

**TOWN OF SWANSBORO
PLANNING BOARD
SPECIAL MEETING AGENDA**

**July 19, 2021
Monday, 5:30 PM**

**Town Hall Community Room
601 W. Corbett Avenue**

1. Call to Order

2. Business

A. Commercial Maintenance Code

Maintenance Codes for other municipalities were provided previously for review. At the June regular meeting, the Board requested to discuss and draft a Commercial Maintenance Code as an amendment to the Town Code. Subsequently, the Town Attorney discovered that our Town Code contains provisions for commercial property maintenance.

Action Needed: Review & discussion of existing regulations in the Town Code.

B. Clear-cutting Definition

At their June 28, 2021, regular meeting, the Board of Commissioners directed staff to work with the Planning Board to develop a definition for clear-cutting as related to the recently adopted amendments regarding land improvement permits and penalty.

Action Needed: A motion to recommend an amendment to Section 152.016, Definitions of Basic Terms, of the Unified Development Ordinance to add a definition for “clear-cutting”.

3. Chairman/Board Thoughts/Staff Comments

4. Adjournment

CHAPTER 151: REPAIR, CLOSING, AND/OR DEMOLITION OF NON-RESIDENTIAL BUILDINGS OR STRUCTURES

Section

- 151.01 Finding
- 151.02 Intent
- 151.03 Definitions
- 151.04 Conflicts
- 151.05 Standards and responsibilities
- 151.06 Occupancy
- 151.07 Administration
- 151.08 Investigation
- 151.09 Notices; administrative hearings
- 151.10 Administrative orders
- 151.11 Limitations on orders
- 151.12 Failure to comply with order
- 151.13 Abandonment of intent to repair
- 151.14 Service of complaints and orders
- 151.15 Liens
- 151.16 Salvage
- 151.17 Occupant removal
- 151.18 Nuisance abatement authority

- 151.99 Penalty

§ 151.01 FINDING.

The town finds that there are or may exist non-residential buildings or structures that are injurious to public health, safety, and welfare the standards of maintenance, sanitation, and/or safety as a result of their failure to meet the standards of maintenance, sanitation, and/or safety set forth herein.

(Ord. 2011-05, passed 1-18-11)

§ 151.02 INTENT.

The intent of this chapter is to establish minimum standards of maintenance, sanitation, and safety for all non-residential buildings and structures within the corporate limits of the Town of Swansboro, in order to address conditions that are injurious to public health, safety, and welfare. The provisions of

this chapter shall apply to all existing and future buildings and structures in use for, and/or intended for use for, non-residential purposes.

(Ord. 2011-05, passed 1-18-11)

§ 151.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PARTIES IN INTEREST. All individuals, associations, and/or corporations who have interests of record in a non-residential building or structure and any who are in possession of such building or structure.

PREMISES. A lot, parcel, or tract of land, including the buildings and structures thereon, under control by the same owner or operator, devoted to, or zoned for, non-residential use.

STRUCTURE. Anything constructed or erected which requires location on the ground or attachment to something having a fixed location on the ground, including, but not limited to, principal and accessory buildings, manufactured homes or offices, trailer units, signs, fences, walls, bridges, monuments, flagpoles, antennas, transmission poles, towers, and cables, above and below ground storage tanks, or other manmade facilities or infrastructures.

VACANT INDUSTRIAL WAREHOUSE. Any building or structure that was previously used for the storage of goods or equipment in connection with manufacturing processes, that has not been used for that purpose for at least one year, and that has not been converted to another use.

VACANT MANUFACTURING FACILITY. Any building or structure that was previously used for the lawful production or manufacturing of goods, that has not been used for that purpose for at least one year, and that has not been converted to another use.

(Ord. 2011-05, passed 1-18-11)

§ 151.04 CONFLICTS.

In the event that any provision, standard, or requirement of this chapter is found to be in conflict with any provision of any other ordinance or code of the town, the provision that establishes the higher standard or more stringent requirement for the promotion and protection of public health, safety, and/or welfare shall prevail.

(Ord. 2011-05, passed 1-18-11)

§ 151.05 STANDARDS AND RESPONSIBILITIES.

The parties in interest of non-residential buildings and structures shall have responsibility for, and shall ensure that such buildings and structures under their ownership or control are maintained in compliance with the following minimum standards of maintenance, sanitation, and safety.

(A) The premises shall be kept free of all nuisances and any hazards to the safety of occupants, customers, and other persons utilizing the premises and to pedestrians and/or vehicles passing thereby, including but not limited to the following conditions in or about such building or structure.

(1) Interior walls or vertical studs that list, lean, or buckle to such an extent as to render the building unsafe.

(2) Supporting member(s) that show 20% or more damage or deterioration or non-supporting enclosing or outside walls or coverings that show 25% or more damage or deterioration.

(3) Floors or roofs that have improperly distributed loads, which are overloaded, or which insufficient strength to be reasonably safe for the purpose used.

(4) Damage by fire, wind, or other causes that renders the building unsafe.

(5) Dilapidation, decay, unsanitary conditions, or disrepair that is dangerous to the health, safety, or general welfare of the occupants or other persons within the community.

(6) Inadequate or obstructed facilities for egress in case of fire or panic.

(7) Defects that significantly increase the hazards of fire, accident, or other calamities.

(8) Lack of adequate ventilation, light, heating, or sanitary facilities to an extent that may endanger the health, safety, or welfare of the occupants or other persons in the community.

(9) Lack of proper electrical, heating, or plumbing facilities that create a health or safety hazard.

(10) Violation of the Fire Code or other conditions that constitute a fire hazard in the building or on the premises, such as (by way of example and not limitation) the accumulation of garbage, rubbish, hazardous liquids, or other combustible material.

(11) Garbage, trash, or rubbish in or near the building, structure, or premises that is likely to attract or become a breeding place for rodents, insects, or other vermin.

(B) The premises are free of loose and overhanging or leaning objects that constitute a danger of falling on persons on the premises or in the vicinity thereof.

(C) The premises are free of holes, excavation, breaks, projections, or obstructions within buildings or other structures and on walks, driveways, parking lots, parking areas, and other parts of the premises that are accessible to and used by persons on the premises.

(D) The exterior of the building, structure, and/or premises is in good repair and free from deterioration, so as not to constitute a nuisance.

(E) All surfaces are maintained free of cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or vinyl, other dangerous objects, or similar hazardous conditions.

(F) All floors, interior walls, and ceilings of every building or structure are structurally sound and are maintained in a good condition compatible with the intended use and in a manner that does not constitute a hazard to the public.

(G) There are no structures attached or unattached to the principal structure that are found to be hazardous, in poor repair, or structurally deficient.

(H) There are no objects or elements on or protruding from building walls or roofs or the surrounding premises, such as empty electrical or other conduits, open pipes, unused sign brackets, which constitute potential safety hazards.

(I) All foundation walls are kept structurally sound and capable of bearing loads safely.

(J) Building walls that have become exposed as a result of the demolition of adjacent buildings (a) have all doors, windows, vents, or similar openings secured with material of the same type comprising the wall, (b) have no protrusions or loose material that constitute a hazard, (c) are painted, stuccoed, or bricked so as not to detract from the adjacent property, and (d) are weatherproofed to prevent deterioration of the wall.

(K) All windows are tight fitting, have sashes of proper size and design, do not have rotten wood, broken joints, or broken or loose mullions, and do not have broken or missing glazing.

(L) All windows are maintained free of broken glass, in a manner that insures that at least 80% of the total surface of the glass is free of cracking.

(M) All openings originally designed as windows are maintained as windows, complete with sills, lintels, frame, and glass, unless the fire chief approves enclosure of the window in a manner that appropriately fills the space and is weatherproof.

(N) All exterior surfaces that require painting or dealing to protect the underlying surface from deterioration are kept properly painted or sealed.

(O) All exterior surfaces that have been painted are maintained free of peeling and flaking paint or stucco and entire walls are scraped and repainted or recovered if 30% or more of the aggregate area of any painted or stuccoed wall has peeling or flaking paint or stucco that is worn away.

(P) All doors or other pedestrian or service openings are maintained in good repair, capable of being safely secured, all door frames have appropriately designed and installed doors, and no openings are left open or unsecured after hours in a manner that may constitute an attractive nuisance to persons (adults or children), animals, or vermin.

(Q) All advertising structures and their supporting members are maintained in good condition and do not constitute a nuisance or safety hazard. All signs, active or inactive, and their supporting members are kept in sound repair (or if not, removed). All sign surfaces are maintained in legible condition, free of cracks, rips, holes, or other deterioration that diminishes their function or creates unsightly conditions.

(R) All light poles or other vertical poles or frames and their supporting members are maintained in sound condition, do not constitute a nuisance or safety hazard, and have their exterior surfaces maintained in a properly painted or sealed condition to avoid peeling, flaking, or rust.

(S) All washrooms and water closet compartment floors are surfaced with water-resistant materials, kept in a dry and sanitary condition, and are provided with permanently installed artificial lighting with a switch and wall plate located in a manner that does not create a danger of short circuiting.

