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8: ENFORCEMENT

8.1. PURPOSE

This section establishes procedures through which the Town seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this section are intended to encourage the voluntary correction of violations, where possible.

8.2. COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons owning, developing, managing, using, or occupying land or structures in the Town.

8.3. STATUTE OF LIMITATIONS

Enforcement of violations of this Ordinance shall be in accordance with Section 1-49(3) and Section 1-51(5) of the North Carolina General Statutes.

8.4. VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided by this Ordinance and by State law:

8.4.1. DEVELOPMENT WITHOUT AUTHORIZATION

Engaging in any development, use, construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required plans, permits, certificates, or other forms of authorization as set forth in this Ordinance;

8.4.2. DEVELOPMENT INCONSISTENT WITH AUTHORIZATION

Engaging in any development, use, construction, land disturbance, 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;

8.4.3. VIOLATION BY ACT OR OMISSION

Violating, by act or omission, any term, variance, modification, adjustment, condition, or qualification placed upon any required plan, permit, certificate, or other form of authorization for the development, use, construction, land disturbance, or other activity upon land or improvements thereon;

8.4.4. USE IN VIOLATION

Erecting, constructing, altering, repairing, maintaining, or using any building or structure, or use of any land in violation of this Ordinance or any regulation made under the authority conferred thereby;

8.4.5. SUBDIVIDE IN VIOLATION

Subdividing land in violation of this Ordinance, or transferring land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the office of the Wake County Register of Deeds; and

8.4.6. VIOLATION OF ENVIRONMENTAL REGULATIONS

Failing to follow or violating the rules or regulations of Section 6.11, Stormwater, Section 3.8.2, Flood Hazard Overlay (FHO) District, or Section 6.9, Soil Erosion & Sedimentation.

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8.5. Responsible Persons

8.5.1. General

8.5. RESPONSIBLE PERSONS

8.5.1. GENERAL

For the purposes of this article, "responsible persons" shall mean the landowner, tenant, or other occupant of any land or structure and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and is subject to the remedies and penalties set forth in this Ordinance.

8.5.2. FAILURE BY TOWN DOES NOT RELIEVE INDIVIDUAL

Failure of a Town official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this section of the Ordinance, or to deny the issuance of a development permit, shall not relieve the responsible party from responsibility for compliance with the condition or for any damages that may result, and shall not result in the Town, its officers, or agents being responsible for conditions or damages.

8.6. ENFORCEMENT RESPONSIBILITIES

The Planning Director shall have responsibility for enforcement of this Ordinance.

8.6.1. INVESTIGATIONS

The Planning Director shall have the power to conduct such investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance.

8.6.2. INSPECTIONS

- A. The Planning Director shall have the right, upon receipt of permission from a responsible person, to enter on any premises within the jurisdiction at any reasonable hour for the purpose of inspecting locations subject to any complaints or alleged violations, or determination of compliance or other enforcement action of this Ordinance.
- B. If any person charged with enforcing this Ordinance cannot obtain permission to enter from a responsible person, the Town shall obtain an administrative search warrant prior to entering the property.

8.6.3. SUPPORTING DOCUMENTATION

The Planning Director shall have the power to compel a person responsible for an alleged violation to provide written statements, certificates, certifications, or reports relating to complaints or alleged violations of this Ordinance.

8.7. ENFORCEMENT PROCEDURE

When the Planning Director finds a violation of this Ordinance, they shall notify the responsible person(s) of the violation in accordance with the following:

8.7.1. WRITTEN NOTICE OF VIOLATION

A written notice of violation shall be prepared and shall include all of following:

- A. **VIOLATION EXISTS**
That the land, building, structure, sign, or use is in violation of this Ordinance;
- B. **NATURE OF THE VIOLATION**
The nature of the violation, and citation of the section(s) of this Ordinance violated;
- C. **REMEDY**
The measures necessary to remedy the violation;
- D. **ALLOWABLE TIME PERIOD**

ARTICLE 8: ENFORCEMENT

8.7. Enforcement Procedure

8.7.2. Delivery of Written Notice

The time period in which the violation must be corrected;

E. PENALTIES THAT MAY BE ASSESSED

That penalties or remedies may be assessed; and

F. APPEAL

That the party cited has the right to appeal the notice in accordance with Section 2.2.3, Appeal.

8.7.2. DELIVERY OF WRITTEN NOTICE

Written notice of violation shall be provided to the owner of record and any parties in interest by any of the following means:

- A.** Certified mail;
- B.** Registered mail to their last known address;
- C.** Personal service;
- D.** Posting notice conspicuously on the property; or
- E.** In any matter permitted by Section 1A-1, Rule 4(j) of the North Carolina General Statutes.

