



Rule No. 1 When Facing a Zoning Violation in N.C.

By: Thomas H. "Tom" Johnson, Jr.

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On February 19, 2019, the North Carolina Court of Appeals, in an unpublished decision, held that "When a landowner fails timely to appeal a notice of zoning ordinance violation to a local board of adjustment as provided in the zoning ordinance, he fails to exhaust the available administrative remedy, depriving the courts of subject matter jurisdiction to address the dispute." As a result, any decision by a government official, whether it be a Zoning Enforcement Officer, Zoning Administrator, Building Inspector or any other official must be appealed within the required appeal period or an aggrieved party will lose the right to complain later.

In Funderburk, a landowner had owned a property since 1948. Initially the property was located in Guilford County's jurisdiction but was subsequently annexed into the City of Greensboro in 1957. The owner lived on the property and operated his business from the same location continuously since he owned the property. In 2015, based upon a zoning complaint, the City's Zoning Enforcement Officer examined the property and determined that violations existed and issued a Notice of Violation "because [a] trucking storage and repair business is not a permitted use in resident (R-5) zoning" and directed Plaintiff to "[c]ease business operations and remove all trucking equipment and accessory supplies.?" The Notice of Violation included language that the owner had 30 days to appeal the violation to the City's Board of Adjustment. The owner did not appeal.

The violation continued, and the City ultimately began issuing fines for the violation. At that point, the owner filed a declaratory judgment action in Guilford County Superior Court requesting the Court to find that the owner was not in violation of the City's zoning ordinance and for other additional relief. The Superior Court dismissed the action finding that It could not consider the matter because of the owner's failure to file a timely appeal of the original Notice of Violation. The Court of Appeals upheld the decision of the Superior Court.

The lesson to be learned is that, whenever you're an owner and receive an official notice of violation, always appeal the notice within the applicable appeal period, or you may forever lose your right to complain, even if you may have valid objections. File an appeal even if you might be in ongoing

discussions with government officials in an attempt to resolve the violation. Even if the violation might ultimately be resolved by agreement, the risk of not reaching an agreement is that the government wins.

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- Thomas H. "Tom" Johnson, Jr. ? 919.981.4006 ? tjohnson@williamsmullen.com

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