

ARTICLE 5. ADMINISTRATIVE PERMITS, ENFORCEMENT AND APPEALS

Table of Contents

ARTICLE 5. ADMINISTRATIVE PERMITS, ENFORCEMENT AND APPEALS	1
5.1 PURPOSE.....	1
5.2 ZONING PERMIT APPROVAL REQUIRED.	1
5.3 ZONING ENFORCEMENT OFFICER ESTABLISHED.....	3
5.4 ZONING PERMIT APPLICATION PROCEDURE.	3
5.5 SITE PLAN CONTENT REQUIREMENTS.....	7
5.6 TEMPORARY CERTIFICATE OF ZONING COMPLIANCE.	8
5.7 SIGN PERMIT PROCEDURE.	8
5.8 TEMPORARY USE PERMIT PROCEDURE.....	9
5.9. DURATION OF PERMITS.....	10
5.10. CHANGES TO ZONING PERMITS.....	11
5.11. INSPECTIONS BY ADMINISTRATIVE STAFF.....	11
5.12. VIOLATIONS.	11
5.13. ENFORCEMENT.	12
5.14. REMEDIES.	14
5.15. REVOCATIONS (CANCELLATIONS) OF PERMITS.....	17
5.16. CERTIFICATE OF OCCUPANCY.....	18
5.17. APPEALS OF ADMINISTRATIVE DECISIONS.....	18

5.1 PURPOSE.

5.1.1. This Article includes the regulations pertaining to Administrative procedures, permits and appeals of Administrative actions regarding zoning in the Town of Fairmont. Administrative permits include, but are not limited to, Zoning Permits, Certificates of Occupancy, Sign Permits, and Temporary Use Permits.

5.2 ZONING PERMIT APPROVAL REQUIRED.

5.2.1. No person shall commence or proceed with development within the Town’s jurisdiction without first securing a Zoning Permit from the Town. 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 the Town's Zoning Ordinances on the property.

- A. Each application for a zoning permit shall be accompanied by such building plans or other information as may be necessary to determine whether the provisions of this ordinance are being observed.
- B. The Town 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.
- C. 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)
(Ord. 05/31/1977; 154.066)***

- 5.2.2. *No Work Permitted Prior to Issuance of Permit.* No land shall be used or occupied, and the use of any land shall not be changed, until a zoning permit and any other applicable permit to be issued by Town of Fairmont for such work has been issued.
- 5.2.3. *No Movement of Structure Prior to Issuance of Permit.* No building or structure, including a manufactured home, shall be moved from an area outside the Town 's zoning jurisdiction to any lot within the Town 's jurisdiction or from one lot to another lot, or on the same lot within the Town's zoning jurisdiction unless such building shall subsequently be made to conform to the then existing building, plumbing, electrical, manufactured home, and zoning codes of the Town. If a building, excluding a manufactured home, is moved from outside the Town 's zoning jurisdiction, the zoning permit fee shall include a mileage fee for each mile of distance from the Town Hall to the house to be moved. Any building or manufactured home so moved shall be made to conform to the required codes of the Town within twelve months from the earlier of either (i) the date of the receipt of a zoning permit issued by the Zoning Official, or (ii) the date the building or manufactured home is moved into the Town limits.
- 5.2.4. *Work Only as Approved in Permit.* Zoning permits and other development permits are issued under this Ordinance only when a review of the application submitted, including the site plans contained therein, indicates that the development will comply with the provisions of this Ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided herein, all development shall occur strictly in accordance with such approved plans and applications.
- 5.2.5. *Exemption from Zoning Permit.* The following are exempt from zoning permit requirements:
 - (a) Farm buildings (other than residences and buildings used in animal feeder/breeder operations) used for bona fide farm purposes;
 - (b) Facilities (other than buildings) of a public utility; and
 - (c) Signs specifically exempted in Article 10.

5.3 ZONING ENFORCEMENT OFFICER ESTABLISHED.

- 5.3.1. The Town Board shall appoint a Zoning Enforcement Officer to enforce the provisions of this Ordinance. The assistance of such other persons may be provided as the Town Board may direct. The ordinance shall be enforceable in accordance with provisions available in the General Statutes of North Carolina Chapter 160(D), Section 403.
- 5.3.2 The Zoning Enforcement Officer is hereby authorized, and it shall be his or her duty to enforce and administer the provisions of this chapter.
- 5.3.3 If the Zoning Enforcement Officer finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for the violations, indicating the nature of the violation and ordering the action necessary to correct it. He or she shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take other lawful action to insure compliance with or to prevent violation of this chapter.
- 5.3.4 If a ruling of the Zoning Enforcement Officer is questioned, the aggrieved party or parties may appeal the ruling to the Board of Adjustment.

