

# ARTICLE 5 – PROCEDURE, PERMITS, ENFORCEMENT, and APPEALS: ADMINISTRATIVE

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### 5.1 PURPOSE

This Article includes the regulations pertaining to Administrative procedures, development approvals, permits and appeals of Administrative actions.

### 5.2 ADMINISTRATIVE DEVELOPMENT APPROVAL (PERMIT) REQUIRED

5.2.1. No person shall commence or proceed with development within the County’s jurisdiction without first securing a Zoning Permit from the County. Unless elsewhere exempted by this ordinance, no use may change, and/or no building, sign or other structure can legally

be erected, moved, added to, or structurally altered without a zoning permit. The Zoning Official will approve or deny the zoning permit based on compliance with the Zoning Ordinance unless evidence exists that there is a violation of county land development ordinances on the property.

(Ord. 7/7/2003, Section 15.2)

- 5.2.2. A development approval shall be in writing and shall contain a provision that the development work done shall comply with all applicable State and local laws.

(Ord. 7/7/2003, Section 15.1)

- 5.2.3. The County may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued.
- 5.2.4. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

**Statutory Authority – NCGS Chapter 160D-403(a)**

**5.3 DEFINITIONS**

- 5.3.1. As used under this Article and consistent with the definitions contained in **Article 2**, the term “Administrative Decision” shall mean decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in NCGS Chapter 160D and these development regulations. These are sometimes referred to as “ministerial” decisions or “administrative determinations.”
- a) Administrative decisions are decisions typically made by the planning and zoning staff of the County.
- 5.3.2. As used under this Article and consistent with the definitions contained in **Article 2**, the term “Administrative Hearing” shall mean a proceeding to gather facts needed to make an administrative decision.
- 5.3.3. As used under this Article and consistent with the definitions contained in **Article 2**, the term “Development” shall mean:
- a) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b) The excavation, grading, filling, clearing, or alteration of land.

- c) The subdivision of land as defined in G.S. 160D-802.
  - d) The initiation or substantial change in the use of land or the intensity of use of land.
- 5.3.4. As used under this Article and consistent with the definitions contained in **Article 2**, the term “Development Approval” shall mean an administrative approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project or development proposal. Administrative development approvals include, but are not limited to, zoning permits and site plan approvals.
- 5.3.5. As used under this Article and consistent with the definitions contained in **Article 2**, the term “Development Regulation” shall mean a unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to NCGS Chapter 160D, or a local act or charter that regulates land use or development.
- 5.3.6. As used under this Article and consistent with the definitions contained in **Article 2**, the term “Zoning Permit” shall mean a permit issued by the Zoning Administrator that certifies compliance with the Zoning Ordinance and authorizes the recipient to make use of property in accordance with the requirements of this Ordinance.

**Statutory Authority – NCGS Chapter 160D-102**

**5.4 ZONING ADMINISTRATOR ESTABLISHED**

The Board of Commissioners or County Manager shall appoint a Zoning Administrator to enforce the provisions of this Ordinance. The assistance of such other persons may be provided as the Board of Commissioners or County Manager may direct.

*(Ord. 7/7/2003, Section 15.2)*

**5.5 ZONING PERMIT PROCEDURE**

No land shall be used or occupied and no building hereafter erected, structurally altered, moved, or its use changed until a Certificate of Zoning Compliance (zoning permit) shall be issued by the Zoning Administrator.

- 5.5.1. **Form.** Requests for a zoning permit shall be submitted by filing an application with the Zoning Administrator. Said application shall be on a form approved by the County Board of Commissioners.

*(Ord. 7/7/2003, Section 15.1)*

- 5.5.2. **Health Department Approval for Zoning Permits.** The Scotland County Health Department or a private soil scientist licensed in the State of North Carolina shall evaluate properly in accordance with the "Laws and Rules for Sewage Treatment, And Disposal Systems" (15A NCAC 15A.1900) to determine the overall site suitability.
- (a) If the Scotland County Health Department evaluates the property, they may issue an Improvement Permit or advise the applicant accordingly, prior to the Scotland County Planning and Zoning Department issuance of a Zoning Permit.
  - (b) A Zoning Permit is required prior to the Scotland County Health Department release of an Authorization for Wastewater System Construction.
  - (c) No person shall commence or assist in the construction, location or relocation of a residence, place of business or place of public assembly unless the Scotland County Planning and Zoning Department has issued a Zoning Permit and Scotland County Health Department has issued an Improvement Permit and Authorization for Wastewater System Construction.
  - (d) The Scotland County Health Department may evaluate properly to determine the overall suitability for an on-site waste water system, but under no circumstances release an Authorization for Wastewater System Construction without first obtaining a copy of the zoning permit. The Scotland County Health Department may advise the applicant on the construction, installation, repair, abandonment, operation, and use of private water supply system.

