
Coates' Canons Blog: Can a Property Owner Be Cited for a Zoning Violation by a Tenant?

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Betty Draper owns a single-family residence. She rents the property to four tenants. The zoning ordinance does not allow parking in the front yard and limits the number of cars that can be parked on the property to four vehicles. The residents regularly park in the front yard and often have eight cars parked on the lot. The neighbors complain. A city investigation establishes a clear-cut zoning violation. The staff has prepared a notice of violation, which provides that civil penalties will be assessed if the violation is not immediately remedied.

Can the city send this citation and notice of violation directly to Betty or is it limited to citing the tenants who have too many cars parked at the house?

The North Carolina Court of Appeals recently addressed whether a property owner rather than the tenant can be cited for a zoning violation. The case, *Patmore v. Town of Chapel Hill*, involved the town's zoning regulations in a neighborhood conservation overlay zoning district. The district was applied to a residential neighborhood near the UNC campus that was experiencing an influx of student rentals of existing single-family residences. This influx generated overcrowding in the neighborhood, often caused by large numbers of students occupying a single residence, leading to problems of parking and traffic congestion, excess garbage, and complaints of violation of various town ordinances. The zoning regulations addressed a number of typical restrictions such as setbacks, limits on the size of buildings, and limits on multifamily housing. They also included more innovative standards regarding permitted residences, such as bedroom to bathroom ratios to limit overcrowding. The town concluded that the number of cars parked at a residence provides a reasonable approximation of the number of people residing there, so the regulations also used this as a means of preventing over-occupation of housing. Critical to this case, the regulations included a limit of four cars that could be parked on a residential lot, applicable to all residences, whether owner or renter occupied (six cars could be parked at a duplex and renters could obtain on-street parking permits as well). The plaintiff in this case did not contest the relationship of parked cars to occupancy levels and the court expressed no view on regulating parking for visitors.

The town followed a policy of citing the property owner rather than the tenant for violations of the zoning restrictions regarding the parking limits. An owner of a rental property that was cited challenged this policy (click [here](#) for a 2013 news article on the challenge). The owner contended that it was arbitrary and capricious, and thus a constitutional violation, to cite the owner where there was no evidence the owner was responsible for or even knew about the excessive parking. (It is important to note the owner here was assessed a civil penalty and was not cited for a criminal offense, where a showing of criminal intent would be required.) The town countered that given the large number of transient student rentals in this neighborhood, it was less burdensome, less difficult, and more efficient to cite the property owner.

The court of appeals agreed with the town. The court noted that the property owner has leases with the tenants, the leases could require compliance with the ordinance, and that leases have terms for enforcement, including eviction, indemnification, and security deposits. The court found that (1) an enforcement policy of citing the property owners for the violation in this situation is more effective than trying to track down transient student tenants and (2) increased effectiveness of enforcement is rationally related to the ordinance's goal of decreasing over-occupancy in the neighborhood conservation district. Thus a policy of citing the property owner for parking violations under the zoning code is not arbitrary or capricious. Given the presumption of validity accorded to zoning ordinances, the court further concluded that the town was not obligated to find an alternative enforcement plan. A request for Supreme Court review of the decision is likely.

In practice, when a local government discovers a zoning violation there are several options for who gets the citation or notice of violation. Where the property owner is also the occupant or developer, the owner is clearly the entity who should receive the zoning violation citation. However, when multiple entities are involved in the use or development or the



property, the situation is more complicated. Many local governments always cite the property owner as that information is a readily available public record, and it is usually reasonable to assume that owners have ultimate responsibility for the use and development of their property. But when others are also involved it is not uncommon to also cite the occupant or tenant who is directly responsible for a violation. When illegal work is underway, a stop work order (and notice of violation) may also be served on the contractor or persons working on site. *Patmore* confirms that at least in the circumstances described in the case, a policy of citing only the owner is legally acceptable.

One lesson from the *Patmore* case is that it is prudent for a city or county to carefully think about an explicit policy of who should receive a citation for a zoning violation and who is ultimately responsible for zoning compliance. When the property is leased, it is acceptable to cite the owner rather than the tenant when a reasonable case can be made this practice would lead to more effective and efficient zoning enforcement. The owner can in turn seek reimbursement from the tenant who violated the ordinance or otherwise enforce the terms of the lease. That, however, is a private matter between the landlord and tenant, as the owner is legally responsible for zoning compliance. It is the local government's responsibility to think through how best to secure effective zoning compliance and to then establish a uniform policy on who gets zoning citations.

Links

- canons.sog.unc.edu/can-a-property-owner-be-cited-for-a-zoning-violation-by-a-tenant/parking-on-the-front-lawn-charlotte-meck/
- appellate.nccourts.org/opinions/?c=2&pdf=31204
- chapelboro.com/news/news-around-time/landlord-sues-over-northside-parking-limits/