(T) Flammable or combustible liquids or substances are not kept in a container and a location in compliance with the codes of the National Fire Protection Association.

(U) Chimneys, flues, and vent attachments are maintained in a structurally sound manner, are durable, are smoke-tight, are capable of withstanding the action of flue gases, and provide sufficient draft.

(V) Exterior porches, landings, balconies, stairs, ramps and fire escapes are provided with properly designed, structurally sound, defect-free and properly maintained banisters or railings. Interior stairs and landings are properly maintained and structurally sound.

(W) Gutters and downspouts are securely installed and appropriately located in a manner that does not create hazards to pedestrians or vehicular traffic.

(X) Parking lots and all curbing, surfacing, sidewalks, and other appurtenances are maintained free of broken or cracked surfaces, holes, or other hazardous conditions; repairs are made with appropriate materials. Curb cuts that are abandoned due to new construction, changes in access, or other causes are closed and replaced with curb and gutter compatible with adjoining curb areas and sidewalks are installed in accordance with municipal design standards.

(Y) Any required landscaping is maintained consistent with the original landscaping plan. Landscaping is kept in good condition, does not obstruct pedestrian walkways, vehicle movement areas, or signs, and does not constitute a vehicle sight distance obstruction, a safety hazard, or a place of potentially dangerous concealment.

(Ord. 2011-05, passed 1-18-11)

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§ 151.06 OCCUPANCY.

The provisions of this chapter apply to non-residential buildings and structures whether they are occupied or vacant. All unoccupied or vacant buildings and structures shall be secured by any party in interest to prevent entry by unauthorized persons and to prevent occurrences of activities not permitted by law.

(Ord. 2011-05, passed 1-18-11)

§ 151.07 ADMINISTRATION.

The Town Manager shall designate one or more employees to serve as the enforcement officer(s) for the administration of these requirements and standards. The enforcement officer is authorized to exercise any powers necessary or convenient to carry out and implement the purpose and provisions of this chapter, including the following powers:

(A) To investigate non-residential buildings and structures in the town to determine whether they have been properly maintained in compliance with the minimum standards, so that the safety or health of the occupants and/or members of the general public are not jeopardized;

(B) To administer oaths and affirmations, examine witnesses, and receive evidence;

(C) To enter upon premises with the permission of the owner or other authorized person or under an administrative search warrant for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession; and

(D) To delegate and assign to subordinates or agents those duties and responsibilities necessary to carry out the purposes of ordinances adopted by the board of commissioners.

(Ord. 2011-05, passed 1-18-11)

§ 151.08 INVESTIGATION.

Whenever it appears to a designated enforcement officer that a non-residential building or structure has not been maintained in accordance with the standards of this chapter, or when a designated enforcement officer receives a complaint of same, the officer shall undertake a preliminary investigation. If entry upon the premises is necessary, the officer may obtain the permission of the owner or other authorized person or may obtain an administrative search warrant under the provisions of G.S. § 27.2.

(Ord. 2011-05, passed 1-18-11)

§ 151.09 NOTICES; ADMINISTRATIVE HEARINGS.

If the preliminary investigation discloses evidence of a violation of the required standards, the enforcement officer shall issue and cause to be served a complaint to the owner of, and any known parties in interest in, the building or structure, setting forth the charges of violations and containing notice that an administrative hearing will be held before the enforcement officer (or his or her agent) at a specific place within a period ten to 30 days following the serving of the complaint. The owner and/or parties in interest shall be given the opportunity to appear in person or otherwise at the time and place of the hearing and to give testimony regarding the matters in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in such administrative hearings.

(Ord. 2011-05, passed 1-18-11)

§ 151.10 ADMINISTRATIVE ORDERS.

If, following the investigation, notice, and hearing, the enforcement officer determines that the non-residential building or structure has not been maintained in accordance with the minimum standards of maintenance, sanitation, and safety set forth in this chapter, the enforcement officer shall make written findings of fact in support of the determination and shall issue and cause to be served on the owner of the property an order requiring the owner to take remedial action within a reasonable, specified time period.

(Ord. 2011-05, passed 1-18-11)

§ 151.11 LIMITATIONS ON ORDERS.

Orders to take remedial action are subject to the following limitations [G.S. § 160A-439(e)].

(A) Orders may require the owner to repair, alter, or improve the building or structure in order to bring it into compliance with the minimum standards of this chapter or to vacate and close the building or structure for any use.

(B) Orders may require the owner to remove or demolish the building or structure if the cost of repair, alteration, or improvement would exceed 50% of its then current value. If the building or structure is designated as a local historic landmark, is listed in the National Register of Historic Places, or located in a designated historic district and the board of commissioners determines, after a public hearing, that the building or structure is of individual significance or contributes to the character of the district, and the building or structure has not been condemned as unsafe, the order may require that the building or structure be vacated and closed until it is brought into compliance with the minimum standards.

(C) Orders may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order may require the building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

(Ord. 2011-05, passed 1-18-11)

§ 151.12 FAILURE TO COMPLY WITH ORDER.

If the owner fails to comply with the order of the enforcement officer, the following procedures shall apply [G.S. § 160A-439(f)].

(A) *Orders to repair, alter, improve, vacate, or close.* If an owner fails to comply with an order to repair, alter, or improve or to vacate or close the non-residential building or structure, the Board of Commissioners may adopt an ordinance ordering the enforcement officer to implement the purpose of this chapter with respect to the property. The property shall be described in the ordinance, which shall be recorded in the Office of the Register of Deeds and indexed to the name of the property owner(s) in the grantor index. Following adoption of the ordinance, the enforcement officer may cause the building or structure to be repaired, altered, or improved or to be vacated or closed. The enforcement officer may post on the main entrance of the building or structure that is closed a placard advising that "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful".

(B) *Orders to remove or demolish.* If an owner fails to comply with an order to remove or demolish the building or structure, the board of commissioners may adopt an ordinance ordering the enforcement officer to implement the purpose of this chapter with respect to the building or structure. No ordinance shall be adopted to require demolition of a building or structure until the owner has been given a reasonable opportunity to bring it into conformity with the minimum standards. The property shall be described in the ordinance, which shall be recorded in the office of the register of deeds and

indexed in the name of the property owner(s) in the grantor index. Following adoption of the ordinance, the enforcement officer may cause the building or structure to be removed or demolished.

(Ord. 2011-05, passed 1-18-11)

§ 151.13 ABANDONMENT OF INTENT TO REPAIR.

If the Board of Commissioners or the enforcement officer has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to such ordinance or order, the Board of Commissioners may find that that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in a vacated and closed status would be inimical to the health, safety, and welfare of the town, in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children or vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the Board of Commissioners may enact an ordinance and serve such ordinance on the owner. If the cost to repair the building or structure to bring it into compliance with minimum standards is 50% or less of its then-current value, the ordinance shall require the owner to either repair or demolish and remove the building or structure within 90 days. If the cost to repair the building or structure to bring it into compliance with minimum standards exceeds 50% of its then-current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days. Vacant manufacturing facilities or vacant industrial warehouses must have been vacated and closed pursuant to an order of ordinance for five years before the Board of Commissioners may take action under this section. The ordinance shall be recorded in the office of the register of deeds, indexed in the name of the property owner in the grantor index. If the owner fails to comply with the ordinance, the enforcement officer shall implement the purpose of the ordinance.

(Ord. 2011-05, passed 1-18-11)

§ 151.14 SERVICE OF COMPLAINTS AND ORDERS.

Complaints or orders issued by the enforcement officer pursuant to an ordinance adopted under this chapter shall be served upon persons either personally or by registered or certified mail, as long as the means are reasonably designed to achieve actual notice. Copies may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is refused, but the regular mail is not returned by the post office within ten days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the affected premises. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the enforcement officer in the exercise of due diligence, and the enforcement officer makes an affidavit to that effect, serving of the complaint or order may be made by publication, at least once no later than the time that personal service would be required, in a newspaper having general circulation in the town. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the affected premises.

(Ord. 2011-05, passed 1-18-11)

§ 151.15 LIENS.

The cost of repairs, alterations, or improvements, or of vacating and closing, or of removal or demolition by the enforcement officer under the provisions of this chapter shall be a lien against the real property upon which the cost was incurred. The lien shall have the same priority and shall be collected as a lien for special assessment under G.S. Ch. 160A, Art. 10. The costs shall also be a lien on any other real property of the owner located within the town except for the owner's primary residence; this additional lien is inferior to prior liens and shall be collected as a money judgment.

(Ord. 2011-05, passed 1-18-11)

§ 151.16 SALVAGE.

If a non-residential building is removed or demolished by the enforcement officer, he or she shall offer for sale any recoverable building materials and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the net proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited in the superior court, secured in a manner directed by the court, and disbursed by the court to the persons found to be entitled thereto.

(Ord. 2011-05, passed 1-18-11)

§ 151.17 OCCUPANT REMOVAL.

