
Coates' Canons Blog: Temporary Housing and Zoning Amendments

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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 McCauley, FEMA's Deputy Individual Assistance Branch Director for Housing, FEMA anticipates that the initial period of assistance for direct housing (RVs and manufactured homes) will be 18 months. RVs will be used where repairs are expected to take 6-12 months, and manufactured homes will be used where repairs are expected to take more than 12 months. For general information, here is the FEMA Fact Sheet on Temporary Housing Units.

Recognizing the need to temporary housing, local governments are considering how to adjust zoning or unified development ordinances to quickly permit temporary housing while still ensuring public health and safety. As discussed more below, local governments seeking to accommodate temporary housing should consider the types and locations of temporary housing, the time frame for temporary housing, dimensional and design standards (including administrative modification), utility connections, public safety concerns such as flood hazards, and the permitting process.

Because an ordinance to permit temporary housing is an amendment to the land development ordinances the local government must follow the standard procedures for public notice and public hearing applicable to all zoning amendments. In order to speed up that process and the deployment of temporary housing, the local government can hold a joint hearing of the planning board and governing board.

Considerations for Temporary Housing

Housing Types. What types of temporary housing will be permitted? Recreational vehicles are commonly used for temporary housing. Manufactured homes are too. FEMA has plans to deploy both types as temporary housing.

Location(s). Where will temporary housing be allowed? Temporary housing could be allowed broadly to allow for maximum flexibility. Alternatively temporary housing could be limited to lots where the owner is actively repairing the structure. Of course that will greatly limit the options. Temporary housing may be permitted in certain existing zoning districts based on the lot sizes, types of land uses, and/or location of those districts. Additionally, new overlay districts may be established to permit temporary housing in identified as recovery areas. (Note that creating new districts is a zoning map amendment and will require posted notice, mailed notice and/or a half-page newspaper ad).

FEMA and other housing providers may seek to establish community sites or temporary housing parks. These will raise separate questions about location, design, infrastructure, and public health. Many ordinances already address the basic standards for manufactured home parks and/or RV parks. The local government may give consideration to whether those standards should be adjusted or whether those uses should be permitted in different zoning districts for a temporary time

period. Thinking about location, a community site could potentially be located on an under-utilized parking lot, at a public park, on an unbuilt commercial site, or otherwise.

Time Frame. How long will temporary housing be permitted? FEMA anticipates that the initial period of assistance for temporary housing will be 18 months. The ordinance could have an automatic sunset, or it might set an expiration on individual permits granted under the ordinance. If temporary housing is specifically tied to repair work occurring on site, the ordinance may require removal of the temporary housing after the repair work is complete (within 30 days, for example). Additionally, the ordinance may build in some flexibility by allowing limited permit extensions granted by a planning official. If extensions are allowed, the ordinance should specify criteria for when an extension may be granted, the duration of an extension, and a maximum time of extension.

As they begin to permit temporary housing, the local government should be clear with the applicants and residents that this is temporary in nature. Owners will be obligated to remove the temporary housing in the future, and that should be clearly stated in the approval.

Dimensional and Design Standards. It may be appropriate to establish new standards or alter existing standards to accommodate temporary housing. Dimensional and design topics may include, among other things: setbacks from property lines, clearance between the principal structure and any temporary housing, lot size minimums, and number of units per lot. Ordinances commonly require skirting, landscaping, and other design elements for manufactured homes in general. Given the short-term nature of the temporary housing, local governments may consider relaxing those design standards for the temporary housing.

Administrative Modification. Implementing a temporary housing ordinance will demand flexibility. Many different applicants will attempt to place many different housing types onto many different types of properties. It may be appropriate to authorize the administrator to grant some modifications. Any such modifications should be based on clear criteria (difficulty meeting the setbacks due the shape of the lot, for example) and should be constrained (a modification up to 15% of the dimensional standard, for example). A staff administrator cannot have unbounded discretion to adjust the standards on a whim. I wrote about this in the blog “Administrative Modifications in Subdivision and Zoning Ordinances.”

Utility Connection(s). While this housing is not permanent, it also may not be especially short-term. Public health and safety must be secured. The permitting process must ensure that temporary housing has safe and adequate water, sewerage, and power. Depending on the location and availability that might be accomplished through new hook-ups, tying into the utilities serving a principal residence on the lot, or by a well and septic system.

Flood Hazards. Many of the homes damaged by Hurricane Florence are in low-lying areas that are prone to flood. Local governments should be mindful of putting temporary housing right back into special flood hazard areas. Applicable standards may require that manufactured homes must be elevated and anchored, and that residents have an evacuation plan. Standards might require that recreational vehicles must be ready for highway use (and only on site for a limited period of time) or elevated and anchored.

