

**TITLE XV: LAND USAGE**

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## CHAPTER 150: FLOOD DAMAGE PREVENTION

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***GENERAL PROVISIONS*****§ 150.01 AUTHORIZATION.**

The State Legislature has in G.S. Ch. 143, Art. 21, Part 6; G.S. Ch. 160A, Art. 19, Parts 3, 5, and 8; and G.S. Ch. 160A, Art. 8, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, the town does ordain as follows.

(Ord. 130, passed 8-4-2008)

**§ 150.02 FINDINGS OF FACT.**

(A) The flood prone areas within the jurisdiction of the town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

(Ord. 130, passed 8-4-2008)

**§ 150.03 PURPOSE.**

It is the purpose of this chapter to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

(A) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights, or velocities;

(B) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

(D) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

(E) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. 130, passed 8-4-2008)

#### § 150.04 OBJECTIVES.

The objectives of this chapter are to:

(A) Protect human life, safety, and health;

(B) Minimize expenditure of public money for costly flood-control projects;

(C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) Minimize prolonged business losses and interruptions;

(E) Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable, and sewer lines, streets, and bridges) that are located in flood prone areas;

(F) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and

(G) Ensure that potential buyers are aware that property is in a special flood hazard area.

(Ord. 130, passed 8-4-2008)

#### § 150.05 DEFINITIONS.

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

**ACCESSORY STRUCTURE (APPURTENANT STRUCTURE).** A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports, and storage sheds are common urban **ACCESSORY STRUCTURES**. Pole barns, hay sheds, and the like qualify as **ACCESSORY STRUCTURES** on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

**ADDITION (TO AN EXISTING BUILDING).** An extension or increase in the floor area or height of a building or structure.

**APPEAL.** A request for a review of the Floodplain Administrator's interpretation of any provision of this chapter.

**AREA OF SHALLOW FLOODING.** A designated Zone AO on a community's flood insurance rate map (FIRM) with base flood depths determined to be from one to three feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

**AREA OF SPECIAL FLOOD HAZARD.** See **SPECIAL FLOOD HAZARD AREA (SFHA)**.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION (BFE).** A determination of the water surface elevations of the base flood as published in the flood insurance study. When the **BFE** has not been provided in a special flood hazard area, it may be obtained from engineering studies available from a federal, state, or other source using FEMA approved engineering methodologies. This **ELEVATION**, when combined with the freeboard, establishes the regulatory flood protection elevation.

**BASEMENT.** Any area of the building having its floor subgrade (below ground level) on all sides.

**BUILDING.** See **STRUCTURE**.

**CHEMICAL STORAGE FACILITY.** A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

**DEVELOPMENT.** Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**DISPOSAL.** As defined in G.S. § 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

**ELEVATED BUILDING.** A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**ENCROACHMENT.** The advance or infringement of uses, fill, excavation, buildings, structures, or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots

on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

**FLOOD** or **FLOODING**. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD BOUNDARY AND FLOODWAY MAP (FBFM)**. An official map of a community, issued by the Federal Emergency Management Agency, on which the special flood hazard areas and the floodways are delineated. This official **MAP** is a supplement to and shall be used in conjunction with the flood insurance rate map (FIRM).

**FLOOD HAZARD BOUNDARY MAP (FHBM)**. An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the special flood hazard areas have been defined as Zone A.

**FLOOD INSURANCE**. The insurance coverage provided under the National Flood Insurance Program.

**FLOOD INSURANCE RATE MAP (FIRM)**. An official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

**FLOOD INSURANCE STUDY (FIS)**. An examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The **FLOOD INSURANCE STUDY** report includes flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), if published.

**FLOOD PRONE AREA**. See **FLOODPLAIN**.

**FLOOD ZONE**. A geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

**FLOODPLAIN**. Any land area susceptible to being inundated by water from any source.

**FLOODPLAIN ADMINISTRATOR**. The individual appointed to administer and enforce the floodplain management regulations.

**FLOODPLAIN DEVELOPMENT PERMIT**. Any type of permit that is required in conformance with the provisions of this chapter, prior to the commencement of any development activity.

**FLOODPLAIN MANAGEMENT.** The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**FLOODPLAIN MANAGEMENT REGULATIONS.** This chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state, or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**FLOODPROOFING.** Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

**FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**FREEBOARD.** The height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The base flood elevation (BFE) plus the **FREEBOARD** establishes the regulatory flood protection elevation.

**FUNCTIONALLY DEPENDENT FACILITY.** A facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

**HAZARDOUS WASTE MANAGEMENT FACILITY.** As defined in G.S. Ch. 130A, Art. 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

**HIGHEST ADJACENT GRADE (HAG).** The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

**HISTORIC STRUCTURE.** Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;



(3) Individually listed on a local inventory of historic landmarks in communities with a certified local government (CLG) program; or

(4) Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”. Certified Local Government (CLG) Programs are approved by the U.S. Department of the Interior in cooperation with the state’s Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966, as amended in 1980, being 54 U.S.C. §§ 300101 et seq.