If any occupant fails to comply with an order to vacate a non-residential building or structure, the enforcement officer may file, with the approval of the Board of Commissioners, a civil action in the name of the town to remove the occupant. Such proceedings shall be carried out in accordance with the requirements of G.S. § 160A-439(j).

(Ord. 2011-05, passed 1-18-11)

§ 151.18 NUISANCE ABATEMENT AUTHORITY.

Nothing in this chapter shall be construed to impair or limit the power of the Board of Commissioners to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(Ord. 2011-05, passed 1-18-11)

§ 151.99 PENALTY.

In addition to other remedies provided in this chapter, any violation of this chapter may subject the offender to a civil penalty in the amount of \$50 for each day the violation(s) continue to exist.

(Ord. 2011-05, passed 1-18-11)

TOWN OF SMITHFIELD
North Carolina

ORDINANCE # 501

**AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD CODE OF ORDINANCES
CHAPTER 5- BUILDINGS AND BUILDING REGULATIONS**

WHEREAS, Chapter 5 of the Town of Smithfield's Code of Ordinances outlines the regulations concerning buildings and building regulations within the Town; and

WHEREAS, the Planning Director Stephen Wensman, is requesting the Ordinance be amended to add Article V. Commercial Building Maintenance and Appearance Regulations.

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Smithfield that Chapter 5 Building and Building Regulations; Article V. Commercial Building Maintenance and Appearance Regulations:

**ARTICLE V. Commercial Building Maintenance and Appearance
Regulations**

Sec. 5-171. Intent and Scope.

Appearance and good repair regulations for commercial buildings in the Commercial Zoning Districts of the Town of Smithfield (defined as zoning Districts, B-1, B-1 CUD, B-2, B-2 CUD, B-3, B-3 CUD, O/I, O/I CUD, L1 and L2 hereinafter referenced jointly as the "Commercial Zoning Districts") will preserve the character and integrity of the commercial business districts of the Town. It will provide corollary benefits such as protection of property values, promotion of tourism, preservation of the character and integrity of the downtown, and contribute to the comfort, happiness, and emotional stability of downtown residents and the greater Smithfield community. It is the further purpose of this Code to minimize discordant, unsightly and offensive surroundings while preserving beauty as well as the usefulness of the environment.

Sec. 5-172. Scope and applicability.

The provisions of these Commercial Building Maintenance and Appearance Regulations shall apply to the exterior of all premises and improvements thereupon within the Commercial Zoning Districts and adjacent to a public street or parking area including but not limited to improvements, structures, parking areas, or buildings, or any lot upon which there were formerly located such improvements, structures, parking areas or buildings. It shall further apply to any lot that had in the past had located upon it a commercial structure or parking area. Exterior walls adjacent to alleys are exempt from these regulations. These regulations establish minimum standards, and do not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building, equipment or facilities contained therein, except as provided herein.

It is also the purpose and intent of the Smithfield Town Council, through the adoption of this Article, to establish a vacant property registration as a mechanism to preserve and to protect the Town's commercial districts from becoming blighted through the lack of adequate maintenance and security for abandoned and vacant properties. Additionally, the Town desires to deter crime and theft of materials, to minimize loss of property value to vacant properties and surrounding occupied properties, to reduce the risk of damage from fire, flooding or other hazards, and to promote the comfort, happiness and emotional stability of area residents. The Town finds that the presence of properties exhibiting evidence of vacancy pose special risks to the health, safety, and welfare of the community, hurt the appearance and fair market value of commercial areas, and therefore require heightened regulatory attention. The provisions of this Article shall apply to all properties in the Commercial Zoning Districts of the Town of Smithfield.

Sec. 5-173. Conflicting Provisions.

In any case where the provisions of this Code impose a standard other than that set forth in any other ordinance of the Town or under the laws of the State of North Carolina, then the more restrictive standard shall prevail.

Sec. 5-174. Definitions.

For the purposes of this Article, certain words and phrases used in this Article are defined as follows:

"Citations". Written notices from an agent of the town as to an enforcement action or penalty.

"Cleared Lots" means lots whereupon there were in the past located improvements, structures, parking areas or buildings but the same have been removed for whatever reason and there are now no improvements on the lot.

"Commercial" means not just commercial but all commercial, business, institutional, industrial, warehouse or storage uses.

"Days" means consecutive calendar days.

"Evidence of Vacancy" means any aesthetic condition that on its own or combined with other conditions present would lead a reasonable person to believe that the Property is vacant. Such conditions include, but are not limited to, overgrown or dead vegetation, extensively chipped or peeling exterior paint, exterior walls in poor condition, porches and steps in poor condition, roof in poor condition, broken windows and other signs of general disrepair, accumulation of newspapers, circulars, flyers or mail, past due utility notices or disconnected utilities, accumulation of trash, junk or debris, the absence of window coverings such as curtains, blinds, or shutters, the absence of furnishings or personal items consistent with commercial habitation, statements by neighbors, passersby, delivery agents, government employees that the Property is vacant.

"Government Agency" means any public body having authority over the Property and residents of the Town, including but not limited to the Town of Smithfield, Johnston County, Smithfield Police Department, Smithfield Fire Department, and Johnston County Sheriff's Office.

"Government Official" means any public official representing a public body which has authority over the Property and residents of the Town, including but not limited to the Town Manager, County Building Inspector, Town Police Chief, County Fire Marshall, and Mayor. In some capacities agents of other governmental entities act for the Town under interlocal agreement and as such have authority to enforce the provisions of the Article in accord with town policy. For example, the Town does not have a building inspection office and the County performs those functions under an interlocal agreement.

"Local" means located within forty (40) road or driving miles distance of the subject Property.

"Non-residential Property" means any real property used or intended to be used for anything other than residential property as defined herein.

"Out of Area" means located in excess of forty (40) road or driving miles distance away from the subject Property.

"Owner" means any person, partnership, association, corporation or fiduciary having a legal or equitable title or any interest in any real property. No trustee in any Deed of Trust shall be considered an owner.

"Owner of Record" is the person or entity listed on recorded deed, probated will or heir by intestacy.

"Property" means any unimproved or improved real property or portion thereof, situated in the Commercial Zoning Districts of the Town and includes the buildings or structures located on the Property regardless of condition.

"Residential Property" means a building, or portion thereof, designed exclusively for residential occupancy, including one-family, two-family, multiple dwellings, mobile homes, house trailers, counseling and lodging houses, apartment houses, and apartment hotels.

"Town" means the Town of Smithfield corporate limits.

"Utilities" means water, sewer, telephone, natural and propane gas, and electric town services.

"Vacant" means a Property that has not been legally occupied for ninety (90) days. Legally occupied means occupancy by the owner or any business or individual whose presence therein is with the consent of the owner. A Property that has utilities that are not operational is Vacant as herein defined or any other Evidence of Vacancy as defined herein above.

Sect. 5-175. Registration.

- (a) Any vacant commercial property located within the Town's Commercial Zoning Districts must be registered by the Owner with the Town Manager, either (1) of the Owner of a Vacant Property's own accord before receiving a Notice of Registration Requirement, or (2) within 90 days of receiving a Notice of Registration Requirement from the Town.
- (b) The Town will send a Notice of Registration Requirement to the Owner of Record of Properties that exhibit Evidence of Vacancy. The Owner shall register Property within the time period set forth in Section (a) of this Section unless the Owner can provide clear and convincing evidence to the Town Manager, within such time period, that the Property is not Vacant.
- (c) The Registration shall contain:
 - (i) the name of the Owner (corporation or individual),
 - (ii) the direct street/office mailing address of the Owner and P.O. Box if applicable,
 - (iii) a direct contact name and phone number
 - (iv) the name, address and telephone number of any local property management company hired by the Owner to meet the maintenance requirements of this Article if Owner's principal residence is not local.
- (d) Any changes in the information in (b)(i) - (b)(iv) of this Section shall be reported to the Town within ninety (90) days of such changes.
- (e) Registration must be renewed annually.
- (f) Vacant properties shall remain subject to the annual registration, maintenance, and security requirements of this Article as long as they remain Vacant.
- (g) Once the Property is no longer Vacant or is sold, the owner must provide written proof of occupancy or sale to the Town Manager.
- (h) A Cleared Lot does not have to be registered.

Sec. 5-176. Maintenance Requirements.

Properties subject to this Article shall be kept in compliance with the following maintenance requirements:

- (a) The exteriors of building(s)/structure(s) on the Property shall be painted and maintained in a way that does not exhibit any Evidence of Vacancy.
- (b) The yard(s) of the Property shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (c) The deck(s) and porch(s) located on the Property shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (d) The window(s) and door(s) of building(s)/structure(s) of the property shall be intact and operable and shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (e) Instances of visible rotting of building(s)/structure(s) located on the Property or portion thereof shall be corrected in order to eliminate Evidence of Vacancy, with the exterior painted and kept in good aesthetic condition.
- (f) The Property shall be maintained so as to exhibit no Evidence of Vacancy.
- (g) The storefronts and facades of buildings shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (h) The interiors, when visible to passersby through storefront windows, shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (i) Cleared Lots will be maintained with the grass cut, shrubs trimmed, and any landscaping neatly maintained.

