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## Coates' Canons Blog: What You Need to Know about Driveway Permits and Road Access: Part I

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Article: <https://canons.sog.unc.edu/what-you-need-to-know-about-driveway-permits-and-road-access-part-i/>

This entry was posted on January 16, 2014 and is filed under **General Local Government (Miscellaneous), Land Subdivision, Land Use & Code Enforcement, Ordinances & Police Powers, Streets & Parking, Zoning**

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***The driveway will be the end of the road.*** So sings Miley Cyrus in the song “Driveway.” Actually, Miley, a driveway normally is just one access point along a road, not necessarily the road’s end. But I’m not sure that you would want to work that kind of detail into your song lyrics. Some might find it a little hard to imagine singing about a road connection with a residential or commercial driveway. But then again it’s also unlikely that Miley Cyrus (or her lyricist) thinks like a transportation planner or traffic engineer. Nonetheless, the way the North Carolina Department of Transportation (NCDOT) or a North Carolina municipality regulates driveways that connect with public streets and highways is an important matter that attracts little attention. Here are some things that you planners, attorneys, and managers should know about driveway permits and access controls.

### (1) What is a driveway?

For purpose of this blog, a driveway is an access way that connects buildings on developed property to a street or highway. A joint driveway serving more than one property is really just a private street or road.

### (2) What units of North Carolina government or governmental agencies may regulate driveways and road access points?

NCDOT is authorized to establish policies and adopt rules concerning the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway that is a part of the NCDOT system (“a State road”). This is true whether the street or highway is located in an unincorporated area or within a city’s limits. (G.S. 136-18(39)). A municipality may regulate driveway connections “into any street or alley” inside its corporate limits. (G.S. 160A-307). A State road or highway as it passes through a city, then, may be subject to both driveway regulations adopted by NCDOT and those adopted by the city. If there is a conflict between the NCDOT regulations and the related driveway improvements required by the city, “the more stringent requirement shall apply.” (G.S. 160A-307).



Deceleration Lane under Construction

A city’s apparent authority to regulate driveway connections into “any street or alley” may suggest the regulation of

connections into private as well as public streets and alleys. However, as a practical matter, cities typically do not regulate driveway connections into private streets.

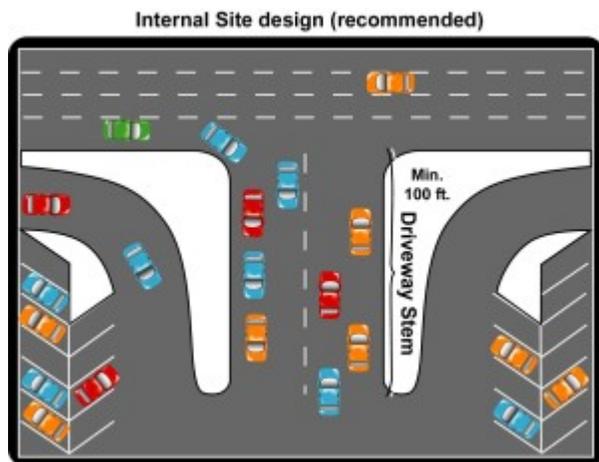
North Carolina counties lack express authority to regulate driveways, a deficiency that may be explained by the fact that counties are also not authorized to maintain their own road systems. However, counties, and cities within their extraterritorial planning jurisdiction, can influence access to land being developed pursuant to their land subdivision and zoning regulations.

**(3) Do NCDOT and various cities require driveway permits for lots proposed for single-family residential development?**

Generally, neither NCDOT nor cities that have adopted driveway ordinances require driveway permits for existing single-family residential parcels. However, NCDOT does have an arrangement whereby NCDOT personnel will install drainage culverts under residential-lot driveways if the owner provides the pipe and related materials. Some municipalities have similar programs.