**LOWEST ADJACENT GRADE (LAG).** The elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building’s **LOWEST FLOOR**, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term **MANUFACTURED HOME** does not include a “recreational vehicle”.

**MANUFACTURED HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MARKET VALUE.** The building value, not including the land value and that of any accessory structures or other improvements on the lot. **MARKET VALUE** may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (actual cash value); or adjusted tax assessed values.

**MEAN SEA LEVEL.** For purposes of this chapter, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

**NEW CONSTRUCTION.** Structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

**NON-ENCROACHMENT AREA.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated in the flood insurance study report.

**POST-FIRM.** Construction or other development for which the “start of construction” occurred on or after the effective date of the initial flood insurance rate map.

**PRE-FIRM.** Construction or other development for which the “start of construction” occurred before the effective date of the initial flood insurance rate map.

**PRINCIPALLY ABOVE GROUND.** At least 51% of the actual cash value of the structure is above ground.

**PUBLIC SAFETY and/or NUISANCE.** Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**RECREATIONAL VEHICLE (RV).** A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

**REFERENCE LEVEL.** The top of the lowest floor for structures within special flood hazard areas designated as Zone A1-A30, AE, A, A99, or AO.

**REGULATORY FLOOD PROTECTION ELEVATION.** The base flood elevation plus the freeboard. In special flood hazard areas where base flood elevations (BFEs) have been determined, this **ELEVATION** shall be the BFE plus two feet of freeboard. In special flood hazard areas where no BFE has been established, this **ELEVATION** shall be at least two feet above the highest adjacent grade.

**REMEDY A VIOLATION.** To bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

**RIVERINE.** Relating to, formed by, or resembling a river (including tributaries), stream, brook, and the like.

**SALVAGE YARD.** Any nonresidential property used for the storage, collection, and/or recycling of any type of equipment, and including, but not limited to, vehicles, appliances, and related machinery.

**SOLID WASTE DISPOSAL FACILITY.** Any facility involved in the disposal of solid waste, as defined in G.S. § 130A-290(a)(35).

**SOLID WASTE DISPOSAL SITE.** As defined in G.S. § 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

**SPECIAL FLOOD HAZARD AREA (SFHA).** The land in the floodplain subject to a 1% or greater chance of being flooded in any given year, as determined in § 150.07.

**START OF CONSTRUCTION.** Includes substantial improvement, and means the date the building permit was issued, provided the actual **START OF CONSTRUCTION**, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual **START** means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF CONSTRUCTION** means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE.** A walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. See definition of substantial improvement. **SUBSTANTIAL DAMAGE** also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT.** Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period, for which the cost equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

**VARIANCE.** A grant of relief from the requirements of this chapter.

**VIOLATION.** The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §§ 150.25 to 150.29 and §§ 150.40 to 150.44 is presumed to be in **VIOLATION** until such time as that documentation is provided.

**WATER SURFACE ELEVATION (WSE).** The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

**WATERCOURSE.** A lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. **WATERCOURSE** includes specifically designated areas in which substantial flood damage may occur.  
(Ord. 130, passed 8-4-2008)

#### **§ 150.06 APPLICATION.**

This chapter shall apply to all special flood hazard areas within the jurisdiction, including extra-territorial jurisdictions (ETJs), of the town and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.  
(Ord. 130, passed 8-4-2008)

#### **§ 150.07 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.**

The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the state and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM) for Stanly County, dated September 3, 2008, which are adopted by reference and declared to be a part of this chapter. The initial flood insurance rate maps are as follows for the jurisdictional areas at the initial date: Stanly County Unincorporated Area, dated June 9, 1978.  
(Ord. 130, passed 8-4-2008)

#### **§ 150.08 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.**

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of § 150.07.  
(Ord. 130, passed 8-4-2008)

**§ 150.09 COMPLIANCE.**

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this chapter and other applicable regulations.  
(Ord. 130, passed 8-4-2008) Penalty, see § 150.99

**§ 150.10 CONFLICT WITH EXISTING AGREEMENTS.**

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.  
(Ord. 130, passed 8-4-2008)

**§ 150.11 INTERPRETATION.**

In the interpretation and application of this chapter, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the governing body; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 130, passed 8-4-2008)

**§ 150.12 DISCLAIMER OF LIABILITY.**

(A) The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration.

(B) Larger floods can and will occur. Actual flood heights may be increased by human-made or natural causes.

(C) This chapter does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages.

(D) This chapter shall not create liability on the part of the town or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 130, passed 8-4-2008)

**ADMINISTRATION****§ 150.25 DESIGNATION OF FLOODPLAIN ADMINISTRATOR.**

The Town Administrator or his or her designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this chapter. (Ord. 130, passed 8-4-2008)

**§ 150.26 FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT, AND CERTIFICATION REQUIREMENTS.**

(A) *Application requirements.* Application for a floodplain development permit shall be made to the Floodplain Administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

(1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

(a) The nature, location, dimensions, and elevations of the area of development/disturbance, existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

(b) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in § 150.07, or a statement that the entire lot is within the special flood hazard area;

(c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in § 150.07;

(d) The boundary of the floodway(s) or non-encroachment area(s) as determined in § 150.07;

(e) The base flood elevation (BFE) where provided as set forth in §§ 150.07, 150.27, or § 150.42;

(f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

(g) The certification of the plot plan by a registered land surveyor or professional engineer.