Sec. 5-177. Security Requirements.

Vacant properties subject to this Article shall comply with the following security requirements:

- (a) The Property shall be maintained in a secure manner so as not to be accessible to unauthorized persons. This includes, without limitation, the closure and locking of windows, doors (including but not limited to walk-through, sliding, and garage), gates, pet doors, and any other such opening of such size that it may allow a child to access the interior of the Property or structure(s).
- (b) Broken windows shall be replaced and/or re-glazed; windows at the basement (the floor for that level being below or partially below ground level), street level and the second story level shall not be boarded up.

Sec. 5-178. Requirement to Hire Local Property Management Company for Out of Area Owners.

- (a) If the Property Owner's principal residence is not local, then a locally present property management company, business, or resident shall be contracted to fulfill the maintenance and security requirements of this Article, set forth in Sections 5 and 6, and any other applicable laws for all Properties that are registered hereunder or subject to registration.
- (b) The Property shall be posted with the name and 24-hour contact phone number of the local property management company. The posting shall be 18 inches by 24 inches and shall be of a font that is legible from a distance of 45 feet and shall contain along with the name and 24-hour contact number the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL." The posting shall be placed in the interior of a window facing the street to the front of the Property so it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the Property so it is visible from the street or, if no such area exists, on a stake of sufficient size to support the posting in a location that is visible from the street to the front of the Property but not readily accessible to vandals. The exterior posting must be constructed of and printed with weather resistant materials.
- (c) The requirement set forth in part (a) of this section may be waived by the Town Manager for owners who (1) reliably demonstrate an ability to maintain the property and (2) have not received any citations for maintenance violations in the previous quarter.

Sec. 5-179. Inspections.

The Town shall have the authority and the duty to inspect properties subject to this Article for compliance and to issue citations for any violations. The Town shall have the discretion to determine when and how such inspections are to be made, provided that their policies are reasonably calculated to ensure that this Article is enforced. The County Building Inspection Department or other entities acting for the Town may perform these inspections under Sec. 5-180 or enforcements under Sec. 5-181 under an interlocal agreement.

Sec. 5 -180. Enforcement; Violations; and Penalties.

- (a) It shall be unlawful for any Owner to be in violation of any of the provisions of this Article.
- (b) Any person who violates a provision of this Article or fails to comply with any order made thereunder and from which no appeal has been taken, or who shall fail to comply with such order as affirmed or modified by appeal, or by a court of competent jurisdiction, within the time fixed herein, shall severally, for each and every such violation and noncompliance respectively, be guilty of a misdemeanor, punishable as provided in this Article.
- (c) The imposition of one penalty for any violation shall not excuse the violation, or authorize its continuance.
- (d) All such persons shall be required to submit an acceptable plan of action to the Town Manager within 10 business days of notification. This plan of action must include, but is not limited to, a description of the work to be done, by whom and a specific schedule. Plans shall be reviewed by the Town Manager and work is to commence within 15 days of Manager's approval. When not otherwise specified, failure to meet any stated condition within 10 days of required action shall constitute a separate offense.
- (e) Penalties for failure to comply:
 - 1) Initial Registration. Failure to initially register with the Town within the time frame required is punishable by a civil penalty of \$50.
 - 2) Changes to Registration. Failure to report changes to registration information within time frame required is punishable by a civil penalty of \$50.
 - 3) Annual Registration. Failure to register annually is punishable by a civil penalty of \$50.
 - 4) Maintenance and Security Requirements. Failure to meet the maintenance and security requirements is punishable by a civil penalty per day of \$50 per day or up to the maximum allowed by Section 1-12 in the discretion of the Town.
 - 5) Failure to submit plan. Failure to submit plan of corrective action is a violation punishable by a civil penalty of \$50 per day or up to the maximum allowed by Section 1-12 in the discretion of the Town.
 - 6) Failure to implement plan. Failure to implement the plan within 15 days of approval or complete it in a timely manner is a violation punishable by a civil penalty of \$50 per day or up to the maximum allowed by Section 1-12 in the discretion of the Town.
 - 7) Concurrent Penalties. Civil Penalties for the violations enumerated above are separate so that an Owner could be subject to concurrent civil penalties under more than one of these subparagraphs. For instance, a person could be subject to civil penalties for failure to implement a plan, or failure to meet the maintenance and security requirements or other subparagraphs simultaneously.

Sec. 5-181. Appeals.

Any person aggrieved by any of the requirements of this Article may present an appeal in writing to the Town Manager and then, if not satisfied, to the Town Board of Adjustment.

Sec. 5-182. Severability.

Should any provision, section, paragraph, sentence or word of this Article be determined or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Article shall remain in full force and effect.

Sec. 5-183. Preemption.

Except as specifically preempted by N.C.G.S. § 160A-441, et. seq. 160A-439 or town ordinances promulgated pursuant to N.C.G.S. § 160A-439, et. seq., or G.S. 160A-174, this Article shall apply to all Vacant Properties in the Commercial Zoning Districts in the Town of Smithfield.

Adopted by motion made by Councilman Barbour, seconded by Councilman Wood, and approved on a vote of 6 in favor and 0 against. The is the 4th day of February, 2020

This Ordinance becomes effective June 1, 2020.

ATTEST



Shannan L. Parrish, Town Clerk




M. Andy Moore, Mayor

APPROVED AS TO FORM:



Robert Spence, Jr., Town Attorney

Section __-__: Non-Residential Maintenance Standards

(A) Purpose

The purpose of this section is to promote public health and safety of nonresidential buildings and to assure a minimum level of acceptable structural integrity and appearance of such buildings.

(B) Maintenance Standards for Commercial Structures

It should be unlawful for any firm, person or corporation to own a building or a structure situated in the jurisdiction of the Town of Shallotte which is in such a defective or hazardous condition that it is unsafe and especially dangerous to life. The Town of Shallotte Board of Aldermen has determined that unsafe and especially dangerous buildings and structures are detrimental to the health, safety and welfare of the citizens of Shallotte, that such unsafe and especially dangerous buildings and structures shall be condemned, and that the owners of such unsafe and especially dangerous buildings and structures shall immediately remedy the unsafe, hazardous or unlawful conditions or demolish such buildings or structures. A building or structure shall be found to be especially dangerous to life and held unsafe by the Inspector if the Inspector finds that any one (1) of the following conditions exists in such building or structure:

- (1) Interior walls or vertical studs which seriously list, lean or buckle to an extent as to render the building unsafe.
- (2) Supporting member or members which show thirty-three (33) percent or more damage or deterioration, or non-supporting members or enclosing or outside walls that shows fifty (50) percent or more damage or deterioration;
- (3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to reasonably be safe for the purpose used;
- (4) Such damage by fire, wind or other causes as to render the building unsafe;
- (5) Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the town;
- (6) Inadequate facilities for egress to such an extent that there does not exist at a minimum, sufficient operable doors that the building can be entered safely and exited in the same manner in case of fire or panic;
- (7) Defects significantly increasing the hazards of fire, accident or other calamities;

- (8) Lack of adequate ventilation, light, heating or sanitary facilities to such an extent as to endanger the health, safety or general welfare of the occupants or other residents of the town;
- (9) Lack of proper electrical, heating or plumbing facilities required by this article which constitutes a health or a definite safety hazard. If the electrical, heating or plumbing facilities are in such a condition that the service to those facilities needs to be discontinued to protect the general public, then the County Building Inspector shall be authorized to notify the appropriate official to disconnect service and that the service shall not be reconnected until the building has been re-inspected and cleared of all violations. Permits may be required from the county building inspections department. Temporary service connections may be permitted to allow for construction and/or cleaning;
- (10) For any building whose occupancy classification requires it, lack of connection to a potable water supply and/or to the public sanitary sewer or other approved sewage disposal system. For the purposes of this standard, a building is not connected to a potable water supply if the water supply has been "cut off" because of nonpayment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.
- (11) Any violation of the State Fire Prevention Code which constitutes a condition which is unsafe and especially dangerous to life.
- (12) Any abandoned nonresidential building which is found to be a health or safety hazard by the Inspector as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities.

In addition to conditions (1) through (12) enumerated above, any one of which renders a building or structure unsafe, the Inspector shall determine that a nonresidential building or structure is unsafe if he finds that a building or structure fails to fully comply with any five (5) or more of the following enumerated standards of building and premises fitness. Full compliance with a standard means that if any part of the stated standard is not complied with by a particular building and premises, then that building and premises has failed to fully comply with the enumerated standard.

General:

- (1) Buildings and premises shall be kept clear of accumulations of garbage, trash, or rubbish which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary way.

Commented [S1]: Kannapolis does not have all of this. Do you want to keep this part or just have the first sentence of #9?

Commented [MG2R1]: Take this out.