**(4) Isn't driveway permitting simply a matter of ensuring that the design and construction of the road connection itself meets appropriate standards?**

Not exactly. Certainly the design and construction of driveway entrances and exits are important. Standards and procedures for NCDOT driveway permits are included in NCDOT's 2003 publication "Policy on Street and Driveway Access to North Carolina Highways." NCDOT and many municipalities typically require the submission and approval of a driveway site plan which is linked to the overall site plan for new development on a vacant land parcel. The driveway site plan will include the design details of the driveway itself, including any driveway apron, and any necessary portion of the site plan for the parcel as a whole. (A physical curb cut may be necessary for a street that has curbs and gutters, although curbs are sometimes cut for driveways before the development of the abutting land is planned.) The areas within sight distance triangles must be clear of obstruction for drivers both entering and leaving the site. (If the driveway crosses a sidewalk, intersects with a bike lane, or is framed with cars parked on the street, special safety considerations are involved.) In addition, the site plan shows how the driveway will tie into the circulation aisles and drives within the site (particularly important with regard to commercial sites) and into parking areas. Projects with drive-up windows, with gated parking lots or garages, or with out-parcels may require long driveway "stems" to deal with the "stacking" of vehicles in queues when they turn into the driveway or before they enter designated parking areas.

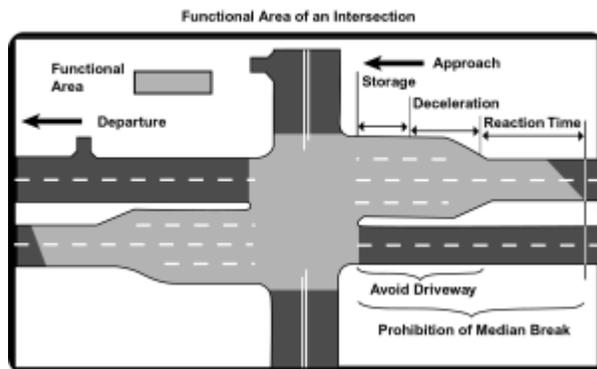


Policy on Street and Driveway Access to North Carolina Highways, p. 34

These site considerations are obviously important. However, driveway permits also allow agencies to review the traffic engineering considerations affecting the traffic flow of the streets and highways to which the driveway connects and to determine the proper location of a driveway in the first place.

**(5) O.K. So how does that work?**

A balance must always be struck between minimizing the interference that driveway connections cause for traffic flow and the increased traffic safety risks that they pose, and the reasonable needs of abutting property owners and users for adequate and safe ingress to and egress from their properties. It should come as



Policy on Street and Driveway Access to North Carolina Highways, p. 27

no surprise that NCDOT and municipalities are the governmental entities that are authorized to regulate driveways. They are also the entities that control the use and design of the adjacent public streets and highways, the applicable speed limits, the erection and timing of traffic signals and other traffic control devices, and the physical roadway improvements (such as traffic medians) that affect traffic flow.

It is often said that a basic principle of access control is to allow as few driveways as possible. A critical consideration, then, is the location and number of driveways permitted on a lot. Some municipal driveway ordinances specify minimum distances between private driveways and minimum distances between driveways and street intersections. For example, the Greensboro Driveway Manual at page 13 permits one driveway for frontages less than 200 feet along a collector street, two driveways if the frontage along such a street is between 200 feet and 350 feet, and three driveways if the frontage exceeds 350 feet. Remarkably, NCDOT regulations are silent with regard to these standards. The location and type of permissible driveway connections into State roads ultimately depends on the location of intersections, traffic signals and signs, the feasibility of road improvements, the design of the connection (a right-in, right-out connection reduces turning movements), and the feasibility of joint driveway arrangements affecting more than one land use.

Last year the General Assembly added Session Law 2013 – 137 (H 864), codified as G.S. 136-18(29b), which concerns stretches of roadway where minimum sight distances between driveways are not established in NCDOT’s “Policy on Street and Driveway Access to North Carolina Highways” for a proposed driveway. The new law directs NCDOT to “consider exceptions” to the sight-distance requirements for driveway locations where road “curves” are close and frequent. The law then directs that exceptions must be granted where sufficient sight distances can be provided through the use of advisory speed signs, convex mirrors, and advanced warning signs. NCDOT may also consider lowering the speed limit on the relevant “curvy road.” G.S. 136-18(29b) expressly permits NCDOT to assign the cost to the applicant of installing appropriate signs around the driveway (speed limit reduction and driveway warning signs) and installing and maintaining convex or other mirrors to increase traffic safety.

