

VIOLATIONS & PENALTIES

15

15.1 NOTICE TO COMPLY

15.1.1 ADMINISTRATOR AUTHORITY

A. Inspections

1. The Planning Director or his/her designee, shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out his/her duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property or premises, public or private, to perform any duty imposed upon them by this ordinance.
2. No person shall refuse entry or access to the Planning Director or his/her designee or other authorized representative of the town who requests entry for the purpose of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with that representative while in the process of carrying out official duties.

15.1.2 COMPLAINTS REGARDING VIOLATIONS

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Any written complaint stating fully the cause and basis thereof shall be filed with the Planning Director who shall properly record such complaint, immediately investigate, and take action as provided by this ordinance.

SECTIONS

15.1 NOTICE TO COMPLY	PAGE 15-1
15.2 PENALTIES FOR VIOLATION & ENFORCEMENT MECHANISMS	PAGE 15-2
15.3 SPECIFIC TYPES OF VIOLATIONS	PAGE 15-4

15.1.3 NOTICE OF VIOLATION

- A. **Notice of Violation:** If it is determined that a person has failed to comply or is no longer in compliance with the provisions of this ordinance, a notice of violation shall be served by the town upon that person by one of the service methods specified in paragraph B. The notice shall set forth that which will be necessary to comply with the ordinance.
- B. **Methods of Service:** The Planning Director shall notify the person responsible for a violation of any provision of this ordinance and give the responsible person a specified time to correct the violation. Notice of violation shall be given in writing and mailed or hand delivered to the address listed for the responsible person in the county property tax records, unless the Planning Director has actual knowledge that the person is residing at a different address. Service of any written notice is complete by hand delivering the notice or by depositing the notice in first class mail. No written notice will be given when the Planning Director has the authority to summarily remove, abate, or remedy a violation of this article. When a person has failed to comply with a notice of violation as described above, the Planning Director shall not be required to provide further notices of violation to that person with regard to the same property before taking any of the enforcement actions authorized by this ordinance.

15.2 PENALTIES FOR VIOLATION & ENFORCEMENT MECHANISMS

In case any structure or use is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this ordinance as herein provided, an action for injunction, or mandamus, or other appropriate action or proceeding to prevent such violation may be instituted by the Planning Director, the Building Inspector, any other appropriate town authority; or any person who may be damaged by such violation.

15.2.1 CRIMINAL

Any person, firm, or corporation convicted of violating the provisions of this ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount not to exceed five hundred dollars (\$500) and/or imprisoned for a period not to exceed 30 days. Each day of violation shall be considered a separate offense, provided that the violation of this ordinance is not corrected within thirty (30) days after notice of said violation is given.

15.2.2 EQUITABLE REMEDY

The Planning Director may apply to a court of competent jurisdiction for any appropriate equitable remedy to enforce the provisions of this ordinance. It is not a defense to the Planning Director's application for equitable relief that there are other remedies provided under general law or this ordinance.

15.2.3 INJUNCTIONS & ORDERS OF ABATEMENT

- A. **Injunction:** Enforcement of the provisions of this ordinance may also be achieved by injunction. When a violation occurs, the Planning Director may, either before or after the institution of other authorized action, apply to the appropriate division of the General Court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.
- B. **Order of Abatement:** In addition to an injunction, the Planning Director may apply for and the court may enter into an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:
1. Buildings or other structures on the property be closed, demolished, or removed;
 2. Fixtures, furniture or other moveable property be moved or removed entirely;
 3. Improvements, alterations, modifications or repairs be made; or
 4. Any other action be taken that is necessary to bring the property into compliance with this ordinance.
- C. **Execution of Court Decisions:** If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she may be cited for contempt. The Planning Director may execute the order of abatement and will have a lien on the property in the nature of a mechanic's and material man's lien for the cost of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and by posting a bond for compliance with the order. The bond must be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter was heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

15.2.4 STOP WORK ORDER ISSUANCE

Whenever a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in substantial violation of any applicable provision of this ordinance, the Planning Director may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary to lawfully resume work.

15.2.5 REVOCATION OF PERMITS

The Planning Director may revoke any permit (e.g., Building Certificate of Occupancy) by written notification to the permit holder when violations of this ordinance have occurred. Permits may be revoked when false statements or misrepresentations were

made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of this ordinance, or a permit has been mistakenly issued in violation of this ordinance.