- (2) Flammable, combustible, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the State Fire Prevention Code.
- (3) Buildings and premises shall be kept free of loose and insufficiently anchored overhanging objects which constitute a danger of falling on persons or property.
- (4) The premises shall be kept free of insufficiently protected holes, excavations, breaks, projections, obstructions and other such dangerous impediments on and around fences, walls, walks, driveways, parking lots and other areas which are accessible to and generally used by persons on the premises.
- (5) Buildings and premises surfaces shall be kept clear of cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other dangerous objects or similar hazardous conditions. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration.
- (6) Buildings and premises shall be kept free of objects and elements protruding from building walls, roof or premises which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects.

Appurtenances:

- (7) All chimneys, flues and vent attachments thereto shall be maintained structurally sound. Chimneys, flues, gas vents, or other draft-producing equipment which are in use shall provide sufficient draft to develop the rated output of the connected equipment, shall be structurally safe, durable, smoke-tight and capable of withstanding the action of flue gases.
- (8) All exterior porches, landings, balconies, stairs and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept structurally sound, in good repair, and free of defects.
- (9) All cornices shall be made structurally sound. Rotten or weakened portions shall be removed and/or replaced. All exposed wood shall be treated or painted.
- (10) Gutters and down spouts shall be replaced or repaired as necessary and shall be appropriately located and securely installed so as not to cause a hazard to pedestrians, vehicular traffic, or property.

- (11) Attached and unattached accessory structures shall be maintained in a state of good repair.
- (12) Advertising sign structures, attached or freestanding, awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a nuisance or safety hazard.

Structural:

- (13) Walls, partitions, supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, shall not be rotted, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.
- (14) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.
- (15) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.
- (16) Interior steps, railings, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fall or collapse.
- (17) Where a wall of a building has become exposed as a result of demolition of an adjacent building said wall must have all doors, windows, vents, or other similar openings closed with material of the type comprising the wall unless such doors, windows, vents or other similar openings are to be maintained in accordance with the provisions of this article. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of adjacent property and weatherproofed if necessary to prevent deterioration of the wall.

Plumbing, electrical and supplied facilities:

- (18) All plumbing fixtures and pipes shall meet the standards of the State Plumbing Code and shall be maintained in a state of good repair and in good working order.
- (19) All electrical fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the State Electric Code.
- (20) Every supplied facility, piece of equipment or utility which is required under this article or the State Building Code for occupancy or use shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

Egress:

- (21) Facilities for egress in case of fire or panic shall be adequate and shall remain clear for such purposes.
- (22) All windows must be tight-fitting and have sashes of proper size and design and free from rotten wood, broken joints, or broken or loose mullions.
- (23) All windows shall be maintained free of broken glass that could be dangerous to the public, invitees or third parties ordinarily expected to use the premises, from falling or shattering.
- (24) All openings originally designed as windows shall be maintained as windows, unless specifically approved by the Inspector for enclosure.

Drainage:

- (25) All yards and premises shall be properly graded and maintained so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.

(C) Investigation

Whenever it appears to the Planning Director that a nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by Section 8.3(G), the Planning Director shall undertake a preliminary investigation and then immediately notify the County Building Inspector. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

Commented [MG3]: We might want to highlight this as I think Code Enforcement would bring to PD and then proceed. Others thoughts?

(D) Complaint and Hearing

- (1) If the preliminary investigation discloses evidence that a building is in violation of the minimum standards, the Planning Director shall issue and cause to be served upon the owner of such building a complaint stating the charges and containing a notice that a hearing will be held before the Town Manager at a place and time therein fixed, not less than ten (10) nor more than thirty (30) days after the serving of said complaint. The owner shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Town Manager. Following the hearing, the Town Manager shall dismiss the complaint if he finds no

violation; if he finds that violations of this article exist, he shall order compliance setting forth a maximum of up to 180 days within which to correct the violations. Such order shall contain an outline of remedial action which, if taken, will effect compliance with the provisions of this article.

- (2) If the Planning Director, with assistance from the County Building Inspector, determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of this article can be made at a cost of less than fifty (50) percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof, an order directing and requiring the owner to repair, alter and improve such building to comply with the standards contained herein.
- (3) If the Planning Director, with assistance from the County Building Inspector, determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of the article cannot be made at a cost of more than fifty (50) percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such building to comply with the standards contained herein or to demolish the building.

(E) Service of Complaints and Orders

- (1) Complaints and all orders issued by the Planning Director, or his/her designee, shall be served by the Planning Director, or his/her designee, upon persons either personally or by registered or certified mail. When service of a complaint or order is accomplished personally or by registered or certified mail, such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (2) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the Planning Director in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail and the Planning Director makes an affidavit to that effect, then the serving of such complaint or order upon the owners or other persons may be made by publication in a newspaper of general circulation in the town at least once

no later than the time at which personal service would be required under the provisions of this article. When service is made by publication, a copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order; in the case of the complaint, it must be posted at least ten (10) days prior to the hearing.

(F) Failure to Comply With Orders

- (1) If the owner fails to comply with an order to repair the building or structure, the Planning Director may, with the assistance of the County Building Inspector:

(a) Cause such structure to be repaired, and pending such repairs, may order the building to be vacated and closed;

(b) Cause to be posted on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Shallotte."

Commented [S4]: Check with CBI

- (2) If the owner fails to comply with an order to remove or demolish the building, the County Building Inspector may give direction to the Town:

(a) Cause such structure to be removed or demolished;

(b) Cause to be posted, pending demolition, on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Shallotte."

- (3) The duties of the Planning Director set forth in subsections (a) and (b) shall not be exercised until:

- (a) The Town Attorney shall institute in the general court of justice an appropriate action to seek an order of the court directing such owner to comply with the order of the Planning Director; or
- (b) The Planning Director shall request the Council to order him, by an ordinance specifically describing the subject property, to do either of the following:
 - (i) To cause such building to be repaired, altered and improved to comply with the standards established by this article; or
 - (ii) To cause such building to be vacated, closed, and removed or demolished. The council, in ordering one of the aforesaid alternatives, shall order the specific action that will best effectuate the purposes of this article. Once the ordinance is adopted by the council a true copy of such ordinance shall be recorded in the office of the register of deeds of the county and the registrar shall index the name of the property owner in the "grantor index."
- (4) The amount of the cost of repairs, alterations and improvements, or vacating, closing and removal or demolition shall be a lien against the real property upon which the cost was incurred. Such lien shall be filed, have the same priority and be collected as the lien for special assessment provided in Article 10, Chapter 160A of the North Carolina General Statutes. If the unsafe building is removed or demolished by the Planning Director, he shall, if possible, sell in any commercially reasonable manner the materials of the unsafe building and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited by the Planning Director with the clerk of superior court for subsequent disbursement by the court to the persons found by the court to be entitled thereto.
- (5) Nothing in this section shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.
- (6) Nothing in this section shall be construed to impair or limit in any way the power of the County Building Inspector in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.

Commented [S5]: Check this.

(G) Appeals

- (1) The process for appeals shall follow those set forth in Article 5 of the Town of Shallotte's Unified Development Ordinance (UDO).

- (2) The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Planning Director, but the concurring vote of 4/5 of the members of the board shall be necessary to reverse or modify any decision or order of the Planning Director. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (3) If the board determines that the building is a building of historical value, the board may enter an order holding the matter in abeyance provided that the owner repairs the building on a timely basis. Such repairs shall commence within six (6) months of the board's order and shall be completed within two (2) years of said date. All such repairs shall be completed in such a way as to maintain the historic character of the building and shall comply with the United States Secretary of Interior standards for the treatment of historic rehabilitation. If the repairs are not commenced and completed within the time periods set out in the order, the Planning Director shall proceed to enforce his original order.
- (4) Every decision of the board shall be subject to review by the county superior court by proceedings in the nature of certiorari instituted within fifteen (15) days of the decision of the board, but not otherwise.
- (5) Any person aggrieved by an order issued by the Planning Director or a decision rendered by the board shall have the right, within thirty (30) days after the issuance of the order or rendering of a decision, to petition the superior court for a temporary injunction, restraining the Planning Director pending a final disposition of the cause.

(H) Violations and Penalties

- (1) It shall be unlawful for the owner of any building to fail, neglect, or refuse to repair, alter, and improve the same; or to fail to vacate, close, and remove or demolish the same, upon order of the Planning Director duly made and served as herein provided, within the time specified in such order, and each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any building with respect to which an order has been issued pursuant to this article to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration and improvement or its vacation, closing and removal or

demolition, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

- (2) Any owner of a building who fails to comply with any order described in subsection (a), or who allows occupancy of the building subject to such order after the compliance period in the order has expired, shall be subject to a civil penalty of \$500.00 for each day that noncompliance continues following the expiration of the compliance period specified in the order of compliance. If a person fails to pay the civil penalty within ten (10) days of receipt of the citation, the town may seek to collect it in a civil action in the nature of a debt.
- (3) Each day that a violation continues after notification that such violation exists shall constitute a separate and distinct offense for purposes of the penalties and remedies set forth in this section.
- (4) This article may be enforced by any appropriate equitable action.
- (5) This article may be enforced by any one, all, or any combination of the remedies authorized in this section.