(Ord. 05/31/1977; 154.065)

Statutory Authority – NCGS Chapter 160D-403

5.4 ZONING PERMIT APPLICATION PROCEDURE.

- 5.4.1. Application Form. Requests for a zoning permit shall be submitted by filing an application with the Zoning Enforcement Officer. Said application shall be on a form approved by the Town Board of Commissioners.
- 5.4.2. Health Department Approval for Zoning Permits. If on-site wastewater service is necessary to the building, lot, etc., then the Robeson County Health Department shall evaluate property (site) in accordance with the "Laws and Rules for Sewage Treatment, And Disposal Systems" (15A NCAC 1SA.1900) to determine the overall site suitability for a septic system.
- A. If the Robeson County Health Department evaluates the property, they may issue an Improvement Permit or advise the applicant accordingly, prior to the issuance of a Zoning Permit.
 - B. The Zoning Permit which is then secured at the Town must be submitted to the Robeson County Health Department before the County can release an Authorization for Wastewater System Construction.
- 5.4.3. Minor or Major Site Plan. The Zoning Permit application shall be accompanied by two (2) sets of plans drawn to scale, one of which shall be returned to the applicant upon approval. The determination of whether a Minor Site Plan or Major Site Plan shall be made by the Zoning Enforcement Officer.
- A. Site Plan. A scaled drawing which shows what already exists on the property and

shows what is proposed for the property. For example, a residential site plan depicts everything within the property lines; namely, a footprint of any existing structures, driveways and parking areas, pathways, trails and easements, drainage ways, utility lines, landscaping and other natural features. See *Section 5.5* for site plan requirements.

1) Minor Site Plans. As used under this Article and consistent with the definitions contained in Article 2, the term “Minor Site Plan” shall mean a scaled drawing which shows what already exists on the property and what is proposed for the property. A Minor Site Plan shall be reviewed by the Zoning Administrator and include the following types of development:

- I. Changes in use.
- II. New single-building non-residential development or additions of less than 2,500 square feet in gross floor area.
- III. New single-building, multi-family development with five to eight dwelling units.

2) Major Site Plans. As used under this Article and consistent with the definitions contained in Article 2, the term “Major Site Plan” shall mean a scaled drawing developed from a survey of the property which details the structures and conditions existing on the property and what is proposed for the property. A Major Site Plan shall be reviewed by the Zoning Administrator and referred to the Planning Board for their review and approval. Major Site Plans shall apply to the following:

- I. New nonresidential or multi-family development with two or more buildings.
- II. New single-building nonresidential development or additions with 2,500 square feet or more in gross floor area.
- III. New single-building multi-family development with nine or more dwelling units.
- IV. Development that results in a new street connection with an existing street or street stub in a single-family residential neighborhood.
- V. Zero-lot-line developments.

5.4.4. Exemption from Site Plan Review. Single-family homes on conforming lots, temporary uses, and internal construction that does not increase gross floor area or building height, the density or intensity of use, or affect parking requirements are exempt from Site Plan Review.

5.4.5. Other Requirements. The Zoning Permit application shall also be accompanied by:

- A. The required fee.
- B. A deed and survey, provided that with consent of the Zoning Enforcement Officer, a tax map photocopy may be substituted if a survey has not been conducted only for a Minor Site Plan.

- C. A Sedimentation and Erosion Control Plan (if applicable) as submitted to the Land Quality Section, Department of Environment and Natural Resources for Major Site Plans.
- D. Any other information, which the Zoning Enforcement Officer may deem necessary for consideration in enforcing all provisions of this Ordinance.

5.4.6. Staff Review of Minor Site Plans. The Zoning Enforcement Officer 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 Enforcement Officer 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, Robeson County Building Inspections Department, and Public Works.