8.7.3. REMEDY UPON NOTICE

Upon delivery of a written notice of a violation, the landowner or any other responsible person shall remedy the violation within the allowable time period.

8.7.4. FAILURE TO COMPLY WITH ORDER

If the landowner, occupant, or any other responsible person fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the BOA following an appeal, the landowner or occupant shall be subject to such remedies and penalties as may be provided for by State law or Section 8.8, Remedies.

8.7.5. EACH DAY A SEPARATE VIOLATION

Each day a violation continues following notice or failure to comply is considered a separate and distinct offense.

8.8. REMEDIES

8.8.1. CIVIL PENALTIES

Any responsible person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty of \$100.00 per day under the procedures provided in Section 8.9, Assessment of Civil Penalties.

8.8.2. DENIAL OF PERMIT OR CERTIFICATE

As appropriate, any of the review authorities listed in this section may withhold or deny a permit, certificate, or other authorization for the same land, subdivision, building, structure, sign, use, or development activity 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.

8.8.3. CONDITIONAL PERMIT OR TEMPORARY CERTIFICATE

- A. The Planning Director may condition the authorization of any permit, certificate, or other approval for land, subdivision, building, structure, sign, use, or development activity with a violation or outstanding enforcement action upon the correction of the violation, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental authority.
- B. In no instance shall the Planning Director condition the authorization of any permit, certificate, or approval for one property with a violation or outstanding enforcement action upon the correction of the violation, payment of civil penalties within a specified time, or the posting of a compliance security for a different property.

8.8.4. STOP WORK ORDERS

- A. **GENERAL**
Whenever a review authority listed in this section determines that a person is engaged in doing work that constitutes, creates, or results in a violation of this Ordinance and that irreparable injury will occur if the violation is not terminated immediately, the review authority may order the specific part of the work that constitutes, creates, or results in a violation of this Ordinance to be immediately stopped.
- B. **ORDER IN WRITING**
The stop work order shall be in writing and directed to the landowner, and the occupant or person doing the work in a manner consistent with applicable law. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.
- C. **APPEAL**
Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment in accordance with Section 2.2.3, Appeal. An appeal shall not stay the stop work order unless the BOA fails to hear the appeal within 60 days of receipt of the notice of appeal. If the BOA fails to hear the appeal within 60 days, the stop work order shall be stayed until the BOA acts on the appeal.
- D. **COMPLIANCE REQUIRED**
Neither the responsible person nor a landowner upon whom a stop work order is served shall continue with work in violation of the stop work order while it remains in effect, unless the order is stayed in accordance with subsection (c) above.

8.8.5. REVOCATION OF PERMITS

- A. The Planning Director may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.

ARTICLE 8: ENFORCEMENT

8.8. Remedies

8.8.6. Criminal Penalties

- B.** Permits or certificates may be revoked, in accordance with Section 160D-403(f) of the North Carolina General Statutes, for any of the following:
1. Any substantial departure from the approved application, plans, or specifications;
 2. Refusal or failure to comply with the requirements of State or local laws; or
 3. For making false statements or misrepresentations in securing the permit, certificate, or approval.
 4. Any permit or certificate mistakenly issued in violation of an applicable State or Town law may also be revoked.

8.8.6. CRIMINAL PENALTIES

A. VIOLATION OF EROSION AND SEDIMENTATION CONTROL

Any person who knowingly or willfully violates any soil erosion and sedimentation control provision of this Ordinance, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions of this Ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000).

B. ALL OTHER VIOLATIONS

Any violation of this Ordinance may be enforced as a Class 3 misdemeanor as provided for by Sections 14-4 and 160A-175 of the North Carolina General Statutes, subject to a maximum fine of \$500.

8.8.7. INJUNCTIVE RELIEF

A. ACTION BY BOARD OF COMMISSIONERS

Whenever the Board of Commissioners has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved development plan, or soil erosion and sedimentation control plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the Town, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation.

B. SUPERIOR COURT

The action shall be brought in the Superior Court of the appropriate county. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.

C. NO RELIEF FROM CRIMINAL PENALTIES

The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

8.8.8. ORDER OF ABATEMENT

In addition to an injunction, the Town may apply for and the court may enter an Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:

- A. That buildings or other structures on the property be closed, demolished, or removed;
- B. That fixtures, furniture, or other moveable property be moved or removed entirely;
- C. That improvements, alterations, modifications, or repairs be made; or
- D. That any other action be taken as necessary to bring the property into compliance with this Ordinance.

ARTICLE 8: ENFORCEMENT

8.9. Assessment of Civil Penalties

8.8.9. Equitable Remedy

8.8.9. EQUITABLE REMEDY

The Town may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by a violator as a defense to the Town's application for equitable relief.

8.8.10. STATE AND COMMON LAW REMEDIES

In addition to other enforcement provisions contained in this section, the Board of Commissioners may exercise any and all enforcement powers granted to it by state law or common law.

