
Coates' Canons Blog: Interpreting the Zoning Ordinance

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Interpreting the zoning ordinance—like interpreting any legislation—can be tricky business. Ordinances may be imprecise, development continually evolves, and terms are not always clear. Reasonable minds may disagree over the correct interpretation and application of a particular provision of the ordinance. Still, the zoning official must make hard determinations about the meaning of the ordinance. A recent decision from the North Carolina Court of Appeals, *Long v. Currituck County*, offered reminders about the rules of thumb for interpreting the ordinance. This blog discusses the case and highlights those rules of thumb.

Let me make two things clear right up front. First, cases about ordinance interpretation are instructive for process (how to interpret an ordinance), but not necessarily content (what an ordinance means). In *Long*, the court decision turns on the definition of “single family detached dwelling.” But remember, the court was interpreting a particular project and a specific ordinance, Currituck County’s ordinance. Your ordinance may have a different definition of the term, and of course you have to apply the rules of your ordinance. So, interpretation cases help guide *how* to interpret your ordinance, but the cases do not necessarily guide *what* your interpretation should be.

Second, when deciphering legislation there may not be a clear answer. There may be multiple reasonable interpretations. The job for the zoning administrator is to consider the ordinance text, use the rules of thumb, and make the best interpretation possible. From there parties can appeal to the board of adjustment and on to the courts if necessary.

Now, back to *Long v. Currituck County*. A property owner sought to build a 15,000 square foot project on an ocean-front lot. The proposed project would consist of three buildings: one main building with kitchen, bathrooms, bedrooms, and gathering areas, and two side buildings with bedrooms and bathrooms. Each building would be approximately 5,000 square feet and would be connected with conditioned hallways. The project was especially controversial because it was a very large project in a low density residential area of the Currituck Outer Banks—an area not accessible by paved roads and not served by public water or sewer.

The zoning official determined that the project was allowed as a “single family detached dwelling” as defined in the ordinance. Neighbors challenged that interpretation. The board of adjustment and superior court upheld the zoning official’s interpretation.

The court of appeals disagreed. Considering the specifics of the project and the language of the ordinance, the court found that the project was not permitted as a single family detached dwelling. In the process, the court walked through an interpretation of the unified development ordinance (UDO). Here is an outline of those steps.

Start with the Ordinance. When interpreting a local ordinance, you must determine and give effect to the intent of the governing board. The best way to determine that intent is from the ordinance text. When the provisions of the ordinance are clear and unambiguous, those provisions must be applied as written. In *Long* the parties agreed that the property was zoned for the Single Family Residential Outer Banks Remote Zoning District. The uses in that district were limited to single family detached dwellings and limited related uses, so the critical question was whether the proposed project could fall within the definition of “single family detached dwelling.”

Consider the Interpretive Guidance. An ordinance may provide direction on how terms and regulations should be interpreted. Follow that guidance. In this case the court noted that the UDO stated that “[w]ords and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have

acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.”

Consider the Definition Thoroughly. When interpreting an ordinance, be sure to check for definitions of applicable terms. In Currituck County, the UDO defined “singled family detached dwelling” as follows: “A residential building containing not more than one dwelling unit to be occupied by one family, not physically attached to any other principal structure.” As noted by the court, this definition includes structural elements (building, not more than one dwelling unit, not physically attached) as well as functional elements (residential use, occupied by not more than one family). The project must meet each of those elements to fall within the definition.

The court had to consider additional definitions. In the UDO the definition of “building” says “see ‘structure.’” “Structure” is defined as “[a]nything constructed, installed, or portable, the use of which requires a location on a parcel of land. . . .” The court, relying on these definitions, stated that because the project at issue includes multiple components constructed or installed on a parcel of land, it included multiple buildings under the UDO definitions. The court stated that the zoning officer, board of adjustment, and superior court overlooked “the essential element that such dwelling unit must be within ‘a residential building[.]’”

Contrast Other Provisions. Sometimes the terms and restrictions of related provisions may inform the meaning of the provision you are interpreting. In *Long*, for example, the court considered the definitions of other dwellings—including duplex dwelling, manufactured home dwelling, and multi-family dwelling—and found that single family dwelling was the only one that included a reference to “a residential building.” The court noted that the fact that the phrase “a residential building” does not appear in the other definitions reiterates the importance of that element for the definition of single family detached dwelling.

Interpret for Logical Meaning, not Superfluous Words or Absurd Meanings. When interpreting an ordinance, words and phrases are presumed to have meaning, not to be unnecessary fluff. As noted by the court of appeals, “‘a residential building’—singular—is a necessary and not merely superfluous part of the definition a Single Family Dwelling.” Additionally the court reasoned that to interpret the singular “building” as plural “buildings,” would make useless or illogical the last phrase of the definition: “not physically attached to any other principal structure.”

Use the Dictionary. When a term is not defined, use the dictionary. (Some ordinances even specify which dictionary to use.) In this case the court considered whether the wings of the proposed project would be accessory structures or principal structures. The court cited the ordinance definition of “accessory structure.” There was no definition of principal structure, however, so the court turned to Webster’s Dictionary to find principal defined as “most important.” Because the buildings were all 5,000, the court states, no building was subordinate to be treated as an accessory structure. Each building was a principal building, but under the ordinance, there could only be one principal structure on the lot.

Consider Intent Language. While the text of the ordinance is controlling, any purpose and intent language for the ordinance may give guidance for interpretation. In the present case the applicable zoning district was “established to accommodate very low density residential development . . .” and “intended to accommodate limited amounts of development in a manner that preserves sensitive natural resources . . .” The zoning district accommodated single-family detached homes, but prohibited commercial, office, and industrial uses. The court noted that the county’s interpretation—to treat the project as a single family residence—would be contrary to the stated purpose of limited amounts of low density development.

In the *Long* case, the court walked through these steps to get to its interpretation. Next time you are interpreting your ordinance there may not be a clear and easy answer. But, you can follow the same steps for interpretation. Start with the text of the ordinance, consider definitions and interpretive guidance, review any purpose and intent language, and craft the best interpretation.

Links

- appellate.nccourts.org/opinions/?c=2&pdf=33295
- canons.sog.unc.edu/the-who-what-and-when-of-appeals-to-the-board-of-adjustment/