*(Ord. 7/7/2003, Section 23.1)*

- 5.5.3. The Zoning Permit application shall be accompanied by either a Minor Site Plan or a Major Site Plan as determined by the Zoning Administrator. Requirements for Site Plans are outlined in Section 5.6.

*(Ord. 7/7/2003, Section 15.1)*

- 5.5.3. The Zoning Permit application shall also be accompanied by:
- a) the required fee.
  - b) A deed and survey, provided that a tax map photocopy may be substituted at the discretion of the Zoning Administrator if a survey has not been conducted.
  - c) such information necessary to secure an environmental health "Improvement Permit" if no connection to public sewer is available.
  - d) a Sedimentation and Erosion Control Plan (if applicable) as submitted to the Land Quality Section, Department of Environment and Natural Resources.
  - e) Any other information, which the Zoning Administrator may deem necessary for consideration in enforcing all provisions of this Ordinance.

(Ord. 7/7/2003, Section 15.1)

- 5.5.4. Review. The Zoning Administrator will verify that the use application and site plan meet the requirements of this Ordinance and will verify that the development will be adequately served by necessary public facilities such as roads, schools, water, emergency services, and sewage disposal. During review, the Zoning Administrator may circulate the plan to relevant governmental agencies and officials. The agencies and officials may include, but not necessarily be limited to, the following: Sherriff’s Department, Fire Department, Scotland County Building Inspections Department, Public Works, County Attorney, Other Utilities Providers, Scotland County Health Department, and the US Army Corps of Engineers.
- 5.5.5. Approval. If the zoning permit application is found to meet all of the applicable regulations of this Ordinance and is consistent with the requirements of this Ordinance, then the Zoning Administrator shall approve and issue a zoning permit. If approved by the Zoning Administrator, such approval shall be evidenced by his signature on the application form as certification of zoning compliance. See **Section 5.9** for Process of Delivery.

(Ord. 7/7/2003, Section 15.2)

- 5.5.6. The applicant shall provide a copy of the approved zoning permit from the Zoning Administrator to the Scotland County Building Inspector prior to obtaining a building permit from the county.
- 5.5.7. Denial. If the Zoning Permit application is found not to meet all applicable regulations of this Ordinance, it shall be marked “Denied” and returned to the applicant. If applicable, instructions on changes necessary to make the compliant shall also be delivered to the Applicant.

(Ord. 7/7/2003, Section 15.2)

- (a) No zoning permit may be processed and/or issued when there is evidence that there is a violation of any of the above referenced codes on or in use upon the land and any portion thereof that is subject to the requested permit/approval. The permit/approval may be issued in cases where the issuance of the permit and/or approval would resolve the violation.
- (b) If the permit/approval will not resolve the violation, the permit/approval shall not be issued until all violations are resolved and any fines levied are paid.
- (c) In instances where evidence of a violation is noted after the acceptance, processing, and/or issuance of a permit/approval, all activity with regards to the processing of the application and/or inspections will cease until the property is brought into compliance and all fines levied are paid. No zoning permit will be issued except in conformity with the provisions of this ordinance, unless the

department receives a written order from the Board of Zoning Adjustment in the form of an administrative appeal or variance as provided by this ordinance.

(Ord. 7/7/2003, Section 15.3)

## 5.6 SITE PLAN REQUIREMENTS

5.6.1. Each applicant must provide to the Zoning Administrator two (2) copies of a map (or sketch), drawn to scale with sufficient clarity and detail to indicate the characteristics of the total property involved. One of these copies shall be returned to the applicant upon approval.

The Site Plan shall contain the following:

- (a) The boundary of the property;
- (b) The location of adjacent rights-of-way (streets, highways, easements, etc.;
- (c) The shape, dimensions, and location of all buildings, existing and proposed, and required setbacks. This shall include all accessory structures;
- (d) The nature of the proposed use of the building or land;
- (e) The location and dimensions of off-street parking and loading space and means of ingress and egress;
- (f) The location of all required buffers;
- (g) The shape and dimensions of the lot on which the proposed building is to be erected.

(Ord. 7/7/2003, Section 15.1)

5.6.2. No permanent power will be authorized and no Certificate of Occupancy will be issued until all the above items are provided and the Zoning Administrator deems the Site Plan complete, and an "as built plan" is submitted.