15.2.6 CIVIL PENALTY

In addition to the other remedies cited in this ordinance for the enforcement of its provisions, and pursuant to NCGS 160A-175, the regulations and standards in this ordinance may be enforced through the issuance of civil penalties by the Planning Director.

- A. **Procedures for Civil Citations:** Subsequent citations for the same violation may be issued by the Planning Director if the offender does not pay the citation (except as otherwise provided in a Warning Situation) after it has been issued, unless the offender has sought an appeal to the actions of the Planning Director through the Board of Adjustment. Once the ten-day warning period has expired, each day which the violation continues shall subject the violator to additional citations to be issued by the Planning Director.
- B. **Schedule of Civil Penalties:** Unless otherwise provided in this ordinance, the following penalties are hereby established:
 - 1. **Warning Citation:** Correct Violation Within 10 Days
 - 2. **First Citation:** \$50.00
 - 3. **Second Citation For Same Offense:** \$100.00
 - 4. **Third And Subsequent Citations For Same Offense:** \$500.00
- C. **Recovery of Penalties:** If the offender fails to pay the civil penalties within fifteen days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

15.3 SPECIFIC TYPES OF VIOLATIONS

15.3.1.A LANDSCAPING VIOLATIONS & PENALTIES

15.3.1 APPLICABILITY

A. General: Violations of Section 9 Tree Preservation, Landscaping & Screening shall be subject to penalties, enforcement, and the procedures relating thereto set forth in Section 15.3. Any landscape areas, trees and vegetation preserved or planted as part of an approved landscape plan or permit shall be continually maintained in good condition by the property owner.

B. Violations:

- 1. **Damage:** Failure to comply with the landscaping and maintenance requirements

of Section 9 of this ordinance, or the disturbance, damage or removal of any trees or vegetation prohibited by this ordinance, shall constitute a violation. This includes the intentional material damage to, or the intentional material alteration of, any landscaped area, tree, or vegetation required to be planted and/or maintained as part of an approved plan or permit. All violations shall be reported by the property owner to the Planning Director immediately, prior to any corrective action.

2. Failure to Remedy: It shall likewise constitute a violation of this ordinance for a property owner to fail, within a reasonable period of time or as specified by this ordinance, to remedy any material damage to, or alteration of, any landscaped area, tree, or vegetation required to be planted and/or maintained as part of an approved plan or permit, irrespective of whether such damage or alteration was the result of causes beyond the property owner's control, including but not limited to natural forces.

C. Enforceability: Where a landscaping violation is found to have occurred, the remedies specified in this ordinance shall be enforced and any civil penalties shall be punishable in accordance with the provisions of this ordinance. Note: Violations pursuant to this section are not enforceable under N.C.G.S. 14-4.

15.3.1.B REPLACEMENT

A. Extent: All landscaped areas, trees, and vegetation required by this ordinance which are disturbed or damaged shall be replanted to meet the standards of this ordinance as well as the approved site/master plan or permit. This includes any tree designated for preservation or installation as part of the approved landscape plan or permit that is removed or dies as a result of negligence or natural forces.

B. Replanting:

1. New Vegetation: New trees or vegetation required as part of an approved plan that are damaged or die shall be removed and replaced with new vegetation of equal or greater size according to the standards of this ordinance.

2. Existing Vegetation: Where the trees or vegetation that have been disturbed or damaged existed on the site at the time the development application was filed, all replacement trees and vegetation shall meet the standards set forth in this ordinance and take into account any unique site conditions as well as significant vegetation remaining within the landscaped area.

i. Location: Replantings shall be located within the vicinity of the violation. If the area is too small for sufficient growth, a more suitable location on the site may be selected as permitted by the Planning Director in consultation with the Arborist.

ii. Vegetation: Damaged or destroyed vegetation in both perimeter and/or interior landscaped/vegetated areas shall be replaced with an equal amount of new vegetation according to the size of vegetation removed. For buffer areas, understory plantings may also be required to restore the disturbed area to meet ordinance requirements.

iii. Trees: Any tree with a caliper of at least twelve inches that is damaged or removed shall be replaced with one or more trees, as determined by the Arborist,

that have a caliper of at least 2.5 inches and a cumulative caliper equal to or greater than the original tree. Trees less than twelve inches in diameter in developments subject to an approved plan and damaged or destroyed shall be replaced to meet ordinance requirements.