(2) Proposed elevation, and method thereof, of all development within a special flood hazard area including, but not limited to:

(a) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

(b) Elevation in relation to mean sea level to which any nonresidential structure in Zone AE, A, or AO will be floodproofed; and

(c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

(3) If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures;

(4) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this chapter are met. These details include, but are not limited to:

(a) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns, posts, piers, piles, or shear walls); and

(b) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with § 150.41(D)(3) when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30.

(5) Usage details of any enclosed areas below the lowest floor;

(6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;

(7) Certification that all other local, state, and federal permits required prior to floodplain development permit issuance have been received;

(8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of § 150.41(F) and (G) are met; and

(9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(B) *Permit requirements.* The floodplain development permit shall include, but not be limited to:

(1) A description of the development to be permitted under the floodplain development permit;

(2) The special flood hazard area determination for the proposed development in accordance with available data specified in § 150.07;

- (3) The regulatory flood protection elevation required for the reference level and all attendant utilities;
- (4) The regulatory flood protection elevation required for the protection of all public utilities;
- (5) All certification submittal requirements with timelines;
- (6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable;
- (7) The flood openings requirements, if in Zones A, AO, AE, or A1-30; and
- (8) Limitations of below BFE enclosure uses (if applicable) (i.e., parking, building access, and limited storage only).

(C) *Certification requirements.*

(1) (a) An elevation certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

(b) A final as-built elevation certificate (FEMA Form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(2) If nonresidential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure



to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(3) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of § 150.14(C)(2).

(4) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(5) The following structures, if located within Zone A, AO, AE, or A1-30, are exempt from the elevation/floodproofing certification requirements specified in divisions (C)(1) and (C)(2) above:

(a) Recreational vehicles meeting requirements of § 150.41(F)(1);

(b) Temporary structures meeting requirements of § 150.41(G); and

(c) Accessory structures less than 150 square feet meeting requirements of § 150.41(H).  
(Ord. 130, passed 8-4-2008)

**§ 150.27 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

The Floodplain Administrator shall perform, but not be limited to, the following duties:

(A) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this chapter have been satisfied;

(B) Review all proposed development within special flood hazard areas to assure that all necessary local, state, and federal permits have been received;

(C) Notify adjacent communities and the state's Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);

(D) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;

(E) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of § 150.44 are met;

(F) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of § 150.26(C);

(G) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of § 150.26(C);

(H) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of § 150.26(C);

(I) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of §§ 150.26(C) and 150.41(B);

(J) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this subchapter;

(K) When base flood elevation (BFE) data has not been provided in accordance with the provisions of § 150.07, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to § 150.42(B)(2), in order to administer the provisions of this chapter;

(L) When base flood elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of § 150.07, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this chapter;

(M) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a special flood hazard area is above the base flood elevation (BFE), advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file;

(N) Permanently maintain all records that pertain to the administration of this chapter and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended;

(O) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action;

(P) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor;

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

(R) Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her Inspections Department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the Department at any reasonable hour for the purposes of inspection or other enforcement action;

(S) Follow through with corrective procedures of § 150.28;

(T) Review, provide input, and make recommendations for variance requests;

(U) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM, and other official flood maps and studies adopted in accordance with the provisions of § 150.07, including any revisions thereto including letters of map change, issued by FEMA. Notify the state and FEMA of mapping needs; and

(V) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-Fs) and letters of map revision (LOMRs).  
(Ord. 130, passed 8-4-2008)

## § 150.28 CORRECTIVE PROCEDURES.

(A) *Violations to be corrected.* When the Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(B) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

(1) That the building or property is in violation of the floodplain management regulations;

(2) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

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

(D) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the Clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

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

(Ord. 130, passed 8-4-2008)

## § 150.29 VARIANCE PROCEDURES.

(A) The Town Planning and Zoning Board, as established by the town and its Town Council, hereinafter referred to as the "Appeal Board", shall hear and decide requests for variances from the requirements of this chapter.

(B) Any person aggrieved by the decision of the Appeal Board may appeal such decision to the Court, as provided in G.S. Ch. 7A.

(C) Variances may be issued for:

(1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

(2) Functionally dependent facilities, if determined to meet the definition as stated in § 150.05, provided provisions of division (I)(2), (I)(3), and (I)(5) below have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

(3) Any other type of development, provided it meets the requirements of this section.

(D) In passing upon variances, the Appeal Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location as defined under § 150.05 as a functionally dependent facility, where applicable;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(E) A written report addressing each of the above factors shall be submitted with the application for a variance.