## 5.7 TEMPORARY CERTIFICATE OF ZONING COMPLIANCE

The Zoning Administrator may issue a temporary *Certificate of Zoning Compliance* for rallies, carnivals, religious revivals, and similar temporary uses. Such certificates shall be issued for a fixed period of time, but not to exceed fifteen (15) days, shall be subject to such limitations as the Zoning Administrator may impose to protect the character of the district affected, and may be considered for reapplication. A fee set by the Board of Commissioners shall be charged for the processing of such application. The adopted fee schedule shall be posted in the Planning Department and the office of the Zoning Administrator and his/her designee.

## 5.8 SIGN PERMIT PROCEDURE

5.8.1. Requests for a sign permit shall be submitted by filing an application with the Zoning

Administrator. Said application shall be on a form approved by the County Board of Commissioners.

- 5.8.2. The Zoning Administrator shall issue the sign permit unless he/she finds, after reviewing the application and consulting with the applicant, that:
- a) The requested permit is not within his authority to approve according to the development regulations governing signs as detailed in **Article 10**.
  - b) The application is incomplete.
  - c) If completed as proposed in the application, the sign will not comply with one or more requirements of this Ordinance.
- 5.8.3. If approved by the Zoning Administrator, such approval shall be evidenced by the signature of the Zoning Administrator on the application form. See **Section 5.9** for process of delivery.

#### **5.9 ADMINISTRATIVE DETERMINATIONS AND NOTICE OF DETERMINATIONS**

- 5.9.1. Written Notice. The Zoning Administrator making the determination based upon the development regulations herein shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination if different from the owner. A decision is effective upon filing the written decision completed by the Zoning Administrator.

**Statutory Authority – NCGS Chapter 160D-403(b)**

- 5.9.2. Delivery of Written Notice. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

**Statutory Authority – NCGS Chapter 160D-403(b)**

- 5.9.3. Addresses. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

**Statutory Authority – NCGS Chapter 160D-403(b)**

- 5.9.4. Constructive Notice by Posting of Signs. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, provided the sign remains on the property for at least 10 days. The sign shall contain the words “Zoning Decision” or “Subdivision Decision” or similar language for other determinations in letters at least six inches high and shall

identify the means to contact a local government staff member for information about the determination.

**Statutory Authority – NCGS Chapter 160D-403(b)**

- 5.9.5. Constructive Notice Not Limited to Posting of Signs. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner, applicant, or person who sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination. Absent an ordinance provision to the contrary, posting of signs shall not be required.

**Statutory Authority – NCGS Chapter 160D-403(b)**

## 5.10. DURATION OF DEVELOPMENT APPROVALS

- 5.10.1. Cases in Which Work is Not Substantially Commenced. Unless a different period is specified by NCGS Chapter 160D or other specific applicable law, or a different period is provided by a quasi-judicial development approval, a development agreement, or the Ordinance, a development approval issued pursuant to this Ordinance shall expire one year after the date of issuance if the work authorized by the development approval has not been substantially commenced.

**Statutory Authority – NCGS Chapter 160D-403(c); S.L. 2020-25**

- 5.10.2. Cases in Which Work or Activity is Commenced Then Discontinued. Where the development approval is issued for temporary land uses, special events, temporary signs, and similar development, if the work or activity is discontinued for a period of 24 ~~12~~ months after commencement, the development approval shall immediately expire.

**Statutory Authority – NCGS Chapter 160D-403(c); 160D-108(d)**

- 5.10.3. During Appeal. The time periods set out in this subsection shall be tolled during the pendency of any appeal.

**Statutory Authority – NCGS Chapter 160D-403(c) 160D-1111.;**

- 5.10.4. New Development Approval Required. No work or activity authorized by any development approval that has expired shall thereafter be performed until a new development approval has been secured.

**Statutory Authority – NCGS Chapter 160D-403(c); 160D-1111.**

- 5.10.5. Vested Rights. This subsection shall not limit any vested rights secured by G.S. 160D-108.

**Statutory Authority – NCGS Chapter 160D-403(c); 160D-1111.**

*Cross Reference – Article 17: Vested Rights and Moratoria.*

**5.11. CHANGES TO DEVELOPMENT APPROVALS**

5.11.1. Written Approval of Changes Required. After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained.

**Statutory Authority – NCGS Chapter 160D-403(d)**

5.11.2. Minor Modifications to Development Approvals. Minor modifications to administrative development approvals shall include those that do not change the use approved or the zoning determination. Examples of minor modification include, but are not limited to, the correction of a name, address or other contact information.