Specimen Trees: Any Specimen Tree removed or damaged such that removal is required, as determined by the Arborist, shall be replaced by one 5-inch caliper tree or three 2.5-inch caliper trees at the discretion of the Arborist.

C. Approval:

1. Plan: All new trees and vegetation must be approved by the Planning Director, in consultation with the Arborist. A replanting plan denoting the proposed installation(s) shall be submitted to the Planning Director for approval in consultation with the Arborist. The plan shall take into consideration the development condition of the site, significant vegetation remaining within landscaped areas, and the required replacement of plant materials.

2. Board of Adjustment: The Planning Director may elect to present the replanting plan to the Board of Adjustment for final approval, as necessary.

D. Timeframe: The responsible party shall replace the required vegetation within the current planting season, next planting season, or as approved by the Arborist. If such replacement does not occur within the specified time period, the Landscape Maintenance Bond may be drawn upon in order to pay for the cost of replacement. In such case, the replacement tree(s) and vegetation shall be installed by or at the direction of the Arborist.

15.3.1.C PENALTIES

A. General:

1. Responsible Parties: Any person or entity who violates any of the sections of this ordinance, or rules or orders adopted or issued pursuant to these sections, shall be subject to civil penalties as prescribed by this section. The person performing the work, the property owner and the person contracting for the performance shall be jointly and severally liable for any penalty or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this ordinance.

2. Scope: Penalties assessed under this chapter are in addition to and not in lieu of compliance with the requirements of this ordinance.

B. Penalties: Civil penalties for violations of this chapter shall be assessed pursuant to the following:

1. Required Installations: Failure to plant original or replacement trees and vegetation in accordance with this chapter shall be \$100.00 for each tree and \$50.00 for each shrub/other vegetation not planted. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received until it is adequately corrected, as confirmed by inspection. In the event of a failure to comply with the Replacement

provisions, the failure to plant each individual tree and/or shrub/vegetation shall constitute a separate, daily and continuing violation from the day the notice of violation is received.

2. Total Loss: The intentional or grossly negligent injury or damage to, or destruction of, trees and shrubs/vegetation protected by this ordinance that result in the total loss of the tree or shrub/vegetation shall be assessed according to the following:

Penalties for losses in areas regulated by approved plans (Master Plans, Conditional Master Plans, Individual Building or other site plans); in designated tree save or preservation areas; outside of site areas approved for pre-application clearing; or, within the public right-of-way:

- Tree: \$500 per Caliper Inch
- Shrub: \$100 per Shrub
- Vegetated Cover: \$10 per SF of Disturbed Area
- Specimen Tree: \$500 Caliper Inch up to 24 inches; \$800 per Caliper Inch over 24 inches .

Note: The maximum civil penalty for each tree injured, damaged or destroyed shall not exceed \$25,000 . No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

Penalties for losses in areas not regulated by an approved plan , including permits (i.e., permits filed after cutting or permits incorrectly executed):

- Tree:
 - 1st Citation: Warning + \$50
 - 2nd & Subsequent Citation for Same Offense: \$500 per Tree
- Specimen Tree:
 - 1st Citation: Warning + \$100
 - 2nd & Subsequent Citation for Same Offense: \$1,000 per Tree

3. Partial Damage: The intentional or grossly negligent injury or damage to, or destruction of, trees and shrubs/vegetation protected by this ordinance that do not result in the total loss of the trees or shrub/vegetation shall be assessed according to the following:

Penalties for partial damage in areas regulated by approved plans (Master Plans, Conditional Master Plans, Individual Building or other site plans); in designated tree save or preservation areas; or, within the public right-of-way:

- Tree: \$500 per Tree
- Shrub: \$50 per Shrub
- Vegetated Cover: \$5 per SF of Disturbed Area
- Specimen Tree: \$1,000 per Tree

No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection. Note: Partial Damage shall not include general maintenance activities performed in accordance with ANSI A300 Part 1 Pruning, Tree Care Industry Association.

4. Insufficient Replanting Area: If the tree violation occurred in a preservation area in which it is determined that the required replacement tree(s) cannot be adequately replanted due to insufficient area, a replacement fee equal to \$100 per caliper inch of

each replacement tree shall be paid to the Tree Fund.