5.4.7. Staff Review of Major Site Plans. The Zoning Enforcement Officer will circulate the plan to relevant governmental agencies and officials for comments and recommendations. The reviewing agencies and officials may include, but not necessarily be limited to the following: Police Department, Fire Department, Robeson Building Inspections Department, Public Works, Town Attorney, Other Utilities Providers, Robeson County Health Department, and the US Army Corps of Engineers. The Zoning Administrator will prepare a staff recommendation for the proposed development and forward this to the Planning Board for consideration.

Major Site Plan review may take place in two stages: first, review of a voluntary Preliminary Site Plan, and second, review of a more detailed Final Site Plan. There is no requirement to prepare a Preliminary Site Plan, and applicants may file a Site Plan application that meets the Final Site Plan requirements without undergoing the Preliminary Site Plan step.

- A. The Preliminary Site Plan is not required to include highly-detailed, fully-engineered elements. It is intended to show general compliance with Zoning requirements and conditions of approval. Town staff will provide comments or information to be included on the Final Site Plan as part of the review of a voluntary Preliminary Site Plan.
- B. The Final Site Plan is required to include all details and required engineering necessary to demonstrate full compliance with the Zoning requirements and other applicable Town Code, as appropriate.

5.4.8. Review by Planning Board of Major Site Plans. Following a complete review by the staff and preparation of the staff recommendation, the Zoning Enforcement Officer shall schedule the application for review by the Planning Board at the next regularly scheduled meeting. The Planning Board shall review the proposed project and either approve or deny the proposed project. A written determination from the Planning Board shall be forwarded to the Town Board of Commissioners within thirty (30) days of application review. for consideration. If a recommendation is not made within 30 days, the application shall be forwarded to the Town Board without a recommendation from the Planning Board.

5.4.9. Action by Town Board on Major Site Plans. Once the recommendation of the Planning Board has been made, or the 30-day period elapses without a recommendation, the Town Board shall follow the quasi-judicial procedures outlined in Article 6. The Town Board may take the following actions:

- (a) Approve the application as received.
- (b) Approve the application with conditions.
- (c) Deny the application.
- (d) Table the application for a specific number of days. The Town Board may also request additional information of the applicant, other governmental agencies, or interested/affected parties in order to aid in the review of the request.
- (e) Return the application to the Planning Board for further consideration. This deferral does not restart the initial Planning Board 30-day review period. The Town Council may direct that the Board return a decision by a certain date.

5.4.10. Approval of Minor Site Plans and Zoning Permits. 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 Enforcement Officer shall approve and issue a zoning permit. If approved by the Zoning Enforcement Officer, such approval shall be evidenced by his/her signature on the application form as certification of zoning compliance.

5.4.11. Provide Zoning Permit for Building Permit. The applicant shall provide a copy of the approved zoning permit from the Zoning Enforcement Officer to the Robeson County Building Inspector prior to obtaining a building permit from the county.

5.4.12. Denial of Zoning Permits. 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.

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

- 5.4.13. Display of Zoning Permits. Zoning permits (and building permits) shall be displayed during all construction and may not be removed until the Town of Fairmont Zoning Enforcement Officer and the Building Inspector have issued a Certificate of Compliance.
- 5.4.14. As-Builts Site Plan Required. For Minor Site Plans, an as-built site plan shall be submitted to the Zoning Administrator by the applicant upon completion of the building foundation(s) to ensure that setbacks and building orientation match the approved site plan. If the survey shows that the placement of the building is incorrect, then the Zoning Administrator shall issue a stop-work order and all construction shall be halted until the problem is remedied.
- 5.4.15. Appeal of Town Board Decisions on Major Site Plans. Any appeal of the decision of the Town Board shall be made to Superior Court.

5.5 SITE PLAN CONTENT REQUIREMENTS.

5.5.1. Minor Site Plan. The Minor Site Plan shall contain the following:

- A. A scale.
- B. Clear identification of the structure or use proposed.
- C. Property boundaries, lot dimension, setbacks, and Property Identification Number for the subject property.
- D. Major physical features including water bodies, creeks, wetlands, buildings, streets, and the like.
- E. The location of adjacent rights-of-way (streets, highways, easements, etc.;
- F. The shape, dimensions, and location of all buildings, existing and proposed, and required setbacks. This shall include all accessory structures;
- G. The location and dimensions of off-street parking and loading space and means of ingress and egress;
- H. The location of all required buffers;
- I. Name, address, and telephone number of applicant, owner, and persons (firm) preparing the development plan.