**Statutory Authority – NCGS Chapter 160D-403(d)**

5.11.3. Major Modification to Development Approvals. Major modification to administrative development approvals shall include all other changes. The process for a major modification shall follow the same development review and approval process required for issuance of the development approval.

**Statutory Authority – NCGS Chapter 160D-403(d)**

5.11.4. The Zoning Administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections.

**Statutory Authority – NCGS Chapter 160D-403(d)**

**5.12. INSPECTIONS BY ADMINISTRATIVE STAFF**

Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the County at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials, provided the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

**Statutory Authority – NCGS Chapter 160D-403(e)**

**5.13. VIOLATIONS**

5.13.1. Violations. Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and penalties provided by this Article and by state law.

- a) Development Without Permit. A ‘development without a permit’ violation means to engage in any development, use, construction, remodeling or other activities of any nature upon the land or improvements thereon subject to the jurisdiction

of this Ordinance without required permits, certificates or other forms of authorization as set forth in this Ordinance.

- b) Development Inconsistent With Permit. A ‘development inconsistent with a permit’ violation means to engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.
- c) Violation by Act or Omission. A ‘violation by act or omission’ means to violate, by act or omission, any term, variance or waiver, condition, or qualification placed by the Board of Commissioners or its authorized boards upon any required permit, certificate or other form of authorization for the use, development or other activity upon land or improvements thereon.
- d) Use in Violation. A ‘use in violation’ means to erect, construct, reconstruct, alter, repair, convert, maintain or use any building or structure or to use any land in violation or contravention of this Ordinance, or any other regulation made under the authority conferred thereby.

5.13.2. Continuation of a Violation. Each day's violation of any provision of this Ordinance is a separate and distinct offense.

**5.14. ENFORCEMENT**

5.14.1 Enforcement Procedure. When the Zoning Administrator or his agent finds a violation of this Ordinance or receives a complaint alleging a violation of this Ordinance, it shall be his duty to notify the owner or occupant of the land, building, structure, sign, or use of the violation.

- a) Notices of Violation. When the Administrative Staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to NCGS Chapter 160D or this ordinance, or other local development regulation or any State law delegated to the County for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued.
  - 1) The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity.
  - 2) The notice of violation may be posted on the property.

- 3) The person providing the notice of violation shall certify to the County that the notice was provided and the certificate shall be deemed conclusive in the absence of fraud.
- 4) Except as provided by G.S. 160D-11-23, 160D-12-6, or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

**Statutory Authority – NCGS Chapter 160D-404**

b) Stop Work Orders. Whenever any work or activity subject to regulation pursuant to NCGS Chapter 160D, this Ordinance, or other applicable County regulation or any State law delegated to the County for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped.

- 1) The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed.
- 2) A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first class mail.
- 3) The person or persons delivering the stop work order shall certify to the County that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud.
- 4) Except as provided by G.S. 160D-11-12 and 160D-12-8, a stop work order may be appealed pursuant to G.S. 160D-4-5.
- 5) No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

**Statutory Authority – NCGS Chapter 160D-404**

**5.15. REMEDIES**

5.15.1. If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, the owner or occupant shall be subject to such remedies including penalties as may be provided for by state law. If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction.

*(Ord. 7/7/2003, Section 19)*

5.15.2. Subject to the provisions of the development regulation, any development regulation adopted pursuant to authority conferred by NCGS Chapter 160D may be enforced by any remedy provided by G.S. 160A-175 or G.S. 153A- 123.

- a) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used or developed in violation of NCGS Chapter 160D or this Ordinance, of any development regulation or other regulation made under authority of NCGS Chapter 160D, the County, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure or land; or to prevent any illegal act, conduct, business or use in or about the premises.
- b) Historic Landmark. In case any building, structure, site, area or object designated as a historic landmark or located within a historic district designated pursuant to this NCGS-Chapter 160D is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the development regulation or other provisions of this Chapter, the County, the historic preservation commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area or object. Such remedies shall be in addition to any others authorized by NCGS Chapter 160D for violation of an ordinance.

**Statutory Authority – NCGS Chapter 160D-404**

5.15.3. Any one or all of the following procedures may be used to enforce the provisions of this Ordinance.

- a) Injunction. Any violation of this Ordinance or of any condition, order, or requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.