(F) Upon consideration of the factors listed above and the purposes of this chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this chapter.

(G) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(H) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the state upon request.

(I) Conditions for variances include the following.

(1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

(2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued prior to development permit approval.

(5) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship;

and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(J) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met:

(1) The use serves a critical need in the community;

(2) No feasible location exists for the use outside the special flood hazard area;

(3) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation;

(4) The use complies with all other applicable federal, state, and local laws; and

(5) The town has notified the Secretary of the state's Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance. (Ord. 130, passed 8-4-2008)

*PROVISIONS FOR FLOOD HAZARD REDUCTION*

**§ 150.40 GENERAL STANDARDS.**

In all special flood hazard areas the following provisions are required.

(A) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

(B) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(C) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

(D) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.

(E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

(G) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(H) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this chapter, shall meet the requirements of "new construction" as contained in this chapter.

(I) Nothing in this chapter shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this chapter and located totally or partially within the

floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this chapter.

(J) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in § 150.29(J). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of § 150.26(C).

(K) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(L) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(M) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(N) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC § 1334.

(O) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

(P) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation (BFE) shall apply.

(Ord. 130, passed 8-4-2008)

#### **§ 150.41 SPECIFIC STANDARDS.**

In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in §§ 150.07 or 150.42, the following provisions, in addition to the provisions of § 150.40, are required.

(A) *Residential construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in § 150.05.



(B) *Nonresidential construction.* New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in § 150.05. Structures located in A, AE, AO, and A1-30 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are water-tight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Article 5, Section G(2). A registered professional engineer or architect shall certify that the floodproofing standards of this division (B) are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in § 150.26(C), along with the operational plan and the inspection and maintenance plan.

(C) *Manufactured homes.*

(1) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in § 150.05.

(2) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the state's Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to G.S. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

(3) All enclosures or skirting below the lowest floor shall meet the requirements of division (D) below.

(4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved, or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

(D) *Elevated buildings.* Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

(1) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

(2) Shall be constructed entirely of flood-resistant materials at least to the regulatory flood protection elevation; and

(3) Shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of flood waters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

(a) A minimum of two flood openings on different sides of each enclosed area subject to flooding;

(b) The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;

(c) If a building has more than one enclosed area, each enclosed area must have flood openings to allow flood waters to automatically enter and exit;

(d) The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

(e) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of flood waters in both directions; and

(f) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(E) *Additions/improvements.*

(1) Additions and/or improvements to pre-FIRM structures, when the addition and/or improvements in combination with any interior modifications to the existing structure, are:

(a) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure; or

(b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(2) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

(3) Additions and/or improvements to post-FIRM structures, when the addition and/or improvements in combination with any interior modifications to the existing structure, are:

(a) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction; or

(b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(F) *Recreational vehicles*. Recreational vehicles shall either:

(1) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

(2) Meet all the requirements for new construction.

(G) *Temporary nonresidential structures*. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood, or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

(1) A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;

(2) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

(3) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(4) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

(5) Designation, accompanied by documentation, of a location outside the special flood hazard area to which the temporary structure will be moved.

(H) *Accessory structures*.

(1) When accessory structures (sheds, detached garages, and the like) are to be placed within a special flood hazard area, the following criteria shall be met:

(a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking, or restroom areas);

(b) Accessory structures shall not be temperature-controlled;

- (c) Accessory structures shall be designed to have low flood damage potential;
  - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of flood waters;
  - (e) Accessory structures shall be firmly anchored in accordance with the provisions of § 150.40(A);
  - (f) All service facilities, such as electrical, shall be installed in accordance with the provisions of § 150.40(D); and
  - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of division (D)(3) above.
- (2) An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with § 150.26(C). (Ord. 130, passed 8-4-2008)

#### **§ 150.42 STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.**

Within the special flood hazard areas designated as Approximate Zone A and established in § 150.07, where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of § 150.40, shall apply.

(A) No encroachments, including fill, new construction, substantial improvements, or new development, shall be permitted within a distance of 20 feet each side from the top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(B) The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria.

(1) When base flood elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this chapter and shall be elevated or floodproofed in accordance with standards in §§ 150.40 and 150.41.

(2) When floodway or non-encroachment data is available from a federal, state, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of §§ 150.41 and 150.44.

(3) All subdivision, manufactured home park, and other development proposals shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such base flood elevation (BFE) data shall be adopted by reference in accordance with § 150.07 and utilized in implementing this chapter.

(4) When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the regulatory flood protection elevation, as defined in § 150.05. All other applicable provisions of § 150.41 shall also apply.

(Ord. 130, passed 8-4-2008)

**§ 150.43 STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BY WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.**

Along rivers and streams where base flood elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(A) Standards of §§ 150.40 and 150.41; and

(B) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(Ord. 130, passed 8-4-2008)

**§ 150.44 FLOODWAYS AND NON-ENCROACHMENT AREAS.**

(A) Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in § 150.07. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of flood waters that have erosion potential and carry debris and potential projectiles.