8.8.11. PREVIOUS ENFORCEMENT

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

8.8.12. REMEDIES; CUMULATIVE AND CONTINUOUS

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

8.9. ASSESSMENT OF CIVIL PENALTIES

8.9.1. RESPONSIBLE PARTIES

Any person who violates any provision of this Ordinance, including the owner or occupant of any land, building, structure, sign, use of land, or part thereof, may be held responsible for the violation and subject to the penalties and remedies provided in this Ordinance.

8.9.2. NOTICE

A. NOTIFICATION REQUIRED

Civil penalties may not be assessed until the responsible person in violation has been notified in accordance with Section 8.7, Enforcement Procedure.

B. CIVIL PENALTY IMPOSED

If after receiving a written notice of violation under Section 8.7, Enforcement Procedure, the person fails to take corrective action or file an appeal, a civil penalty may be imposed in accordance with this section.

C. NOTICE OF PENALTY ASSESSMENT

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

D. ASSESSMENT CONTENTS

The assessment notice 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 30 days of the date of the notice.

E. SEPARATE NOTICES

Separate notices must be provided for the first or second violations. The Town may, in its discretion, treat the first notice for a violation as the final notice for chronic violators.

F. ASSESSMENT UNTIL COMPLIANCE

Civil penalties may be assessed until compliance is achieved.

8.9.3. CONTINUING VIOLATION

ARTICLE 8: ENFORCEMENT

8.10. Enforcement Provisions for Violations in the FHO District

8.9.4. Demand for Payment

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.

8.9.4. DEMAND FOR PAYMENT

If compliance is not achieved, then the Planning Director shall make written demand for payment of penalties that have accrued while the property has been in violation. The demand for payment shall be sent to the responsible person in violation and must include a description of the violation for which the civil penalties have been imposed.

8.9.5. NONPAYMENT

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Town may recover any unpaid civil penalty by filing a civil action in the nature of debt.

8.9.6. PENALTIES

Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty for each succeeding violation over the course of a calendar year.

8.9.7. CIVIL PENALTIES IN THE R1 DISTRICT

In addition to the remedies available in Section 8.8, Remedies, and the standards related to the assessment of civil penalties in this section, the North Carolina Environmental Management Commission may also assess civil penalties for violation of the R1 district standards in accordance with Section 143-215.6(A) of the North Carolina General Statutes.

8.10. ENFORCEMENT PROVISIONS FOR VIOLATIONS IN THE FHO DISTRICT

This section sets out the standards pertaining to violations of Section 3.8.2, Flood Hazard Overlay (FHO) District.

8.10.1. VIOLATIONS TO BE CORRECTED

When the Floodplain Administrator finds violations of applicable state and local laws, it shall be their duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in the notification.

8.10.2. INSPECTIONS OF WORK IN PROGRESS

- A. As the work pursuant to a permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this Ordinance and the terms of the permit.
- B. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.

8.10.3. STOP-WORK ORDERS

- A. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the Floodplain Administrator may order the work to be immediately stopped.
- B. The stop-work order shall be in writing and directed to the person doing the work in a manner consistent with applicable law. The stop-work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.
- C. Violation of a stop-work order constitutes a misdemeanor.

8.10.4. REVOCATION OF PERMITS

ARTICLE 8: ENFORCEMENT

8.10. Enforcement Provisions for Violations in the FHO District

8.10.5. Periodic Inspections

- A.** The Floodplain Administrator may revoke and require the return of the development permit by notifying the permit holder in writing stating the reason for the revocation.
- B.** Permits shall be revoked for any substantial departure from the approved application, plans or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit.
- C.** Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

8.10.5. PERIODIC INSPECTIONS

The Floodplain Administrator shall have a right, upon presentation of proper credentials, to enter on any premises within the Town's planning jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.

8.10.6. ACTIONS IN EVENT OF FAILURE TO TAKE CORRECTIVE ACTION

If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

- 1. That the building or property is in violation of this Ordinance;
- 2. That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- 3. That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, demolish the building, remove fill, or take such actions as necessary to comply with applicable laws.

8.10.7. ORDER TO TAKE CORRECTIVE ACTION

- A.** If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of this Ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days.
- B.** Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in a lesser period as may be feasible.

8.10.8. APPEAL

- A.** Any landowner who has received an order to take corrective action may appeal the order to the BOA body by giving notice of appeal in writing to the Floodplain Administrator within ten days following issuance of the final order.
- B.** The BOA shall hear an appeal within a reasonable time and may affirm, modify and affirm or revoke the order.
- C.** In the absence of an appeal, the order of the Floodplain Administrator shall be final.

8.10.9. FAILURE TO COMPLY WITH ORDER

If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

