

ARTICLE 14: ENFORCEMENT, PENALTIES AND EXCEPTIONS

Section 14.1 Authority and Enactment

Section 14.1.1 Duties of Zoning Administrator, Board of Adjustment, Courts and Board of Commissioners in Matters of Appeal

It is the intention of this Ordinance that all questions arising in connection with the enforcement of this Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the Zoning Administrator; and that from decision of the Board of Adjustment recourse shall be to courts as provided by law. It is further the intention of this Ordinance that the duties of the Board of Commissioners in connection with the Ordinance shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as herein set out in the Ordinance, and that the duties of the Board of Commissioners in connection with this Ordinance shall be only the duty of considering and passing upon any proposed amendment or repeal of the Ordinance as provided by law.

Section 14.1.2 Violations

A. Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and civil penalties provided by this Division and by State law.

1. Development Without Permit

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required permits, certificate, or other forms of authorization as set forth in this Ordinance.

2. Development Inconsistent With Permit

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.

3. Violation by Act or Omission

To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the Board of Commissioners or its agent boards upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

4. Use in Violation

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. Subdivision of land in violation

To subdivide land in violation of this Ordinance

- B. Each day's continuance of any of the above violations is a separate and distinct offense.

Section 14.1.2 Inspection and Investigation

In order to determine violations of this Ordinance, the Zoning Administrator shall have the following rights and powers:

A. Inspections

The Zoning Administrator shall have the right upon presentation of proper credentials, or inspection warrant if necessary, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action.

B. Investigations

The Zoning Administrator shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out his/her duties as prescribed in this Ordinance and, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.

C. Supporting Documentation

The Zoning Administrator shall have the power to require written statements, certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this Ordinance.

Section 14.1.3 Enforcement Procedures

A. Use (zoning) violation

If the Zoning Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or additions; alternations, 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.

B. Subdivision violation

Any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of the Town, thereafter subdivides his land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be an illegal action and subject to enforcement procedures. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The Town may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land; and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision regulations.

C. Denial of Building Permit

In addition, as stated above in Article 3, Section 3.2.10, the Town may deny a zoning permit for lots that have been illegally subdivided and therefore effectively prohibit the issuance of a building permit (required pursuant to G.S. 160A-417) for said lot(s). In addition to other remedies, the Town may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

D. Notice of Violation

If the owner or occupant of the land, building, structure, sign or use in violation of a subdivision violation fails to take prompt corrective action, the Zoning Administrator shall give the owner or occupant written notice (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

1. that the land, building, structure, sign or use is in violation of this Ordinance;
2. the nature of the violation, and citation of the Section(s) of this Ordinance violated; and
3. the measures necessary to remedy the violation and;
4. the right to appeal the decision of the Zoning Administrator to the Board of Adjustment within 15 days following the date of the notice of the violation.

E. Appeal

Any owner or occupant who has received a Notice of Violation, other than a subdivision violation as set forth in Section 14.1.3.B above, may appeal in writing the decision of the Zoning Administrator to the Board of Adjustment within thirty (30) days following the date of the Notice of Violation. The Board of Adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the decision, of the Zoning Administrator shall be final.

F. Notice of Decision

The decision of the Board of Adjustment may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

G. Order of Corrective Action

If upon a hearing held pursuant to an appeal as prescribed above, the Board of Adjustment shall find that the owner or occupant is in violation of this Ordinance, the Board of Adjustment shall make an order in writing to the owner or occupant affirming the violation and ordering compliance.

Section 14.1.4 Failure to Comply with Notice

If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or a final decision by the Board of Adjustment following an appeal, the owner or occupant shall be subject to the civil penalties and remedies as set forth in Section 14.2 or to such remedies and penalties as may be provided by the State law.

Section 14.2 Penalties and/or Remedies

Section 14.2.1 Penalty and/or Remedy Procedures

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

A. Violations

Violations of this ordinance shall subject the offender to a civil penalty upon the issuance of a citation for the violation as provided in this section. The civil penalty, if not paid to the town within fifteen (15) days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. The amount of such civil penalty shall be \$50 for each violation, and each day any single violation continues shall be a separate violation.

B. Civil Penalties

Upon determination of a violation of any section of this ordinance, the penalty for which is a civil penalty, the town shall cause a warning citation, in the form of a notice of violation, to be issued to the violator. Such notice of violation shall set out the nature of the violation, the section(s) of the ordinance violated and the date of the violation, and shall contain an order to immediately cease or remedy the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated. The warning citation or notice of violation shall specify that a second citation notice shall incur a civil penalty, together with costs.

C. Civil Citation

Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the appropriate official of the town and served directly on either the violator, his duly designated agent, or the registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the town or obtained from the violator at the time of the issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of the citation. The citation shall direct the violator to pay the citation within fifteen (15) days of the date of the citation. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued.