(B) The following provisions, in addition to standards outlined in §§ 150.40 and 150.41, shall apply to all development within such areas.

(1) No encroachments, including fill, new construction, substantial improvements, and other developments, shall be permitted unless:

(a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit; or

(b) A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.

(2) If division (B)(1) above is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this chapter.

(3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

(a) The anchoring and the elevation standards of § 150.41(C); and

(b) The no encroachment standard of division (B)(1) above.

(Ord. 130, passed 8-4-2008)

### ***LEGAL STATUTE PROVISIONS***

#### **§ 150.55 EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.**

This chapter in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted September 21, 2000, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this chapter shall not affect any action, suit, or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the town enacted on September 21, 2000, as amended, which are not reenacted herein are repealed. The date of the initial flood damage prevention ordinance for the county is June 9, 1978.

(Ord. 130, passed 8-4-2008)

#### **§ 150.56 EFFECT ON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.**

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this chapter; provided, however, that when construction is not begun under such outstanding permit within a period

of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this chapter.

(Ord. 130, passed 8-4-2008)

**§ 150.99 PENALTY.**

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. 130, passed 8-4-2008)





## CHAPTER 151: MAINTENANCE OF NONRESIDENTIAL BUILDINGS

### Section

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*GENERAL PROVISIONS***§ 151.01 TITLE.**

This chapter shall be known as the “Nonresidential Building Maintenance Standards” for the town, and may be cited as such, and will be referred to hereinafter as “this chapter”.  
(Ord. 93, passed 10-4-1999)

**§ 151.02 PURPOSE.**

It is the purpose of the provisions of this chapter to provide a just, equitable, and practicable method whereby nonresidential buildings and premises which from any cause, endanger the life, limb, health, morals, property, safety, or welfare of the general public or their occupants, diminish property values, or detract excessively from the appropriate appearance of the area in which they are located, may be required to be repaired, closed, vacated, or demolished. The provisions of this chapter are cumulative with and in addition to any other remedy provided by law including the current editions of standard codes adopted by the town.  
(Ord. 93, passed 10-4-1999)

**§ 151.03 FINDINGS, AUTHORITY.**

(A) Pursuant to G.S. § 160A-174, it is hereby found and declared that there exist in the town nonresidential buildings and premises which are unsafe and especially dangerous to life because of liability to fire or because of bad conditions of walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems, inadequate means of egress, and other causes.

(B) In addition, it is hereby found and declared that there exist in the town nonresidential buildings and premises which, although not meeting the classification of unsafe and especially dangerous to life, fail to fully comply with all the minimum standards for nonresidential buildings and premises fitness as established herein and, therefore, have present one or more conditions which are inimical to the public health, safety, and general welfare. Such conditions, if not corrected, can lead to deterioration and

dilapidation of nonresidential buildings and premises which render them unsafe and especially dangerous to life.

(Ord. 93, passed 10-4-1999)

**§ 151.04 SCOPE; JURISDICTION.**

The provisions of this chapter shall apply to all existing nonresidential buildings and premises and to all nonresidential buildings and premises hereafter constructed within the town limits as now or hereafter established.

(Ord. 93, passed 10-4-1999)

**§ 151.05 GENERAL DEFINITIONS AND INTERPRETATIONS.**

(A) Unless specifically defined in § 151.06, words used in this chapter shall have their respective customary dictionary definitions.

(B) For the purpose of these regulations certain words, terms, or phrases used herein are interpreted and defined as follows:

(1) Words used in the present tense shall include the future tense;

(2) Words used in the singular shall include the plural and words used in the plural shall include the singular;

(3) The words *SHALL* and *WILL* always indicate mandatory. The words *SHOULD* and *MAY* always indicate optional;

(4) The word *LOT* includes the words *PLOT* and/or *PARCEL*;

(5) The word *BUILDING* includes the word *STRUCTURE*;

(6) The word *PERSON* includes a *FIRM*, *ASSOCIATION*, *ORGANIZATION*, *PARTNERSHIP*, *TRUST*, *COMPANY*, *CORPORATION*, and/or *INDIVIDUAL*;

(7) The word *USE* includes the terms *ARRANGED*, *DESIGNED*, and/or *INTENDED* for a use, activity, and/or purpose;

(8) The term *BOARD OF ADJUSTMENT* shall always indicate the Board of Adjustment of the town, as created and appointed by the Town Council of said town; and

(9) The term *TOWN COUNCIL* shall always indicate the Town Council.  
(Ord. 93, passed 10-4-1999)

**§ 151.06 SPECIAL DEFINITIONS AND INTERPRETATIONS.**

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

**BUILDING.** Any covered structure intended for shelter, housing, or enclosure of persons, animals, facilities, equipment, or chattels; the term **BUILDING** shall be construed to include the term “structure”; furthermore, it shall be construed as if followed by the term “or part thereof”.