5. Tree Protection Measures: Failure to install or maintain required tree protection measures in accordance with Section 9 shall be punishable up to \$1,000 per violation. No civil penalty shall be assessed until the person has been notified of the violation as provided in Section 15. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received until it is adequately corrected, as confirmed by inspection. The failure to install the required tree protection measures shall constitute a separate, daily and continuing violation. Injury or damage to, or destruction of, trees in the tree protection zone and tree save area resulting from the failure to install or maintain required tree protection measures in accordance with Section 9 constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this section.

6. Miscellaneous Violations: Any other action that constitutes a violation of this chapter may subject the violator to a civil penalty of \$50, and each day of continuing violation shall constitute a separate violation. However, the maximum amount of the penalty shall not exceed \$1,000. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received until it is adequately corrected, as confirmed by inspection.

7. Non-Monetary Penalties: At the discretion of the Planning Director in consultation with the Arborist, alternative non-monetary penalties or replanting strategies may be assessed in addition to or in lieu of any monetary penalties prescribed under this section. Plantings shall be approved in accordance with the Replacement provisions of this ordinance.

8. Penalties Cumulative: The civil penalties provided for in this Section 9.10 may be assessed cumulatively. By way of example only, if a Specimen Tree and the vegetated cover surrounding it are damaged due to inadequate tree protection measures, a total of at least three separate penalties may be assessed: (i) one for partial loss of the Specimen Tree; (ii) one for partial loss of the vegetative cover; and (iii) one for the failure to install or maintain required tree protection measures.

C. Assessment, Notice of Violation, & Payment: The Planning Director, in consultation with the Arborist, shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of violation shall be served as provided in Section 15.1 and shall direct the violator to either pay the assessment or contest the assessment as specified in this ordinance. If payment of assessed penalties is not received within thirty (30) days after it is due, or if no request for a hearing has been made as provided in this ordinance, the assessment shall be considered a debt due and owing to the Town, and the matter shall be referred to the town attorney for institution of a civil action to recover the amount of the debt. The civil action may be brought in the Mecklenburg County Superior Court or in any other court of competent jurisdiction.

D. Civil Action for Unpaid Assessment: A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of violation. A violation that is contested is due at the

conclusion of the administrative and judicial review of the assessment.

E. Use of Civil Penalties Collected: Civil penalties collected pursuant to this section shall be credited to the Tree Fund as a nontax revenue and shall be used to further the purposes, intent and requirements of this ordinance as prescribed by the Board of Commissioners resolution establishing the Tree Fund.

15.3.1.D APPEALS & VARIANCES

A. General: Any party dissatisfied with a decision of the Town adversely affecting such party in the application or enforcement of this ordinance, including notices of violations and assessments of civil penalties, may request a public hearing before the Board of Adjustment.

B. Request: The issuance of a decision, including a notice of violation or assessment of a civil penalty by the Town, shall entitle the party subject to the decision or responsible for the violation (petitioner) to a hearing before the Board of Adjustment if such party submits a written request for a hearing to the Planning Director within thirty (30) days of the receipt of a decision, notice of violation or assessment of a civil penalty. The right to a hearing shall be communicated by the Town as part of its decision, notice of violation, or assessment.

C. Procedure: Appeals and variances shall follow the rules and procedures set out in NCGS Section 160 A-388, as amended, and Section 14.18 of the Davidson Planning Ordinance.

15.3.2 SIGN VIOLATIONS

Any sign that has been installed without a permit or is otherwise in violation of this ordinance must be removed by the owner or property manager after notice has been given by the Planning Director. Provided the time to remove the sign is not less than 24 hours, notice shall be considered sufficient. Notice shall only be provided once for the violation. Repeat violations, occurring within twelve months, using the same or a similar sign at the same location (e.g., use of a plastic A-frame sign after being given notice of violation or continued use of an off-site sign to advertise a business) will not be provided another notice of violation but, instead, will be issued a civil citation.

For the second through fifth violations, \$100.00 per offense;

For the sixth through tenth violations, \$500.00 per offense,

For the eleventh and all future violations, \$1000.00 per offense.

Each day the illegal sign is in use is considered a separate offense. If the responsible person fails to pay the civil penalty or appeal the assessment within 15 days of being notified of the amount due, the town may recover the penalties in a civil action in the nature of a debt. An appeal of a civil penalty assessment may be made to the Board of Adjustment.