5.5.2. Major Site Plan. A Major Site Plan shall be survey grade and shall include the following:

- A. A scale that shall be the same scale as required for development plan submittal.
- B. Property boundaries and total acreage, including NC PINs (Property Identification Numbers) for all properties.
- C. Major topographical and physical features including water bodies, creeks, wetlands, buildings, streets, and the like.
- D. Proposed streets, rights-of-way, buildings, and/or lot arrangements, including proposed lot sizes, common areas, and the buffers required.

- E. Existing and proposed land use, drawn to scale, with brief project description including proposed structures, yard setbacks, building sizes, unit sizes, lot sizes, open space, amenities, the amount of impervious surfaces in square feet and the percentage of impervious surface of the entire development and the like.
- F. Name, address, and telephone number of applicant, owner, and persons (firm) preparing the development plan.
- G. Adjacent street names, numbers, and right-of-way widths.
- H. Zoning district classification of site and surrounding properties, including any water supply watershed(s) and zoning of properties located across adjacent streets.
- I. The boundaries of any proposed phasing.
- J. Sites, if any, for schools, parks, churches, and playgrounds.
- K. Acreage in public uses.
- L. Approximate number of lots.
- M. Sketch vicinity map showing the relation of the proposed site to existing uses of the land.

5.6 TEMPORARY CERTIFICATE OF ZONING COMPLIANCE.

5.6.1. The Zoning Enforcement Officer 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 Enforcement Officer 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 Town office.

5.7 SIGN PERMIT PROCEDURE.

5.7.1. Purpose. The purpose of this section is to outline the procedure for issuing a permit for temporary uses which will permit limited use of temporary signs for commercial and institutional uses, to ensure that temporary signage of the Town of Fairmont does not constitute a visual blight on the landscape and character of the town, and to preserve the health, safety, and welfare of the general public. Consult ARTICLE 10 of this Ordinance for further information on types of signs permissible within the Town of Fairmont.

5.7.2. Application. Requests for a sign permit shall be submitted by filing an application with the Zoning Enforcement Officer. Said application shall be on a form approved by the Town Board of Commissioners.

- 5.7.3. Review by Zoning Enforcement Officer. The Zoning Enforcement Officer 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.
- 5.7.4. Issuance. If approved by the Zoning Enforcement Officer, such approval shall be evidenced by the signature of the Zoning Enforcement Officer on the application form. The permit may be picked up at Town Hall.

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

5.8 TEMPORARY USE PERMIT PROCEDURE.

Section 11.47 of this Ordinance outlines the types of temporary uses permitted in the zoning jurisdiction of Town of Fairmont. Temporary Use Permits issued for any such temporary use shall include the following:

- 5.8.1. Temporary Use Permit Required. Every use that is classified as a temporary use in the zoning district in which it is to be located shall be placed or established on the property only after receiving a temporary use permit.
- 5.8.2. Filing and Contents of Application.
- (a) An application for a temporary use permit may be filed only by the owner of the property, or by an agent, lessee, or contract purchaser specifically authorized by the owner to file such application.
 - (b) An application for a temporary use permit shall be filed with the Zoning Administrator. Where appropriate, each application shall be accompanied by a Minor Site Plan which complies with the standards set forth in Article 15 Part IV of this Ordinance.
- 5.8.3. Filing Deadline. All applications for temporary use permits shall be filed at least two (2) weeks prior to the date the temporary use will commence, or at least four (4) weeks prior to the date the temporary use will commence if public safety support is requested from the Town. The Zoning Administrator may waive this filing deadline requirement in an individual case, for good cause shown.
- 5.8.4. Approval Criteria. The Zoning Administrator shall issue a temporary use permit if the proposed temporary use satisfies the requirements set forth in Section 11.47.

5.8.5. Duration of Permit. A temporary use permit shall be valid only for the time period stated on the permit as included in Section 11.47

5.8.6. Temporary Structure Permit Required. No tent, trailer, or other temporary structure governed by the State Building Code shall be occupied or used in conjunction with a temporary use until and unless the applicant has received a tent permit or a building permit from the Inspections and Permits Department pursuant to the State Building Code.

5.9. DURATION OF PERMITS.

5.9.1. 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

5.9.2. 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 months after commencement, the development approval shall immediately expire.

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

5.9.3. 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.

5.9.4. 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.

5.9.5. 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.