**BUILDING, ACCESSORY.** A detached subordinate building located on a lot, parcel, or tract whose use is incidental to that of the principal building. A building cannot be considered **ACCESSORY** unless it accompanies a principal building on the same lot, parcel, or tract.

**BUILDING, PRINCIPAL.** A building in which the principal use of the lot, parcel, or tract is conducted.

**BUILDING CODE.** The North Carolina State Building Code.

**DETERIORATION.** The condition of a building or part thereof, characterized by holes, breaks, rot, crumbling, rusting, peeling paint, or other evidence of physical decay or loss of structural integrity.

**FIRE HAZARD.** Any thing or act which increases, or may cause an increase of, the hazard, likelihood, or menace of fire to a greater degree than reasonable for the conduct of the nonresidential use on the premises, or which may unreasonably obstruct, delay, or hinder, or may unreasonably become the cause of an obstruction, a delay, a hazard, or an unreasonable hindrance to the prevention, suppression, or extinguishment of fire. See also **NUISANCE**.

**GARBAGE.** The animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food.

**INFESTATION.** The haunting or overrunning by rats, snakes, birds, insects, or other destructive vermin or animals that endanger the public health and safety.

**NONRESIDENTIAL BUILDING MAINTENANCE STANDARDS INSPECTOR.** The person delegated as such by the Town Council. Hereinafter referred to as “the Inspector”.

**NUISANCE.**

(1) Any public nuisance known as common law or in equity jurisprudence, or as provided by the statutes of the state, or the ordinances of the town;

(2) Any condition, including an attractive nuisance, which may prove detrimental to human health or safety whether in a building, on the premises of a building, or part of a building or upon an occupied lot;

(3) Physical conditions dangerous to human life or detrimental to health of persons in, on, or near the premises where the condition exists;

(4) Unsanitary conditions or conditions that are dangerous to public health, well-being, or the general welfare; or

(5) Fire hazards or other safety hazards.

**OCCUPANT.** Any person who has charge, care, or control of a nonresidential building and/or premises or a part thereof, whether with or without the knowledge and consent of the owner, or any person, individually or jointly, entitled to possession regardless of whether the building and/or premises are actually occupied or not.

**OWNER.** The holder of the title in fee simple and every mortgagee of record of a property.

**PHYSICAL VALUATION.** The estimated cost to replace a building in kind.

**PLUMBING.** All of the following supplies, facilities, and equipment: gas pipes, gas burning equipment, water pipes, water heaters, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, vents, and other similar fixtures, together with all connections to water, sewer or gas lines, and water pipes and lines utilized in conjunction with HVAC equipment.

**PREMISES.** A lot, plot, or parcel of land, including the buildings or structures thereon, under control by the same owner or occupant, devoted to or zoned for nonresidential use.

**PUBLIC SANITARY SEWER.** Any sanitary sewer owned, operated, and maintained by the town and available for public use for the disposal of sewage.

**RUBBISH.** Combustible and non-combustible waste materials, except garbage and ashes, including, but not limited to, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery, and dust.

**SEWAGE.** Waste from a flush toilet, bathtub, sink, lavatory, dishwashing or laundry machine, or water-carried waste from any other fixture, equipment, or machine.

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

**STRUCTURE.** Anything constructed or erected which requires location on the ground. Refer to the definition of **BUILDING** herein.

**SUPPLIED.** Paid for, furnished or provided by, or under control of the owner or occupant.  
(Ord. 93, passed 10-4-1999)

**§ 151.07 DUTIES AND RESPONSIBILITIES OF THE OWNER.**

It shall be the duty and responsibility of the owner to maintain all nonresidential buildings and premises in accordance with all standards for nonresidential buildings and premises fitness as stated in §§ 151.25 to 151.26.

(Ord. 93, passed 10-4-1999)

**§ 151.08 DUTIES AND RESPONSIBILITIES OF THE OCCUPANT.**

It shall be the duty and responsibility of the occupant to ensure that:

(A) All parts of the premises under the control of the occupant shall be kept in a safe, clean, and sanitary condition consistent with the nonresidential use and the occupant shall refrain from performing any acts which would render any parts of the building or premises unsafe or unsanitary or which would obstruct any adjacent owner/occupant from performing any duty required, or from maintaining his or her building or premises in a safe and sanitary condition;

(B) Every occupant shall be responsible for the elimination of infestation in and on the premises, subject to his or her control;

(C) Every occupant shall maintain all supplied plumbing fixtures in a safe and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of same;

(D) No garbage or solid waste shall be stored or allowed by the occupant to accumulate on the premises unless contained in a trash receptacle(s) which is in accordance with the town's code of ordinances;

(E) Damage to public sidewalks and/or curb and gutter located in the public right-of-way shall be repaired or replaced at no expense to the town when such damage is caused by vehicles making deliveries to the nonresidential use under the control of the occupant; and

(F) Where the owner would not otherwise know of a defect of any facility, utility, or equipment required to be furnished hereunder and the same is found to be defective or inoperable, the occupant affected thereby shall, upon learning of such defect, provide notice to the owner.