(I) Condemnation of Buildings or Structures, Generally

The County Building Inspector shall declare unsafe any building which appears to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes. In such event, the County Building Inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

(J) Condemnation of Nonresidential Buildings or Structures

The County Building Inspector, as necessary, may declare a nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

- (1) It appears to be vacant or abandoned.
- (2) It appears to be in such a dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

If the County Building Inspector declares a nonresidential building or structure to be unsafe, the County Building Inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this subsection, the term "community development target area" means an area that has characteristics of a development zone under G.S. § 105-129.3A, a "nonresidential development area" under G.S. § 160A-503(10), or an area with similar characteristics

designated by Town Board as being in special need of revitalization for the benefit and welfare of its citizens.

(K) Action in Event of Failure to Take Corrective Action

If the owner of a building or structure that has been condemned as unsafe pursuant to this article shall fail to take prompt corrective action, the Planning Director shall give him written notice, by certified or registered mail to his last known address or by personal service, of the following:

- (1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
 - (a) Constitutes a fire or safety hazard;
 - (b) Is dangerous to life, health, or other property;
 - (c) Is likely to cause or contribute to blight, disease, vagrancy, or danger to children;
 - (d) Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.
- (2) That a hearing will be held before the Town Manager at a designated place and time, not later than ten (10) 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 Planning Director may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure at least ten (10) days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the town at least once not later than one (1) week prior to the hearing.

(L) Equitable Enforcement

- (1) In the case of a nonresidential building or structure declared unsafe under this article, the town may, in lieu of seeking civil enforcement under G.S. § 160A-432(a), cause the building or structure to be removed or demolished. The amounts incurred by the town in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of Chapter 160A, G.S. If the building or structure is removed or demolished by the town, the town shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or

attached to the building. The town shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the Clerk of Superior Court of Brunswick County and shall be disbursed by the court to the person found to be entitled thereto.

- (2) Nothing in this section shall be construed to impair or limit the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(M) Appeals

If, upon a hearing held pursuant to the notice prescribed in Section 8.3(C), the Planning Director finds that the building or structure meets one or more of the conditions specified in Section 8.3(C)(1), he shall render an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than (sixty) 60 days, as the Planning Director may prescribe. Provided, however, nothing herein shall preclude the County Building Inspector from requiring that corrective action be taken in a lesser period of time upon finding that there is imminent danger to life or other property.

(N) Applicability and Compliance

- (1) Every commercial building or structure and the premises on which it is situated, used or intended to be used for commercial business occupancy shall comply with the provisions of this ordinance, whether or not such building shall have been constructed, altered, or repaired before or after the enactment of this article, and irrespective of any permits or licenses which shall have been issued for the occupancy of the building or for the installment or repair of equipment or facilities prior to the effective date of this article. This article establishes minimum standards for the initial and continual occupancy and use of all such buildings, and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building, equipment or facilities contained therein except as provided herein. Where there is mixed occupancy, any commercial business use therein shall be regulated by and subject to the provisions of this article.
- (2) It shall be the duty of each and every owner, operator or other party in interest of a commercial building or premises to which this article is applicable to comply with the regulations and requirements set forth herein. No license, permit or certificate of occupancy shall be issued unless and until all applicable sections of this article have been complied with. No land or building or combination thereof, shall be used in a manner inconsistent with or in conflict with the requirements of this article.

- (3) The provisions of this Code that apply to the exterior or exterior components of a building shall be complied with whether the structure or building is occupied or vacant. All unoccupied or vacant structures or buildings shall be secured to prevent the entry of unauthorized persons or the occurrence of conditions not permitted by law in accordance with the standards set out herein.

**ORDINANCE TO AMEND TOWN OF GIBSONVILLE CODE OF ORDINANCES
TITLE XV: LAND USE, CHAPTER 150. BUILDING REGULATIONS BY ADDING
SECTION 150.130 NONRESIDENTIAL BUILDINGS**

Section 150.130 NONRESIDENTIAL BUILDINGS

(A) Authority

As authorized by G.S. 160A-439, the provisions of this chapter shall apply to all non-residential buildings and structures within the town limits as now or hereinafter fixed.

(B) Purpose and Definitions

The purpose of this chapter is to arrest, remedy, and prevent the decay and deterioration of nonresidential buildings and structures for the protection of life, health, welfare, safety and property of the general public and the owners and occupants of non-residential buildings and structures within the Town of Gibsonville.

Basic Structural Elements: the parts of a building which provide the principal strength, stability, integrity, shape and safety of the building, including, but not limited to, plates, studs, joists, rafters, stringers, stairs, sub-flooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry and all other essential components.

Building: Any structure, place, or any other construction built for the shelter or enclosure of persons, animals, chattels or property of any kind or any part of such structure, shelter or property.

Code Enforcement Officer: A code enforcement officer of the Town of Gibsonville or any person or persons designated or contracted by the Town to enforce the provisions of this chapter.

Nonresidential: Any building or structure or portion of a building or structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space or sleeping space for one or more human beings, either permanently or transiently.

Occupant: person who is a tenant or has actual possession of a nonresidential building or structure or part thereof.

Operator: Any person who has charge, care, or control of a nonresidential building or structure, or part thereof.

Owner: Any person who alone, or jointly, or severally with others:

- (a) Shall have title in fee simple to any nonresidential building or structure, with or without accompanying actual possession thereof; or
- (b) Shall have charge, care or control of any nonresidential building or structure as owner or agent of the owner, or as executor, executrix, administrator, administration, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter and of rules and regulations adopted pursuant thereto, to the same extent as if he or she were the owner.

Parties in Interest: All individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

Premises: Any lot or parcel of land inclusive of any building or improvements located thereon.

Safe: A condition which is not likely to do harm to humans or to real or personal property.

Sound: Substantially free from flaw, defect, decay or deterioration to the extent that the building or structure or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.

Structure: Anything constructed or placed upon a property which is supported by the ground or which is supported by any other structure, except a currently operable licensed vehicle.

Unsafe Building: A building that falls within the statutory definitions as set forth in G.S.160 A-426(a).

Vacant Industrial Warehouse. Any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

Vacant Manufacturing Facility. Any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.

Vacant Retail Facility. Any building or structure previously used for the lawful sales of goods or services, which has not been used for that purpose for at least one year and has not been converted to another use.

(C) Applicability and Compliance.

1. The provisions of this chapter shall apply to all nonresidential buildings or structures which are now in existence or which may be built within the corporate limits of the town.
2. Every nonresidential building or structure and the premises on which it is situated shall comply with the provisions of this chapter, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this subchapter, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or structure or for the installment or repair of equipment or facilities. This section establishes minimum standards for all nonresidential buildings and structures and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or structure, equipment or facilities contained therein.

(D) Maintenance and Standards

1. Standards for Nonresidential Buildings and Structures.

All nonresidential buildings and structures shall be free of all conditions that are unsafe and dangerous and injurious to the public health, safety, and welfare of occupants or members of the general public. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be dangerous to the public health, safety and welfare for which a public necessity exists for the repair, closing, or demolition of such building or structure and must be corrected in accordance with the provisions of this section and G.S. 160A-426 Unsafe Buildings Condemned in Localities:

- (a) Exterior walls that are not structurally sound, free from defects and damages, and capable of bearing imposed loads safely. Where a wall of a building has become exposed as a result of demolition of adjacent buildings, such wall must have all doors, windows, vents, or other similar openings closed with material of the type comprising the wall. The exposed wall shall be painted, stuccoed or bricked and sufficiently weatherproofed to prevent deterioration of the wall.
- (b) Roofs shall be kept structurally sound and shall be maintained in such a manner so as to prevent rain or other objects from penetrating into the interior of the building.
- (c) Such damage by fire, wind, or other causes as to render the building unsafe.
- (d) Dilapidation, decay, unsanitary conditions, or disrepair, which is dangerous to the health and safety of the occupants or members of the general public.
- (e) Buildings and structures including their environs that have accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary manner.
- (f) Buildings and structures that have loose and insufficiently anchored overhanging objects, which constitute a danger of falling on persons or property.
- (g) Buildings and structures that have cracked or broken glass, loose shingles, loose wood, rotted wood, peeling paint, crumbling stone concrete or brick, loose or broken plastic, or other dangerous objects or similar hazardous conditions.

- (h) Buildings and structures that have objects and elements protruding from building walls or roofs, which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects.
- (i) Exterior porches, landings, balconies, stairs, or fire escapes which are not structurally sound. All exterior porches, landings, balconies, stairs, and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept sound, in good repair, and free of defects.
- (j) Windows containing broken or cracked glass that could be in danger of falling or shattering.
- (k) All openings originally designed as windows, doors, loading docks, or other means of egress or ingress which have been temporarily closed by boarding or other manner in a non-secure manner so as to allow unauthorized admittance. If an opening is temporarily closed by boarding to secure the building or structure, the boarding shall be trim fit, sealed to prevent water intrusion, and the building or structure shall be maintained in a state that secures the building or structure from any unauthorized admittance from humans, animals, or birds.
- (l) Any combination of conditions which in the judgment of the code enforcement officer renders any building or structure dangerous or injurious to the health, safety, or general welfare of occupants or members of the general public.

