

**BEFORE THE NORTH CAROLINA BUILDING CODE COUNCIL
RALEIGH, NORTH CAROLINA**

Docket No. 2018-2

IN THE MATTER OF AN APPEAL)	
BY ROBERT A. PRIVOTT AND)	ORDER AND FINAL
NORTH CAROLINA HOME BUILDERS)	AGENCY DECISION
ASSOCIATION)	
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THIS MATTER was heard on October 31, 2018 by the North Carolina Building Code Council (“Council”) in Raleigh, N.C. on the appeal by Petitioners Robert A. Privott and the North Carolina Home Builders Association (“Petitioners”) from a June 19, 2018 formal interpretation of Respondent Office of State Fire Marshall (“OSFM”) of the N.C. Department of Insurance.

The hearing was properly noticed. A quorum of the members of the Council was present. Mr. Privott represented himself and the North Carolina Home Builders Association. The OSFM was represented at the hearing by N.C. Assistant Attorney General Heather Freeman. The Council heard sworn testimony from Dan Tingen, former Council member and chairman, and Barry Gupton, Chief Code Consultant of the Engineering Division of the OSFM.

The parties introduced Petitioners’ Exhibits 1, 2, 3, 4A, 4B and 5 and OSFM’s Exhibits 1 through 3, which the Council accepted and reviewed in arriving at its decision herein.

Based on the competent evidence in the record, the arguments of the parties and the record as a whole, the Council makes the following:

FINDINGS OF FACT

1. Section 107.1.5 of the 2012 NC State Building Code: Administrative Code and Policies provides that:

Framing inspections shall be made after the roof (excluding permanent roof covering), wall, ceiling, and floor framing is complete with appropriate blocking, bracing, and firestopping in place.

The following items shall be in place and visible for inspection:

1. Pipes;
2. Chimneys and vents;
3. Flashing for roofs and chimneys;
4. Insulation baffles; and
5. All lintels that are required to be bolted to the framing for support shall not be covered by any exterior or interior wall or ceiling finish material before approval. Work may continue without approval for lintels supported on masonry or concrete.

2. In a letter of April 30, 2018, Petitioners requested a formal interpretation from the OSFM regarding whether Section 107.1.5 permitted exterior siding to be installed on a structure before a framing inspection was conducted, so long as the siding did not cover any lintels bolted to the framing, as specified in Item 5 of the Section. Petitioners noted in their request that some local building inspectors permitted exterior siding to be installed before a framing inspection, while others did not.

3. On June 19, 2018, the OSFM, through Mr. Gupton, responded to Petitioners' request. The OSFM acknowledged that Section 107.1.5 was "silent about wall exterior covering, other than Item 5, that addresses bolted lintels (brick)." Nonetheless, the OSFM stated that Section 107.1.5 implied that installing exterior siding prior to a framing inspection was a "concern."

4. At the hearing, Mr. Gupton testified that, generally, the installation of exterior

siding prior to a framing inspection would not make the building inspector conducting such an inspection unable to visibly inspect from the interior of a structure the pipes, chimneys and vents, flashing for roofs and chimneys, insulation baffles or lintels other than those addressed by Item 5 in Section 107.1.5.

CONCLUSIONS OF LAW

1. The North Carolina Building Code, including its Administrative Code and Policies, is an administrative regulation. Where the plain language of an administrative regulation is unambiguous, there is no need for further analysis to construe the regulation's meaning. *See In re R.L.C.*, 361 N.C. 287, 292, 643 S.E.2d 920, 923 (2007) ("When the language of a statute is clear and without ambiguity, it is the duty of this Court to give effect to the plain meaning of the statute[.]") (citation omitted); *see also Kyle v. Holston Group*, 188 N.C. App. 686, 692, 656 S.E.2d 667, 671 (2008) ("Our Supreme Court has applied the rules of statutory construction to administrative regulations as well as statutes."). Where the plain language of a statute or regulation does not contain an exception, one should not be implied. *See Sara Lee Corp. v. Carter*, 351 N.C. 27, 34, 519 S.E.2d 308, 313-314 (1999).

2. Here, as essentially recognized by the OSFM in its June 19, 2018 interpretation, the plain language of Section 107.1.5 is silent regarding whether exterior siding can be installed on a structure before a framing inspection is conducted, so long as the siding does not cover any lintels bolted to the framing, as specified in Item 5 of the Section. Further, although the plain language of Section 107.1.5 requires that a building inspector be able to visibly inspect a structure's pipes, chimneys and vents, flashing for roofs and chimneys, insulation baffles and those lintels addressed in Item 5 of the Section, there was no evidence presented at the hearing

that the installation of exterior siding would impede an inspector from visibly inspecting such items from the interior of a structure.

Based on these Findings of Fact, the Council makes the following:

1. The OSFM's formal interpretation of June 19, 2018 is reversed.

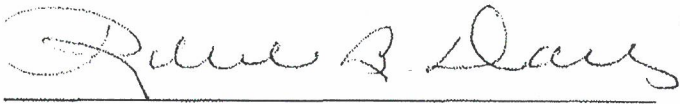
ORDER

Based on the above Findings of Fact and Conclusions of Law, the Council hereby reverses the OSFM's formal interpretation of June 19, 2018.