(Ord. 93, passed 10-4-1999)

**§ 151.09 RELATIONSHIP OF DUTIES AND RESPONSIBILITIES TO OCCUPANCY.**

The provisions of this chapter that apply to the exterior or exterior components of a structure or building or to the premises shall be complied with whether the structure or building or premises is

occupied or vacant. All unoccupied or vacant structures or buildings shall be secured by their owners to prevent the entry of unauthorized persons or the formation of nuisance conditions such as infestation. (Ord. 93, passed 10-4-1999)

**§ 151.10 CONFLICT WITH OTHER REGULATIONS.**

In the event 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 which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the jurisdiction shall prevail. The State Building Code, current edition, shall serve as the standard for all alterations, repairs, additions, removals, demolitions, and other acts of building made or required pursuant to this chapter.

(Ord. 93, passed 10-4-1999)

**§ 151.11 AMENDMENTS.**

The Town Council may from time to time amend, supplement, or change the provisions and requirements of this chapter. Any such amendment shall be by ordinance of the Town Council.

(Ord. 93, passed 10-4-1999)

***STANDARDS FOR NONRESIDENTIAL BUILDINGS AND PREMISES FITNESS***

**§ 151.25 UNLAWFUL TO OWN UNSAFE BUILDINGS AND STRUCTURES.**

(A) It shall be unlawful for any firm, person, or corporation to own a building or a structure situated in the jurisdiction of the town which is in such a defective or hazardous condition that it is unsafe and especially dangerous to life. The Town Council has determined that unsafe and especially dangerous buildings and structures are detrimental to the health, safety, and welfare of the citizens of the town, 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, dangerous, hazardous, or unlawful conditions or demolish such buildings or structures.

(B) 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 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;

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(2) Supporting member or members which show 33% or more damage or deterioration, or non-supporting, enclosing, or outside walls or covering which shows 50% or more of damage or deterioration;

(3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to be reasonably 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, or welfare of the occupants or other people of the jurisdiction;

(6) Inadequate facilities for egress 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 extent as to endanger the health, safety, or general welfare of the occupants or other residents of the jurisdiction;

(9) Lack of proper electrical, heating, or plumbing facilities required by this chapter which constitutes a health or a definite safety hazard;

(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; or

(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.

(C) In addition to divisions (B)(1) to (B)(12) 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 or she finds that a building or structure fails to fully comply with any five 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.



(1) *General.*

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

(b) 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.

(c) Buildings and premises shall be kept free of loose and insufficiently anchored overhanging objects which constitute a danger of falling on persons or property.

(d) 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.

(e) 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.

(f) Buildings and premises shall be kept free of objects and elements protruding from building walls, the 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.

(2) *Appurtenances.*

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) Attached and unattached accessory structures shall be maintained in a state of good repair.

(f) 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.

(3) *Structural.*

(a) 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.

(b) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

(c) Foundations, foundation walls, piers, or other foundation supports shall not be deteriorated or damaged.

(d) Interior steps, railings, landings, porches, or other parts or appurtenances shall be maintained in such condition that they will not fall or collapse.

(e) 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 chapter. 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.

(4) *Plumbing, electrical, and supplied facilities.*

(a) 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.

(b) 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.

(c) Every supplied facility, piece of equipment, or utility which is required under this chapter 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.

(5) *Egress.*

(a) Facilities for egress in case of fire or panic shall be adequate and shall remain clear for such purposes.

(b) 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.

(c) 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.

(d) All openings originally designed as windows shall be maintained as windows, unless specifically approved by the Inspector for enclosure.

(6) *Drainage.* 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.  
(Ord. 93, passed 10-4-1999)

**§ 151.26 BUILDINGS AND PREMISES NOT DECLARED UNSAFE BUT WHICH ARE NOT IN COMPLIANCE WITH ALL STANDARDS.**

In any case where the Inspector determines that a nonresidential building and/or premises fails to fully comply with one or more but less than five of the standards of nonresidential buildings and premises fitness set forth in § 151.25(C), such building and/or premises shall not be found to be unsafe and shall not be subject to the procedures and remedies as provided for in this chapter for unsafe buildings and premises. Each such failure of non-compliance, however, shall constitute a violation of the terms of this chapter and shall subject the violator to the penalties and enforcement procedures, civil or criminal or both, of § 151.99. In such case, the Inspector shall notify the owner as provided for in § 151.44.