(E) Enforcement Provisions

1. Duties of the Enforcement Officer.

The code enforcement officer is hereby designated as the public officer to enforce the provisions of this subchapter and to exercise the duties and powers herein prescribed. It shall be the duty of the code enforcement officer:

- (a) To investigate the conditions of nonresidential buildings and structures in the Town and to inspect nonresidential buildings and structures located in the Town in order to determine which nonresidential buildings and structures are not being maintained so that the health and safety of its occupants or members of the general public are jeopardized and for the purpose of carrying out the objectives of this section with respect to such nonresidential buildings and structures;
- (b) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect the repair or demolition of nonresidential buildings and structures which have not been properly maintained in compliance with minimum standards established by this section;
- (c) To keep a record of the results of inspections made under this subchapter and an inventory of those non-residential buildings and structures which have not been properly maintained in compliance with the minimum standards established by this section;
- (d) To perform such other duties as may be herein prescribed.

2. Powers of the Enforcement Officer.

The code enforcement officer is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this section, including the following powers in addition to others herein granted:

- (a) To investigate nonresidential buildings and structures in the Town to determine whether they have been properly maintained in compliance with the minimum standards established by this section so that the safety or health of the occupants or members of the general public are not jeopardized;
- (b) To administer oaths and affirmations, examine witnesses and receive evidence;
- (c) To enter upon premises for the purpose of making examinations and inspections provided that such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession; and
- (d) To appoint and fix duties of such officers, agents, and employees as the code enforcement officer deems necessary to carry out the purposes of this section.

3. Inspections.

For the purpose of making inspections, the code enforcement officer is hereby authorized to enter, examine, and survey at all reasonable times, nonresidential buildings and structures. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

4. Procedure for Enforcement.

1. *Preliminary investigation.* Whenever it appears to the code enforcement officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by this subchapter, the code enforcement officer shall undertake a preliminary investigation.
2. *Complaint and hearing.* If the preliminary investigation discloses evidence of a violation of the minimum standards established by this section, the code enforcement officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the code enforcement officer at a place therein fixed, not less than ten days nor more than 30 days after the serving of the complaint, that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer.
3. *Procedure after hearing.*
 - a. If, after notice and hearing, the code enforcement officer determines that the nonresidential building or structure has been maintained in that the property meets the minimum standards established by this subchapter, the code enforcement officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of said determination.
 - b. If, after notice and hearing, the code enforcement officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by this section, the code enforcement officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of division 3.c and 3.d of this section and subject to the limitations set forth in Sec. F and Sec. G.
 - c. If the code enforcement officer determines that the cost of repair, alteration, or improvement of the building or structure would not exceed 50% of its then-current value, then the code enforcement officer shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
 - i. Repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by this section; or
 - ii. Vacate and close the nonresidential building or structure for any use.
 - d. If the code enforcement officer determines that the cost of repair, alteration, or improvement of the building or structure would exceed 50% of its then-current value, then the code enforcement officer shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
 - i. Repair, alter or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this section; or
 - ii. Remove or demolish the nonresidential building or structure.
4. *Failure to comply with order and ordinances.*
 - a. If the owner fails to comply with an order to either repair, alter, or improve the nonresidential building or structure or vacate and close the nonresidential building or structure, Board of Aldermen may adopt an ordinance ordering the code enforcement officer to cause such nonresidential building or structure to be repaired, altered, or improved in order to bring it into compliance with the minimum standards established by this section or to be vacated and closed. The property shall be described in the subchapter. The section shall be recorded in the Office of the Register of Deeds and shall be indexed in the name of the property owner(s) in the grantor index.
 - b. If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, Board of Aldermen may adopt an ordinance ordering the code enforcement officer to cause such nonresidential building or structure to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a nonresidential building or structure until the owner has first been given

a reasonable opportunity to bring it into conformity with the minimum standards established by the Board of Aldermen. The property shall be described in the ordinance. The ordinance shall be recorded in the Office of the Register of Deeds and shall be indexed in the name of the property owner(s) in the grantor index.

(F) Limitations on Orders and Ordinances - Historic Landmark or Historic District.

Notwithstanding any other provision of this section, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the Board of Aldermen determines, after a public hearing, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, an order issued by the code enforcement officer pursuant to Sec. 4.3 and an ordinance approved by Board of Aldermen pursuant to Sec. 4.4 may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by this section.

(G) Limitations on Orders and Ordinances - Vacant Manufacturing Facility or Vacant Industrial Warehouse.

Notwithstanding any other provision of this section, an order issued by the code enforcement officer pursuant to Sec. 4.3 and an ordinance approved by Board of Aldermen pursuant to Sec. 4.4 may not require repairs, alterations, or improvements to be made to a vacant manufacturing facility or a vacant industrial warehouse to preserve the original use. The order and ordinance may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

(H) Vacated and Closed Nonresidential Buildings or Structures.

1. If the Board of Aldermen has adopted an ordinance or the code enforcement officer has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, then if the Board of Aldermen finds that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the Town in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area, then Board of Aldermen may, after the expiration of the two-year period, adopt an ordinance and serve such ordinance on the owner, setting forth the following:
 - (a) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to 50% of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days; or
 - (b) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards exceeds 50% of its then current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.
2. In the case of a vacant manufacturing facility or a vacant industrial warehouse, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before Board of Aldermen may take action under this section. The ordinance shall be recorded in the Office of the Register of Deeds and shall be indexed in the name of the property owner in the grantor index.
3. If the owner fails to comply with the requirements of the ordinance within 90 days, the code enforcement officer shall demolish and remove the nonresidential building or structure.

(I) Methods of Service of Complaints and Orders.

1. Complaints or orders issued by the code enforcement officer under this subchapter shall be served upon persons either personally or by registered or certified mail and, in conjunction therewith, may be served by regular mail. When the manner or service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing, service shall be deemed sufficient. The person mailing the complaint or order by regular mail shall certify that fact and the date thereof, and such certificate shall be conclusive in the absence of fraud. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the

premises thereby affected.

2. If the identities of any owner or the whereabouts of persons are unknown and cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence, and the code enforcement officer makes an affidavit to that effect, then the serving of the complaint or order upon the unknown owners or other persons may be made by publication in a newspaper having general circulation in the Town at least once no later than the time at which personal service would be required under the provisions of this section. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected. Sec. J. Interim Action by Code Enforcement Officer.

(J) Interim Action by Code Enforcement Officer.

After failure of an owner of a nonresidential building or structure to comply with an order of the code enforcement officer issued pursuant to the provisions of this subchapter and upon adoption by the Board of Aldermen of an ordinance authorizing and directing the owner to do so, as provided by G.S. 160A- 439(f) and Sec. 4.4 of this section, the code enforcement officer shall proceed to cause such nonresidential building or structure to be repaired, altered, or improved to comply with the minimum standards established by this section, or to be vacated and closed or to be removed or demolished, as directed by the ordinance of the Board of Aldermen. The code enforcement officer may cause to be posted on the main entrance of any nonresidential building or structure which is to be vacated and closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a class 3 misdemeanor.

(K) Costs, A Lien on Premises.

1. As provided by G.S. 160A-439(i), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the code enforcement officer pursuant to Sec. 4.4 or Sec. (H) of this chapter shall be a lien against the real property upon which such costs were incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by G.S. 160A, Article 10. The amount of the costs shall also be a lien on any other real property of the owner located within the Town limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.
2. If the nonresidential building or structure is removed or demolished by the code enforcement officer, the code enforcement officer shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the code enforcement officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(L) Ejectment.

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the code enforcement officer may file a civil action in the name of the Town to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the code enforcement officer produces a certified copy of an ordinance adopted by the Board of Aldermen pursuant to G.S. 160A-493(f) and Sec. 4.4. to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the summary ejectment proceeding, that the Board of Aldermen has ordered the code enforcement officer to proceed to exercise his duties under G.S. 160A- 493(f) and Sec. 4.4 of this chapter to vacate and close or

remove and demolish the nonresidential building or structure.

(M) Alternative Remedies.

Neither this chapter nor any of its provisions shall be construed to impair or limit in any way the power of the Town of Gibsonville to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this chapter as provided in Sec. (P).

(N) Appeals Process.

1. Within 30 days following receipt of an order from the code enforcement officer any person receiving such order, believing that the literal application of the ordinance will cause undue hardship or has been misconstrued, wrongly interpreted or applied, may appeal in writing to the Town of Gibsonville Board of Adjustment for such relief as may be granted, after investigation of the grounds thereof, by way of a reasonable extension of time or a variation from strict compliance with the provisions of this subchapter. The circumstances justifying such findings related to hardship are:
 - (a) Inability to comply within the time period provided in this subchapter due to clearly documented severe financial distress;
 - (b) The clear and significant non-availability of services or equipment with which to comply, without fault of the applicant; or
2. Other extenuating circumstances showing a good faith intention on the part of the applicant or another to comply when able to do so.
 - (a) Any person aggrieved by the decision of the Board of Adjustment may petition the Superior Court in the county where said violation occurs for an injunction.
 - (b) Any such petition must be filed with the Superior Court within 30 days from the date of the Board's decision.