Additionally, the Council instructs the NCDOI to post this Order prominently on its website(s) within 10 days by following the standards in N.C. Gen. Stat. § 143-138.1(b).

SO ORDERED, this the 27th day of November, 2018.

NORTH CAROLINA BUILDING CODE COUNCIL

By: 
Robbie B. Davis, Chairman

NOTICE OF APPEAL RIGHTS

This is an Order and Final Agency Decision issued under the authority of N.C. Gen. Stat. § 143-141 and N.C. Gen. Ch. 150B, Article 3A.

Under the provisions of N.C. Gen. Stat. § 143-141, any party wishing to appeal an Order and Final Agency Decision of the North Carolina Building Code Council must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the proposed building is to be situated, in accordance with the provisions of N.C. Gen. 150B, Article 3A. The appealing party must file the Petition for Judicial Review within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with N.C. Gen. Stat. §§ 1A-1, Rule 5 and 150B-42(a), this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. § 150B-46 describes the contents of a Petition for Judicial Review and requires service of the Petition on all parties. The mailing address to be used for service on the North Carolina Building Code Council is Barry Gupton, 1202 Mail Service Center, Raleigh, North Carolina 27699-1202.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing ORDER upon Petitioners via email and certified mail, return receipt requested, addressed as follows:

Robert A. Privott and
North Carolina Home Builders
Association
PO Box 99090
Raleigh, NC 27624-9090

I HEREBY CERTIFY that I have this day served the foregoing NOTICE OF HEARING AND SCHEDULING ORDER upon counsel for Respondent via State interoffice mail, addressed as follows:

Heather Freeman
Assistant Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, NC 27602-0629

This 4th day of December 2018.

JOSHUA H. STEIN
ATTORNEY GENERAL



Terence D. Friedman
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
Telephone: (919) 716-6610
Attorney for the Building Code Council



ENGINEERING

Tel 919.647.0000 Fax 919.715.0067

MIKE CAUSEY, INSURANCE COMMISSIONER & STATE FIRE MARSHAL
BRIAN TAYLOR, CHIEF STATE FIRE MARSHAL

June 19, 2018

Robert Privott
NC Home Builders Association
PO Box 99090
Raleigh, NC 27624-9090

**RE: 2012 NC Administrative Code
Section 107.1.5, Building Framing Inspection**

Mr. Privott:

This letter is in response to your request for formal interpretation dated 4/30/18. Section 107.1.5 is copied below for your convenience. Your question, in my words, is:

"Can the exterior veneer be installed prior to the building framing inspection?"

107.1.5 Building framing inspection. Framing inspections shall be made after the roof, excluding permanent roof covering, wall ceiling and floor framing is complete with appropriate blocking, bracing and firestopping in place. The following items shall be in place and visible for inspection:

1. Pipes;
2. Chimneys and vents;
3. Flashing for roofs and chimneys;
4. Insulation baffles; and
5. All lintels that are required to be bolted to the framing for support shall not be covered by any exterior or interior wall or ceiling finish material before approval. Work may continue without approval for lintels supported on masonry or concrete.

This Section is silent about wall exterior covering, other than Item 5, that addresses bolted lintels (brick). The main paragraph does address that the inspection should be made prior to permanent roof covering installation. The permanent wall exterior covering installation is a similar concern.

Please call if you have comments or questions.

Sincerely,

A handwritten signature in red ink, appearing to read "Barry Gupton", is written over a horizontal line.

Barry Gupton, PE
Chief Code Consultant

cc: File
David Smith, NCBCC
Cliff Isaac, PE, NCDOI
Mike Page, PE, NCDOI

OFFICE OF STATE FIRE MARSHAL

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MIKE CARPENTER

April 30, 2018

Mr. Barry Gupton, PE
North Carolina Department of Insurance
Office of State Fire Marshal
Engineering & Codes
1202 Mail Service Center
Raleigh NC 27699-1202

Dear Mr. Gupton:

I am writing to request a formal letter of interpretation in accordance with NCAC, Section 203.2.1.2 (GS 143-140) concerning the installation of siding during the inspection process and compliance with the North Carolina Administrative Code and Polices Section 107. The only mention of siding is in Section 107.1.5 #5 that prohibits covering lintels that are required to be bolted to the framing with any exterior or interior wall or ceiling finish material. Some jurisdictions will allow siding to be installed prior to the building framing inspection and some will not. Clarification would be helpful.

If you have any questions feel free to contact me at 919-676-9090. I thank you in advance for your assistance in this matter.

Sincerely,

Robert A. Privott

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*HOMER BARRETT (1970)
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*J. VAUGHN KLUTTS (1973)
*Deceased

*C.L. REAVIS (1974)
*JOHN T. BELL (1975)
*WILLIAM T. BOYD (1976)
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J. RAY SPARROW (1978)
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BRIAN PACE (2016)
GARY EMBLER (2017)