15.3.3 FLOODPLAIN VIOLATIONS

Violation of the floodplain provisions of this ordinance including violation of conditions and safeguards established in connection with grants of Floodplain Development Permits or Variances shall be corrected in accordance with the provisions of Section 18.

15.3.4 OPEN SPACE VIOLATIONS

Failure to comply with this ordinance's open space requirements will result in the following:

- A. Violations of provisions regarding maintenance of open space will require restorative action to bring the subject area into compliance. Specifically, failure to maintain open space as prescribed by the governing documents/ownership conditions will be subject to a remediation plan determined by the Planning Director. The plan, including all required restorative actions, shall be at the expense of the party responsible for open space management of the subject area.
- B. Violation of the provisions reducing open space wherein farmland or prime agricultural soils, as defined by this ordinance, are provided as part of development shall require:
 1. Payment to the Town of Davidson of 1.5 times the property taxes of the development's original land area. This applies to all years in which property tax revenue was not received because the subject area was protected in a conservation easement.
 2. Payment to the Town of Davidson's open space fund the cost per acre for all acres of land not provided as open space that would have been required as open space at the time of plan approval.
 3. Dedication of all land area as open space in accordance with the ordinance requirements.

15.3.5 DEMOLITION BY NEGLECT OF HISTORIC PROPERTIES

A. Conditions of Neglect Defined and Prohibited: Demolition by neglect is the destruction of a building through abandonment or lack of maintenance. In order to promote the preservation of the Historic District, owners shall maintain or cause to be maintained the exterior and structural features of their historic properties and not allow conditions of neglect to occur. The exterior features of any building or structure located within the local historic district shall be preserved by the owner or such other person who may have legal possession, custody, and control thereof against decay and deterioration and kept free from structural defects. The owner, or other person having such legal possession, custody, and control, shall upon written request by the town repair such exterior features if they are found to be deteriorating. Conditions of neglect include the following:

1. Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.
2. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.

3. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
4. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
5. Deterioration or crumbling of exterior plasters or mortars.
6. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
7. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
8. Rotting, holes, and other forms of decay.
9. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
10. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.

B. Boarded Up Windows and Doors: Boarded-up windows and doors in areas in the historic district are prohibited with the following exceptions:

1. In order to protect a structure against further deterioration pending replacement of windows, doors, or storefronts a temporary exception to this standard can be authorized by the Historic Preservation Commission through the Certificate of Appropriateness process. (See Section 22)
2. All temporary boarded up windows which will remain for more than 30 days must be painted as specified and authorized by the Certificate of Appropriateness.
3. Property owners in the historic district who currently have windows or doors boarded-up must have such windows and doors replaced pursuant to a Certificate of Appropriateness, within six months of the effective date of this ordinance.

C. Petition and Action: The Historic Preservation Commission or Administrator may initiate a petition listing specific defects. Following the initiation of such petition the Administrator shall act under the following procedures to require the correction of deterioration or making of repairs to any historic landmark or significant structure located within the historic district so that such structure shall be preserved and protected in accordance with this ordinance.

1. Whenever a petition is filed with the Administrator charging that a structure is undergoing demolition by neglect, the Administrator (or a designated agent) shall, if his/her preliminary investigation discloses a basis for such charges, within 15 days issue and cause to be served upon the owner and/or such other person who may have legal possession, custody, and control thereof, as the same may be determined by reasonable diligence, a complaint stating the charges and

offering the owner the opportunity to meet in person with the Planning Director not less than 30 nor more than 45 days after the serving of such complaint. The owner and/or parties in interest shall be given a right to answer to give testimony at the place and time fixed in the complaint; the town shall also be given notice of the hearing; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Planning Director. The purpose of the hearing is to receive evidence concerning the charge of deterioration and to ascertain whether the owner and/or other parties in interest wishes to petition the Board of Adjustment for a claim of undue economic hardship.

2. If after such notice and hearing, the Planning Director determines that the structure is undergoing demolition by neglect because it is deteriorating, according to the standards of this section, the Planning Director shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner and/or other parties in interest therein an order to repair within the time specified those elements of the structure that are deteriorating, contributing to deterioration, or deteriorated. In the event that the owner and/or other parties in interest wish to petition for a claim of undue economic hardship, the Planning Director's order shall be stayed until after the Board of Adjustment's determination in accordance with the procedures of Section 15.3.4.F.