(O) Conflict with Other Provisions.

In the event any provision, standard or requirement of this subchapter is found to be in conflict with any other ordinance or code of the Town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of health and safety of the citizens of the Town shall prevail.

(P) Violations; Penalty.

1. It shall be unlawful for the owner of any nonresidential building or structure to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close and remove or demolish the same, upon order of the code enforcement officer duly made and served in accordance with the provisions of this section, within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any nonresidential building or structure, with respect to which an order has been issued pursuant to Sec. (E)4.3. of this chapter, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration, improvement, or its vacation and closing, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
2. In addition to or in lieu of the other remedies provided by this chapter, any owner of a nonresidential building or structure that fails to comply with an order of the code enforcement officer within the time specified therein, shall be subject to a civil penalty in accordance with Sec. (Q).

(Q) Penalty.

In addition to other remedies provided for in this Chapter, any violator who fails to comply with an order to take corrective action regarding an unsafe building shall be subject to a civil penalty of one hundred dollars (\$100.00) for noncompliance when the order expires. Thereafter, an additional ten (10) days may be allowed for compliance, after which the penalty for the second violation is two hundred dollars (\$200). A penalty of ten dollars (\$10.00) per day that the violation is not corrected may be imposed.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN FOR THE TOWN OF GIBSONVILLE: that the Gibsonville Code of Ordinances be amended Title XV: Land Use, Chapter 150. Building Regulations, by adding Section 150.130. Non Residential Buildings.

Adopted this the 1st day of June, 2020.



Mayor

Attest:



Town Clerk



Planning Board Agenda Item Submittal

Item to Be Considered: **Clear-cutting Definition**

Board Meeting Date: **July 19, 2021**

Prepared By: **Jennifer Ansell, Planner**

Overview: At their June 28, 2021 regular meeting, the Board of Commissioners directed staff to work with the Planning Board to develop a definition for clear-cutting as related to the recently adopted amendments regarding land improvement permits and penalty.

Action Needed: A motion to recommend an amendment to Section 152.016, Definitions of Basic Terms, of the Unified Development Ordinance to add a definition for “clear-cutting”.

Pursuant to NC GS 160D-604, when conducting a review of proposed zoning text or map amendments, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable.

The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

Attachments

Proposed Definition

Planning Board Statement of Consistency

Ordinance 2021-O4 (adopted June 28, 2021)

Merriam-Webster Definition

**CHAPTER 152: UNIFIED DEVELOPMENT ORDINANCE
GENERAL PROVISIONS**

§ 152.016 DEFINITIONS OF BASIC TERMS.

CLEAR-CUTTING. The alteration and/or improvement of a site when it results in the removal of regulated trees in excess of fifteen (15) per acre and causes the loss of forestland.

PROTECTED/REGULATED TREE. A tree measuring 18 inches at circumference-at-breast height.

PLANNING BOARD STATEMENT OF CONSISTENCY

Clear-cutting Definition

During its May 4, 2021 regular meeting, the Town of Swansboro Planning Board recommended proposed amendments to the Unified Development Ordinance related to Section 152.538, Tree Preservation and Replacement.

This proposed amendment serves to further clarify the recently adopted amendment (Ordinance 2021-O4) by adding a definition to Section 152.016, Definitions of Basic Terms, for “clear-cutting”.

The proposed change is **consistent** with the current Comprehensive Plan, specifically the 2019 CAMA Land Use Plan Update, Section 4, Goals and Objectives, 3, “Prioritize the Natural Environment that is key to Swansboro’s Quality of Life” and have been recommended for **approval** by the Planning Board.

This statement reflects the recommendation of the Town of Swansboro Planning Board this the 19th day of July 2021.

Vote

Scott Chadwick, Planning Board Chairperson

ORDINANCE 2021-O4
AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE
TO ESTABLISH A PERMIT FOR LAND IMPROVEMENT AND FEE FOR
NONCOMPLIANCE

WHEREAS the Unified Development Ordinance, Regulations for Landscaping, were established to enhance the visual character of the community and preserve the economic value of property and to encourage the proper use of land by promoting an appropriate balance between the built environment and preservation/conservation of open space; and

WHEREAS the 2019 CAMA Land Use Plan Update, Goals and Objectives, includes prioritizing the natural environment that is key to Swansboro's quality of life and to improve and protect the Town's natural environment in order to attract new residents and maximize the Town's economic development potential; and

WHEREAS the Board of Commissioners finds that the proposed text amendment is consistent with the current Comprehensive Plan, and considers the action taken to be reasonable and in the public interest.

NOW BE IT ORDAINED by the Board of Commissioners of the Town of Swansboro that:

The Town of Swansboro Unified Development Ordinance and Schedule of Fees are amended as follows:

§ 152.105 APPROVALS REQUIRED.

- A) No person shall commence or proceed with development without first securing any required development approval required by the State Building Code, or other State or local law from the Town of Swansboro. A development approval shall be in writing and may contain a provision that the development shall comply with all applicable State and local laws. 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.
- B) Development approvals are issued under this chapter only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this chapter if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in §152.130 through 152.135, all development shall occur strictly in accordance with such approved plans and applications.
- C) Physical improvements ~~or alteration of land to be subdivided~~ may not be commenced except in accordance with a land improvement permit issued by the ~~Board of Commissioners or after final plat approval by the~~ Town Manager or his/her designee pursuant to the requirements of §152.538, Tree Preservation and Replacement.
- D) A development approval shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements.

§ 152.538 TREE PRESERVATION AND REPLACEMENT.

~~(A) Tree preservation.~~

~~(1) Preservation and credit.~~ Existing vegetation on all development sites should be preserved to the greatest extent possible and incorporated in the project landscape plan in order to promote the preservation of existing natural areas. ~~Credits for tree preservation toward buffer, parking and other landscaping requirements are available when a tree preservation plan or site plan illustrating trees to be saved is submitted prior to grading the site.~~

~~A land improvement permit issued by the Town Manager or his/her designee is required prior to the alteration or improvement of any commercial or residential (excluding single-family) development site. The permit application must include a site plan identifying~~

~~(2) Tree protection zones (TPZ).~~ The preservation plan should specify the location of temporary tree protection zones (TPZ) fences to protect trees and their roots during construction. Temporary protection fences defined § 152.531 shall be erected and encroachment prohibited in the TPZ area using the following guidelines.

~~(B) Standards for preservation or replacement.~~

~~(1) Minimum standards.~~ For the purpose of achieving the objectives outlined in § 152.525 and 152.538, all new commercial or residential developments shall provide for the preservation or replacement of regulated trees using the following minimum standards:

(a) The total number of regulated trees to be retained should be at least 15 trees per acre (less impervious surface area (ex. parking, building)).

(b) If there are less than 15 regulated trees per acre on the site, then the difference shall be replaced with new ~~or existing smaller~~ trees, to a total of 15 trees per acre equaling at least three caliper inches per tree planted or retained.

(c) If there are no regulated trees on the site, then at least 15 new or existing trees per acre (less impervious surface area) equaling at least three caliper inches per tree shall be planted or retained.

(d) In the event a developer clear-cuts a lot or tract and has failed to provide a site plan to the ~~office of~~ Planning and Code Enforcement ~~office~~, the developer shall be required to plant 23 trees per acre (less impervious surface area), each with a minimum caliper of three inches, ~~and is responsible for paying a penalty fee as established by the Town's Schedule of Fees. The money collected shall be deposited into the Stormwater Enterprise Fund to aid in stormwater compliance, drainage problem identification and prioritization and proactive maintenance of Town owned and operated drainage facilities.~~

(e) Regulated trees that are retained may be used to fulfill some of the planting requirements of street yard, parking facilities, or buffering, provided they are not damaged by construction activities or the intended use of the property.

Town of Swansboro Schedule of Fees

OTHER BUILDING AND PLANNING FEES

Land Improvement Permit	No Charge
Penalty for Failure to Obtain a Land Improvement Permit	\$3,500/acre up to \$20,000.00 max



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clear-cutting



Dictionary

Thesaurus

clear-cutting noun



Save Word

clear-cut-ting | \ 'klir-,kə-tɪŋ \

Definition of *clear-cutting*

: the removal of all the trees in an area of forest

// Long considered a "trash tree" by the timber industry, the number of Pacific yews has been drastically reduced—perhaps halved—by *clear-cutting*, the logging practice that totally strips a targeted area.

— Rob Nicholson

// ... the *clear-cutting* of chestnut trees ahead of the spreading disease.

— Sandra L. Anagnostakis

First Known Use of *clear-cutting*

1922, in the meaning defined [above](#)

Learn More About *clear-cutting*

WORD OF THE DAY

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[See Definitions and Examples »](#)

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