5.10. CHANGES TO ZONING PERMITS.

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

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

5.10.2. 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)

5.10.3. 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)

5.10.4. The Zoning Enforcement Officer 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)

5.11. INSPECTIONS BY ADMINISTRATIVE STAFF.

5.11.1. 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 Town 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)

5.12. VIOLATIONS.

5.12.1. Violations. If the Zoning Enforcement Officer shall find that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of such violation and ordering the action necessary to correct it. He shall order

discontinuance of illegal use of land, buildings, or structures or of additions, alterations or structural changes thereto, discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violations of its provisions. 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.

(Ord. 05/31/1977; 154.065)

- 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.

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

5.13. ENFORCEMENT.

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

- A. Notices of Violation. When the Zoning Enforcement Officer 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 Town 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 Town 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 Town regulation or any State law delegated to the Town 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 Town 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

5.14. REMEDIES.

- 5.14.1. In any case any building is created, constructed, reconstructed, altered, repaired, converted, or maintained, or any building or land is used in violation of this Ordinance, the Zoning Enforcement Officer, or any other appropriate Town authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceeding to prevent such violation.
- 5.14.2. 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.
- 5.14.3. 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 Town, 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 Town, 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

5.14.4. 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.

B. Civil Penalties. Any person who violates any provisions of this Ordinance shall be subject to the assessment of a civil penalty the maximum civil penalty allowed by law.

1) Notice. No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation in accordance with Article 5.13.1. If after receiving a notice of violation the owner or other violator fails to take corrective action, a civil penalty in the amount of \$50.00 may be imposed under this Section in the form of a citation. The citation shall be served in the manner of a Notice of Violation. The citation shall state the nature of the violation, the civil penalty to be imposed upon the violator and shall direct the violator to pay the civil penalty within thirty days of the date of the notice.

i. In accordance with NCGS 160A-175, violation of local ordinances are declared a misdemeanor.

(a) Except as provided in subsection (b) or (c) of this section, if any person shall violate an ordinance of a county, city, town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars (\$50.00).

(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars (\$50.00).

(c) A person may not be found responsible or guilty of a local ordinance violation punishable pursuant to subsection (a) of this section if, when tried for that violation, the person produces proof of compliance with the local ordinance through any of the following:

(1) No new alleged violations of the local ordinance within 30 days from the date of the initial alleged violation.

(2) The person provides proof of a good-faith effort to seek assistance to address any underlying factors related to unemployment,

homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance.

Statutory Authority – NCGS Chapter 160A-175

- 2) 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.
- 3) 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.
- 4) Demand for Payment. The Zoning Enforcement Officer 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.
 - a) 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 Enforcement Officer 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.
- 5) 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.
 - (a) Five Years. Action by the Town 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.

- (b) Seven Years. Action by the Town 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).

- C. Denial of Permit or Certificate. The Zoning Enforcement Officer 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.
- D. 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.

5.15. REVOCATIONS (CANCELLATIONS) OF PERMITS.

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

- A. The Town 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.
- B. Failure to Comply with Development Approval. Development approvals shall be revoked for any of the following:
 - 1) Substantial departure from the approved application, plans, or specifications.
 - 2) 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.
 - 3) For false statements or misrepresentations made in securing the approval.

- C. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked.
- D. 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)

5.16. CERTIFICATE OF OCCUPANCY.

5.16.1. No land shall be used or occupied, except for agricultural purposes, and no building hereafter structurally altered, erected, or moved shall be used or occupied until a certificate of occupancy shall have been issued by the Zoning Enforcement Officer stating that the building and/or the proposed use thereof complies with the provisions of this Ordinance and any other appropriate regulatory codes. A like certificate shall be issued for the purpose of maintaining, renewing, changing, or extending a nonconforming use. A certificate of occupancy, either for the whole or part of a building, shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this Ordinance and any other appropriate regulatory codes. A record of all certificates shall be kept on file in the office of the Zoning Enforcement Officer and copies shall be furnished, on request, to any person having a proprietary or tenancy interest in the building erected. No permit for excavation of, or erection of a building shall be issued until after a statement of its intended use has been filed by the applicant.

(Ord. 05/31/1977; 154.068)

5.17. APPEALS OF ADMINISTRATIVE DECISIONS.

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

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 Town 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.

5.17.2. 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.

- 5.17.3. 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.
- 5.17.4. 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.
- 5.17.5. 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.
- 5.17.6. 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.
- 5.17.7. 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