Permitting and Administration. Given the need to quickly deploy temporary housing, the permitting process should be streamlined and handled by administrative staff. Application forms should be thorough enough to gather all relevant information of proper review, but plain enough for residents to complete them without unnecessary cost or technical assistance. Community sites that will include multiple temporary units, along with the necessary infrastructure, may demand additional application materials and technical review. Given the temporary nature of the use, any permit should prominently note the date of expiration as well as any obligations such as appropriate utility connections.

While the focus now is on providing temporary housing as soon as possible, local governments must keep in mind the long term administration and enforcement challenges. Residents will be living in these housing units for many months or years. Public safety and habitable conditions must be ensured. Moreover, at some point in the future—maybe 6 months, maybe 36 months—zoning inspectors and code enforcement officers will have the challenging task of enforcement as the temporary permission expires.

“Quickly” Amending the Zoning Ordinance

Community planning is a deliberative process, intentionally including community engagement, broad input, and a range of policy concerns. Before a local governing board may amend the zoning or unified development ordinance it must refer the amendment to the planning board for recommendation, provide specific public notice over the course of two weeks, hold a public hearing, and adopt a statement of plan consistency. Amending the ordinances to permit temporary housing is an amendment to the zoning or unified development ordinance and subject to the standard procedures. There is not an exception for emergencies or disaster recovery. With careful planning and attention to detail, however, a zoning or unified development ordinance may be amended within a couple of weeks. The discussion below outlines possible steps to hold a joint public hearing by the planning board and governing board to adopt an ordinance amendment expeditiously.

Meeting Notice

For the public hearing on the zoning amendment two different notice requirements will apply: the standard notice requirements for regular and special meetings of a public body and the particular notice requirements for an amendment to a land use ordinance.

For meeting notice, if the meeting is a regular meeting, then the public body (governing board or planning board) should have already filed its regular meeting schedule with the city or county clerk and posted the schedule to the local government website, if any. If the meeting is a special meeting, the local government must provide notice in three ways. First, notice of the special meeting must be posted on the principal bulletin board of the public body (or meeting room door if there is no bulletin board). Second, notice must be provided by mail, email, or delivery to anyone who has made written request for such notice. And third, notice must be posted on the local government website, if any. Special meeting notice must set forth the time, place, and purpose of the meeting, and it must be provided at least 48 hours before the meeting. For more on the notice requirements for special meetings, see Trey Allen's blog, "Statutory Permission to Take Up Items Not on the Special Meeting Notice."

Zoning Amendment Notice

For an amendment to the zoning or unified development ordinance the local government must publish in a newspaper of general circulation two notices of the governing board's required public hearing on a proposed adoption, amendment, or repeal of a land use regulatory ordinance. G.S. 153A-323; 160A-364. The first notice must be published at least 10 days but not more than 25 days prior to the hearing (the date of publication is not included in this calculation, but the day of the hearing is). The second notice must be in a separate calendar week. The notice must be sufficiently detailed to allow citizens to discern what is being proposed and whether they would be affected. Notice of the hearing must also be sent by certified mail to the base commander if the proposed amendment affects permitted uses, major subdivisions, or tall structures within five miles of a military base.

If the amendment will change the zoning map (a rezoning), there are additional notice requirements. G.S. 153A-343; 160A-384. The local government must mail notice to the owners of affected property and owners of properties abutting the affected properties. Mailed notice must be deposited in the mail at least 10 days but not more than 25 days prior to the hearing. Additionally a sign must be posted on the affected property to alert the public of the upcoming hearing.

For more on the Mandated Notices in Land Development Regulations, see the blog from my colleague David Owens. Here is a sample notice for a joint hearing:

Town of _____ to Consider Amendment to Permit Recreational Vehicles and Manufactured Homes as Temporary Housing During Recovery from Hurricane Florence



The Town Council and Planning Board of the Town of _____ will conduct a joint public hearing and consider the temporary use of recreational vehicles and manufactured homes for temporary housing at its regular [or special] meeting on October __. The ordinance amendment would permit temporary housing on residential and commercial properties, subject to certain design and safety standards. The allowance for temporary housing will expire after _____ months. For a copy of the ordinance amendment, visit the town website (_____) or visit town hall. The meeting will be held at Town Hall, _____[address], on October __, 2018 at 6:00 pm.