D. Civil Action

If the violator fails to respond to a citation within fifteen (15) days of its issuance, and pay the penalty prescribed in the citation, the town may institute a civil action in the nature of debt in the appropriate division of state general court of justice for the collection of the penalty, costs and other such relief as permitted by law.

E. Stop Work Orders

Whenever a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the Zoning Administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. 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. Such action shall be in accordance with NCGS 160A-421.

F. Revocation of Permits or Certificate

The Zoning Administrator may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of an applicable State or local law may also be revoked. The Zoning Administrator shall withhold or deny any permit, certificate, or other authorization on any land, building, storage, sign, 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. The Zoning Administrator may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental authority.

G. Injunctions

In case any building or structure is erected, constructed, reconstructed, repaired, converted, or maintained or any building, structure, or land is used in violation of this ordinance, the Zoning Administrator or any other appropriate town authority, or any person who would be damaged by such violation, in addition to other remedies, may institute injunction, mandamus, or other appropriate action in proceeding to prevent the violation.

H. State and Common Law

In addition to other enforcement provisions contained within this Section, the Board of Commissioners may exercise any and all enforcement powers granted to it by state law or common laws. The violation may not be prosecuted as a criminal misdemeanor.

Section 14.3 Applications, Exceptions, and Modifications

Section 14.3.1 Application

A. General

In interpreting and applying these regulations, the requirements contained herein are declared to be the minimum requirements necessary to carry out the purposes of these regulations. Wherever the provisions of these regulations impose greater restrictions upon the use of land or buildings, or require a larger percentage of the lot to be left unimproved than the provisions of other ordinances, rules, regulations, permit, or any easements, covenants, or other agreements between parties, the provisions of this Ordinance shall govern.

B. Compliance with Zoning Ordinance

1. No building, premises, or structure shall be constructed, erected, modified, converted, occupied, placed, maintained or moved, and no land use shall be commenced, maintained, or modified, except as authorized by this Ordinance. Lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.
2. No lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein and/or other applicable town ordinances. Lots or developments which were approved prior to the effective date of this Ordinance and which do not comply with the provisions of this Ordinance shall be considered legally nonconforming. Modifications to and conversions of nonconforming uses shall be allowed pursuant to the requirements of Article VIII.

C. Compliance with subdivision requirements Enforcement and Remedies

1. Any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of the Town, thereafter subdivides his land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be subject to enforcement procedures. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The Town may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision regulations.
2. In addition, as stated above in Section 14.3.1.C.1, the Town may deny a zoning permit/certificate for lots that have been illegally subdivided and therefore effectively prohibit the issuance of a building permit (required pursuant to G.S. 160A-417) for said lot(s). In addition to other remedies, the Town may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

Section 14.3.2 Computation**A. Rounding of Numbers**

All calculations that result in a part or fraction of a whole number shall be rounded up to the next highest whole number, except that in calculating density, all calculations

that result in a part or fraction of a whole number shall be rounded down to the next lowest whole number.

B. Computation of Required Spaces

No part of a yard, or other open space required about or in connection with any use for the purpose of complying with this Ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other use.

Section 14.3.3 One Principal Building per Lot

Every building hereafter erected or moved shall be located on a buildable lot and in no case shall there be more than one principal residential building on a lot except as provided for in planned developments, Planned Village Development or residential group developments (condominiums, townhouses or multifamily developments) as provided in Articles 4, 5 and 6 and Section 11.4.

Section 14.3.4 No Structures in a Public Right of Way

No building, fence, sign, or other structure, or part thereof, shall be erected or installed in any public road, street, lane, alley, park, or other public right-of-way.

Section 14.3.5 Vision Clearance at Intersections

In order to maintain a safe line of sight distance for vehicular traffic at intersections of streets and roads, no opaque obstructions such as parking spaces, fences, walls, lights, trees, shrubs, or other types of obstruction shall be permitted, erected, placed, planted, or allowed to grow in such a manner as to materially impede vision within the area specified and described under Section 7.4.1.

Section 14.3.6 Street Access

No building, structure or use of land shall be established on a lot nor shall any lot be created that does not abut upon a public street as defined herein to which it has legal access for a distance of not less than sixty-five (65) feet. This access requirement shall not apply to existing lots of record with a minimum of sixty-five (65) feet of frontage on a dedicated but not maintained street or road nor shall it apply to developments exempt from the public street access requirement as provided in the town's Subdivision Regulations.

Section 14.3.7 Outdoor Lighting

Outdoor lighting fixtures shall be installed in a manner to protect traffic on the street and neighboring properties from direct glare or hazardous interference of any kind.

Section 14.3.8 Certain Units As Storage Are Prohibited

The use of manufactured homes, travel trailers, semi-trailers, and vehicles that are no longer used as vehicles, shipping containers for storage purposes shall be expressly prohibited in all zoning districts.

Section 14.3.9 Necessary Repairs Permitted

Nothing in this Ordinance shall prevent the strengthening or restoration to a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by the building officials, fire officials, or any other duly authorized of the town, county, or state.