**(6) Is it necessary to prepare a traffic impact study in order to get a driveway permit?**

As a general rule, NCDOT requires a traffic impact study if preliminary indications are that the traffic expected to use the

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driveway will exceed 3,000 vehicle trips per day. Such a study may also be required if the driveway access points are within 1,000 feet of a highway interchange, in the vicinity of a high accident location, on major arterial highway, involve a median crossover, involve improvements in the Transportation Improvement Program, or involve an active road construction project. The 3,000 trips might be generated by 55,000 square feet of retail space, 250,000 square feet of office development, or a 350-unit hotel.

Cities may require such a study as well, either under their authority over driveways or their authority to regulate land development and subdivision. However, large-scale developments within the jurisdiction of a city are also more likely to be located on State streets and roads inside city limits. In such a case NCDOT policies would also apply.

**(7) I have heard that NCDOT or a city may require property owners and developers to absorb the cost of constructing traffic storage lanes for vehicles waiting to turn, acceleration and deceleration lanes for vehicles approaching or leaving the driveway, and medians that would serve traffic entering a particular driveway. Is that true?**

It is. NCDOT is authorized to require any of these improvements if vehicles per day exceed 4,000 trips per day. (G.S. 136-18(29)). No specific minimum traffic volume standard applies to cities, who happen to enjoy otherwise parallel authority. (G.S. 160A-307)). Property owners may also be required to dedicate additional right-of-way for any of these road improvements if more right-of-way is needed to accommodate a new deceleration or traffic storage lane. There is no express statutory authority for either NCDOT or a city to require permit applicants to pay for traffic signals

NCDOT's policy is to link improvements to specific criteria. Applicants are expected to identify "mitigation improvements" if at least one of the following conditions exists when comparing existing transportation network conditions to expected post-project conditions:

- the total average delay at an intersection or individual approach increases by 25% or greater, even though the level of service of the road link remains the same,
- the level of service of the link degrades by at least one level,
- or the level of service for the link is "F."

In the case of turning lanes, improvements are expected when analysis indicates that the size of the queue is expected to exceed the storage capacity of the existing lane at least 5% of the time. Ultimately the size, type, and extent of mitigation improvements tied to the issuance of a NCDOT driveway permit is determined by the local NCDOT district engineer.

In this context, then, the December 2012 case of *High Rock Lake Partners, LLC v. North Carolina Department of Transportation*, 366 N.C.315, 735 S.E.2d 30 (2012), *rev'g*, *High Rock Lake Partners, LLC v. North Carolina Department of Transportation*, \_\_ N.C. App. \_\_, 720 S.E.2d 706 (2012), was an unusual one. The North Carolina Supreme Court ruled that NCDOT lacked authority to impose certain mitigation requirements upon High Rock Lake Partners, a residential subdivider. The driveway permit conditions NCDOT had imposed on High Rock Lake included (i) widening a state road from the entrance to a 60-lot subdivision to a railroad crossing about a quarter-mile down the road; (ii) improving the railroad crossing by widening and repaving the crossing, relocating and adding flashers and gates and related safety devices, and installing a median separator; and (iii) constructing a grade separation between the railroad and the road. According to the court, G.S. 136-18(29) provided insufficient authority for these requirements. The requirements NCDOT tried to impose were unrelated to the driveway connection between the subdivision and the spine highway that served the peninsula where the subdivision was located. Several other broader statutes were found to be inapplicable.

**(8) Anything else?**

As mentioned above, cities may impose improvement requirements that are more demanding than NCDOT's. Whether such power can be exercised in granting subdivision plat approval or conditional-use permit is debatable. (That legal issue and other issues related to property access will be taken up in my blog "Driveway Regulation, Part II," which will appear several months from now.)

For now, particularly if your community does not have an active driveway permit program, watch out. Remember what Miley Cyrus has sung: "It's too soon to tell what's round the bend."



## Links

- [www.last.fm/music/Miley+Cyrus/\\_/The+Driveway](http://www.last.fm/music/Miley+Cyrus/_/The+Driveway)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=136-18](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=136-18)
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- [www.greensboro-nc.gov/Modules/ShowDocument.aspx?documentID=18607](http://www.greensboro-nc.gov/Modules/ShowDocument.aspx?documentID=18607)
- [www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H684v4.pdf](http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H684v4.pdf)
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