(Ord. 7/7/2003, Section 19)

- 1) Responsible Parties. The owner or occupant of any land, building, structure, sign, or use of land or part thereof and any architect, builder, contractor, agent or any other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of the requirements of this Ordinance may be held responsible for the violation and subject to the civil penalties and remedies herein provided.

(Ord. 7/7/2003, Section 19)

- 2) Continuing Violation. For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

(Ord. 7/7/2003, Section 19)

- 3) Demand for Payment. The Zoning Administrator shall make written demand for payment upon the property owner or the person in violation, and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

- 4) Nonpayment. If payment is not received or equitable settlement reached within thirty days; after demand for payment is made, the matter shall be referred to legal counsel for institution of a civil action in the appropriate division of the General Courts of Justice for recovery of the civil penalty. Provided however, if the civil penalty is not paid within the time prescribed, the Zoning Administrator may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to NCGS 14-4.

- (d) Bring Court Action Prior to Expiration of Statute of Limitations. Be aware that a local government must bring a court action in advance of the applicable five and seven-year statutes of limitation.

- (1) Five Years. Action by the County against the owner of an interest in real property for a violation of a land-use statute, ordinance, or permit or any other official action concerning land use carrying the effect of law must be brought within five years. The claim for relief accrues upon the occurrence of the earlier of any of the following:

- i. The facts constituting the violation are known to the governing body, an agent, or an employee of the unit of local government.
- ii. The violation can be determined from the public record of the unit of local government.

**Statutory Authority – NCGS Chapter 1-51.**

- (2) Seven Years. Action by the County against the owner of an interest in real property for a violation of a land-use statute, ordinance, or permit or any other official action concerning land use carrying the effect of law must be brought from the earlier of the following:

- i. The violation is apparent from a public right-of-way.
- ii. The violation is in plain view from a place to which the public is invited.

**Statutory Authority – NCGS Chapter 1-49(3).**

- d) Denial of Permit or Certificate. The Zoning Administrator may withhold or deny any permit, certificate, occupancy or other form of authorization on any land, building, sign, structure or use in which there is an uncorrected violation of a provision of this Ordinance or of a condition or qualification of a permit, certificate or other authorization previously granted.
- e) State and Common Law Remedies. In addition to other enforcement provisions contained in this Article, the Board of Commissioners may exercise any and all enforcement powers granted to it by state law or common law.

**5.16. REVOCATIONS (CANCELLATIONS) OF DEVELOPMENT APPROVALS**

In addition to initiation of enforcement actions under NCGS 160D-404, development approvals may be revoked by the County by notifying the holder of the development approval in writing stating the reason for the revocation.

5.16.1. The County shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval.

5.16.2. Failure to Comply with Development Approval. Development approvals shall be revoked for any of the following:

- a) Substantial departure from the approved application, plans, or specifications.
- b) Refusal or failure to comply with the requirements of any applicable development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State.
- c) For false statements or misrepresentations made in securing the approval.

5.16.3. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked.

5.16.4. Appeal. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. an appeal is filed regarding a development regulation adopted by a local government pursuant to this Chapter, the provisions of G.S. 160D-405(e) regarding stays shall be applicable.

**Statutory Authority – NCGS Chapter 160D-403(f)**

**5.17. CERTIFICATE OF OCCUPANCY**

No building, structure, or use of land that is subject to a building permit issued by Scotland County shall be occupied or used until a certificate of occupancy or temporary certificate pursuant to G.S. 160D-11-14 has been issued.

**Statutory Authority – NCGS Chapter 160D-403(g)**

**5.18. APPEALS OF ADMINISTRATIVE DECISIONS**

5.18.1. Appeals of decisions made by the Administrative staff shall be made to the Board of Adjustment and shall follow the quasi-judicial procedure.

*(Ord. 7/7/2003, Section 44.1)*

a) Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the Board of Adjustment unless required by a County ordinance or code provision.

b) The official who made the decision (or his or her successor if the official is no longer employed) is to appear as a witness in the appeal.

5.18.2. Standing. Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the local government clerk or such other local government official as designated by ordinance. The notice of appeal shall state the grounds for the appeal.

5.18.3. Time to Appeal. The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

5.18.4. Record of Decision. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

5.18.5. Stays. An appeal of a notice of violation or other enforcement order stays enforcement of

the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed.

Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

- 5.18.6. Alternative Dispute Resolution. The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.
- 5.18.7. No Estoppel. G.S. 160D-1403.2, limiting a local government’s use of the defense of estoppel, applies to proceedings under this section.

**Statutory Authority – NCGS Chapter 160D-405**