Joint Public Hearing of Governing Board and Planning Board

In order to amend the zoning or unified development ordinance, the proposed amendment must be referred to the planning board for recommendation. There is no requirement, however, that there must be a period of time between the planning board recommendation and the governing board action. Thus, the planning board and governing board can hold a joint hearing to take up the matter. The two boards will participate in the same public hearing. At the conclusion of the public hearing the planning board will discuss, vote, and deliver its written recommendation to the governing board. The governing board will then discuss and vote.

As part of the approval process for a zoning amendment, the planning board must provide written recommendation and the governing board must adopt a statement of consistency. The planning board is tasked with providing a “written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board.” (160A-383 & 387; 153A-341 & 344). The governing board must adopt a statement describing the consistency with applicable plans and explaining why the action is reasonable and in the public interest. For more on the statutory requirements for consistency statements, see David Owens’ “A Statutory Modification for Plan Consistency Statements.”

The statements need to be more than a mere recitation of the statute. The statements need to *describe* the plan consistency and *explain* how the action is reasonable and in the public interest. The planning board statement must be a written statement approved by the planning board and delivered to the governing board. The governing board needs to formally adopt the consistency statement; it is not enough for it merely to be in the staff report. Because of the similarity of content, the statements of the planning board and the governing board may be parallel. Below is a sample consistency statement for a temporary housing ordinance.

Sample Language for the Planning Board Recommendation and Governing Board Statement of Consistency

Having reviewed and considered the Proposed Amendment to the Zoning Ordinance, Case _____, the accompanying documents, the analysis of the planning staff, and comments from the public, the _____ [Planning Board or Governing Board] adopts this statement of consistency.

The Proposed Amendment is consistent with the _____ Comprehensive Land Use Plan because the Plan seeks a safe and healthy community, emphasizes the need for affordable housing options, and encourages economic development as noted in the following sections:

The Proposed Amendment is reasonable and in the public interest because in September 2018 Hurricane Florence brought widespread devastation to the State of North Carolina and _____ in particular; damage to residences, businesses, and the community is extensive; temporary housing is necessary for residents to return to the community, repair their properties, and resume their lives; and a short-term allowance of safe and temporary housing options is critically needed.

[Planning Board Written Recommendation] For the reasons set forth above, the Planning Board hereby advises and comments that the Proposed Amendment is consistent with the applicable land use plans.

[Governing Board Adoption] For the reasons set forth above, the _____ Town Council hereby adopts this Statement of Consistency and approves the Proposed Amendment.

A governing board may adopt the consistency statement and ordinance by separate motions, or together as one motion.

In the Interim

Even if the local government fast-tracks the zoning amendment, there will still be some delay for notice and public hearing. Meanwhile individuals lack housing and FEMA may have housing to deploy. There is not a clear or simple answer to addressing this interim period. Arguably the town could use some enforcement discretion to not enforce against temporary units in the interim. There is a risk though. Such inaction could turn a blind eye to unsafe living conditions, and those early units may fail to comply with the soon-to-be-adopted standards.

An alternative option is for the governing board to adopt a resolution that identifies the challenge, outlines the proposed ordinance changes, expresses the intent to properly adopt something substantially similar to the proposed ordinance, and directing planning and inspections staff to issue provisional permits in accordance with the proposed amendment. The provisional permits, then, could be converted to permits once the ordinance is formally amended and the new standards are known.

There is risk here too. A resolution does not effectively change the land use ordinances, so it is not clear that such provisional permits are permissible. Moreover, if the final ordinance amendment language is different from the provisional language, some provisional applicants may have to make adjustments to obtain a permit. A resolution could serve as an interim measure to indicate intent and guide staff actions in the challenging circumstances of disaster recovery, but it does not replace the legally-required process for zoning or unified development ordinance amendment. For more on resolutions, see the blog, "Now Therefore, Be It Resolved..." from my colleague Frayda Bluestein.

From a plain legal perspective, the safest path is for the local government to follow the procedures for a joint public hearing as quickly as possible.

Sample Timeline

To conclude, here is a sample timeline for the public notice and joint public hearing for an amendment to the land use ordinances.

- *As soon as possible:*
 - Legal notice in newspaper of general circulation (additional notice for rezonings)
 - Certified mail notice to military base commander, if applicable
- *Day in next calendar week:*
 - Repeat legal notice in newspaper of general circulation
- *At least 3 days before hearing:*
 - Notice of special meeting, if needed
- *At least 10 days after the first newspaper notice:*
 - Joint Public Hearing of Planning Board and Governing Board
 - Planning Board Deliberation, Vote, and Written Recommendation
 - Governing Board Deliberation, Vote, and Consistency Statement



Links

- www.fema.gov/media-library-data/1528986100530-53ed1205fcc4cd1d47fe8d2ea6c83ee4/TemporaryHousing.pdf