D. Methods of Service: Complaints or orders issued by the Planning Director shall be served upon persons either personally or by registered or certified mail; but if the whereabouts of such persons are unknown and the same cannot be ascertained by the Planning Director in the exercise of reasonable diligence, and the Planning Director shall make an affidavit to that effect, stating the steps taken to determine and locate the persons in interest, then the serving of such complaint or order may be made by publishing the same once each week for two successive weeks in a newspaper generally circulated within the town. Where such service is by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

E. Safeguards from Undue Economic Hardship

1. When a claim of undue economic hardship is made owing to the effects of this article, the Planning Director shall notify the Board of Adjustment within 10 days following the hearing on the complaint. The Board of Adjustment shall schedule a hearing on the claim at its next regular meeting, within the limitations of its procedures for application deadlines. The petitioner shall present the information provided under Section 15.3.4.E.2 to the Board of Adjustment. The Board of Adjustment may require that an owner and/or parties in interest furnish such additional information that is relevant to its determination of undue economic hardship. The Board of Adjustment may direct its staff to furnish additional information as the board believes is relevant such as findings from the Historic Preservation Commission. The Board of Adjustment shall also state which form of financial proof it deems relevant and necessary to a particular case. In the event that any of the required information is not reasonably available to the owner and/or parties in interest and cannot be obtained by the owner, the

- owner shall describe the reasons why such information cannot be obtained.
2. When a claim of undue economic hardship is made owing to the effects of this article, the owner and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of hardship.
 - a. The minimum evidence for all property shall include the following:
 - i. Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.
 - ii. Financial resources of the owner and/or parties in interest.
 - iii. Cost of repairs.
 - iv. Assessed value of the land and improvements.
 - v. Real estate taxes for the previous two years.
 - vi. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
 - vii. Annual debt service, if any, for previous two years.
 - viii. Any listing of the property for sale or rent, price asked, and offers received, if any.
 - b. The minimum evidence for income producing property shall also include the following:
 - i. Annual gross income from the property for the previous two years,.
 - ii. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed.
 - iii. Annual cash flow, if any, for the previous two years.
 3. Within 60 days of the Board of Adjustment's hearing on the claim, the Board of Adjustment shall cause to be made a finding regarding the claim of undue economic hardship and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the Board of Adjustment shall report such a finding to the Planning Director. The Planning Director shall then cause to be issued an order for such property to be repaired within the time specified.
 4. In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under the North Carolina law, loans or grants from the city, the county, or other public, private, or non-profit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations,

or relaxation of the provisions of this article sufficient to mitigate the undue economic hardship. The Board of Adjustment shall report such finding and plan to the Planning Director. The Planning Director shall cause to be issued an order for such property to be repaired within the time specified, and in accordance with the provisions of the recommended plan.

- F. Appeals:** Findings made by the Planning Director or by the Historic Preservation Commission may be appealed to the Board of Adjustment. To perfect such an appeal, application must be filed by an aggrieved party with the Board of Adjustment within 10 days following receipt of the order for repair of the property or determination. Appeals from the Board of Adjustment shall be in the nature of certiorari.
- G. Other Town or County Powers:** Nothing contained within this article shall diminish the town's or county's power to declare a building as unsafe or a violation of the minimum building code.
- H. Penalties and Remedies:** Enforcement of this article may be by either one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.
 - 1. **Equitable Remedy:** The town may apply for any appropriate equitable remedy to enforce the provisions of this article.
 - 2. **Order of Abatement:** The town may apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this article. Whenever the party is cited for contempt by the court and the town executes the order of abatement, the town shall have a lien, in the nature of a mechanic's and materialman's lien, on the property for the cost of executing the order of abatement.
 - 3. **Civil Penalty:** No civil penalty shall be levied unless and until the Planning Director (or a designated agent) shall deliver a written notice by personal service or by registered mail or by certified mail, return receipt requested, to the person responsible for each violation indicating the nature of the violation and ordering corrective action. The notice shall also set forth the time period when corrective measures must be completed. The notice shall state that failure to correct the violation within the specified time period will result in the assessment of civil penalties and other enforcement action. If after the allotted time period has expired and after the hearing of any appeal by the Board of Adjustment, and no corrective action has been completed, a civil penalty shall be assessed in the amount of \$50.00 per day of continuing violation. The fine will be allocated to projects in the historic district.