housing & Minimum Housing Codes (15)
  - Community Development & Redevelopment (21)
- [+] Elections (50)
- [+] Emergency Management (12)
- [+] Employment (54)
- [+] Ethics & Conflicts (42)



# I. Permitting Fees

## II. Administering the Ordinance

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# Informal Internal Review of Inspection Decisions

- Inspection Department must have process including
  - procedures the department will follow when a permit holder requests an informal internal review
  - listing on each permit the name, phone number, and email address of the supervisor, along with a notice of the availability of the review process
  - an initial review by the inspector's supervisor

G.S. 153A-352 and 160A-412 (S.L. 2017-130 (HB 252))

# Alternate Inspections

(160A-413.5, S.L. 2018-29)

No city inspection necessary for a component or element of construction (not systems) that meets the following:

- Design completed under valid seal of licensed architect or engineer
- Field inspection performed by licensed architect or engineer or person under direct supervision
- Signed written statement from licensed architect or engineer of compliance with the NC Res. Code for 1- & 2-Family Dwellings
- Inspection certification provided by electronic or physical delivery; city/county must confirm receipt through reciprocal means

City released from liability

# More Inspectors

- Mutual Aid Contracts for Building Inspection (160A-413.6; 153A353.1; S.L. 2018-29)
- Comity (143-151.14; S.L. 2018-29) is already allowed for inspectors from other states; now allowed for inspector certified by the International Code Council; all now required to be in good standing with certifying board and to take short course training in NC within three years;

# State Pool of Inspectors

(143-139.4; S.L. 2018-29)



# Documenting Inspection Requests

- Local department shall maintain record of each inspection request (date and time received, type of inspection, address of inspection, person to whom request directed, name of requestor.
- Local department may inform requestor that inspection cannot be performed within two business days
- Request received after noon deemed to be received the next business day

# DOI Pool of Inspectors

- Department of Insurance to establish a pool of qualified Code-enforcement officials
- If inspection is not completed by local department within two business days of being requested, then the permit holder may make written request to Insurance Commission to complete the inspection
- Submission form specified by statute (identification, permit and timing documentation)

# Prior to assigning a state inspector, Commissioner shall verify:

- Permit holder desires the inspection to be completed
- Local dept received a request for inspection
- Inspection has not been completed (and the reason for lack of inspection)
- Other information deemed relevant

# Process

- Commissioner will inform local inspection department if a free agent inspector will be assigned
- Local department shall provide information regarding outstanding building permits and previously conducted inspections on those (may also provide similar information for other projects by same permit holder or requestor)
- Commissioner will charge a fee; local inspections department will reimburse requestor for fees charged on inspections not complete
- Within one business day of receipt, Commissioner shall forward the free agent inspector's report to the local inspection department, the permit holder, and the requestor (if different from permit holder)
- Local inspection department released from liability

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# Time Limits for Zoning Enforcement

- 5 years for court action from the time
  - “The facts constituting the violation are known to the governing body, an agent, or an employee of the unit of local government.”
  - “The violation can be determined from the public record of the unit of local government.”
- 7 years for court action from the time
  - “The violation is apparent from a public right-of-way.”
  - “The violation is in plain view from a place to which the public is invited.”

# Moving forward with zoning enforcement

- Refine the land use ordinance
- Proactive investigation and enforcement
- Staff and board training
- Public records review
- Violation tracking (watch the clock)
- Proactive lawsuits



# Coates' Canons: NC Local Government Law



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## Administering Development Regulations and Accounting for Permitting Fees

This entry was posted on September 4th, 2018 and is filed under [Accounting, Reporting, Auditing, Administration & Enforcement, Community & Economic Development, Development Fees, Development Finance, Development Finance, Fees, Charges, Penalties, Finance & Tax, General Local Government \(Miscellaneous\), Land Use & Code Enforcement](#).



A 2015 North Carolina law requires that fees collected by the local “inspections department” must stay with that department. A 2018 law requires local finance officers to report to the Local Government Commission the revenues and expenditures “from building inspections.” The basic statutory language of each rule is straightforward, but in practice the meaning and scope is less clear. The lack of clarity around permitting fees arises from the complicated authority for local governments to administer development regulations. This area of law has overlapping terminology, convoluted statutory structure, and varied local government organization and practices. This blog attempts to shed some light on the topic, but questions remain.

### About the author

Adam Lovelady



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- [+] Ethics & Conflicts (42)
- [+] Finance & Tax (300)
  - Accounting, Reporting, Auditing (5)
  - Development Finance (21)
  - Fees, Charges, Penalties (18)
- [+] General Local Government (Miscellaneous) (132)

I. Permitting Fees

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IV. Zoning Enforcement



# Questions

<https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation>

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