(Ord. 93, passed 10-4-1999) Penalty, see § 151.99

***PROCEDURE FOR ENFORCEMENT***

**§ 151.40 UNSAFE BUILDINGS SHALL BE CONDEMNED BY THE INSPECTOR.**

If a building or structure shall appear to the Inspector to be especially dangerous to life and unsafe under § 151.25, the Inspector shall:

(A) Make a written finding that the building or structure appears to be unsafe and is condemned;  
and

(B) Affix a condemned notice of the dangerous character or conditions of the building or structure to a conspicuous place on the exterior wall of such building or structure.  
(Ord. 93, passed 10-4-1999)

#### **§ 151.41 REMOVAL OF CONDEMNATION NOTICE UNLAWFUL.**

It shall be unlawful for any person to remove a condemned notice from a building or structure after such condemned notice has been affixed to it by the Inspector pursuant to the provisions of § 151.40.  
(Ord. 93, passed 10-4-1999) Penalty, see § 151.99

#### **§ 151.42 COMPLAINT AND NOTICE OF HEARING.**

(A) If a building or structure has been condemned by the Inspector as unsafe pursuant to § 151.40, the Inspector shall serve the owner with a written complaint and notice of hearing which notice shall state that:

(1) The building or structure is condemned due to its condition that appears to constitute a fire or safety hazard or appears to be dangerous to life, health, or other property and that it is held to be unsafe;

(2) A hearing will be held before the Inspector at a designated place and time, which time shall be not less than ten days nor more than 30 days after the date of such notice, and that at such hearing 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) Following the hearing, the Inspector may issue such order to repair, close, vacate, or demolish the building or structure as the Inspector deems to be appropriate under the existing conditions.

(B) Upon the issuance of a complaint and notice of hearing pursuant to this section, the Inspector may cause the filing of a notice of lis pendens, with a copy of the complaint and notice of hearing attached thereto, in the office of the Clerk of County Superior Court, to be indexed and cross-indexed in accordance with the indexing procedures of the state's General Statutes. The Inspector shall cause a copy of the notice of lis pendens to be served upon the owner of the building or structure at the time of filing in accordance with G.S. § 160A-428, as applicable. Upon compliance with the requirements of any order issued based upon such complaint and hearing, the Inspector shall direct the Clerk of Superior Court to cancel the notice of lis pendens.  
(Ord. 93, passed 10-4-1999)

#### **§ 151.43 REPAIR OF UNLAWFUL CONDITION.**

If, upon a hearing held pursuant to the notice prescribed in § 151.42, the Inspector shall find that the building or structure is in an unsafe condition which constitutes a fire or safety hazard or renders it

dangerous to life, health, or other property, the Inspector shall issue an order in writing, directed to the owner or owners of such building or structure, directing the owner or owners to remedy the defective condition by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps within such a period as the Inspector may prescribe, which period may not be less than 60 days from the service of the order; provided that, where the Inspector finds that there is imminent danger to life, health, or other property, the order may require that corrective action be taken in such lesser period as may be feasible.

(Ord. 93, passed 10-4-1999)

**§ 151.44 SERVICE OF WRITTEN NOTICE OR ORDER OF INSPECTOR.**

In any case where this chapter requires service of a written notice or order by the Inspector, such notice or order shall be made in the following manner.

(A) The written notice or order shall be served upon each owner by mailing the same by certified or registered mail, return receipt requested, to the owner's last known address or by personal service of the notice or order upon each owner.

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

(Ord. 93, passed 10-4-1999)

**§ 151.45 APPEAL OF ORDER OF INSPECTOR; FINALITY IF NOT APPEALED.**

Any owner who has received an order under § 151.43 may appeal from the order to the Town Council by giving notice of appeal in writing to the Inspector and to the Town Clerk within ten days following issuance of the order. In the absence of an appeal to the Town Council within the prescribed time, the order of the Inspector shall be final. The Town Council shall hear appeals within a reasonable time after receipt of the notice of appeal and it may modify and affirm or revoke the order.

(Ord. 93, passed 10-4-1999)

**§ 151.46 FAILURE TO COMPLY WITH ORDER OF INSPECTOR.**

It shall be unlawful for the owner of a building or structure to fail to comply with an order issued pursuant to § 151.43 from which no appeal has been taken or fail to comply with an order of the Town Council following an appeal, unless the owner shall, within ten days following issuance of the order by the Town Council, appeal from that order as by law provided.

(Ord. 93, passed 10-4-1999) Penalty, see § 151.99

**§ 151.47 REMEDIES; LIEN FOR COST OF DEMOLITION AND REMOVAL.**

(A) In the event of such failure to comply, in addition to the penalties, remedies, and enforcement procedures contained in §§ 10.99 and 151.99, the Inspector may cause such building and premises to be repaired, closed, vacated, or demolished as appears appropriate.

(B) The Inspector, however, shall not take such action until the Town Council shall have by ordinance ordered the Inspector to proceed with such action with respect to the particular property or properties which the Inspector shall have found to be unsafe or not in compliance with all standards of nonresidential building and premises fitness and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a building until the owner has first been given a reasonable opportunity to bring it into conformity with this chapter. The ordinance adopted pursuant to this section shall be recorded in the office of the County Register of Deeds and shall be indexed in the name of the property owner or owners in the grantor index.

(C) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Inspector shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as a lien for special assessments provided in G.S. Ch. 160A, Art. 10. If the building is removed or demolished by the Inspector, he or she shall sell the materials of the building, and the personal property, fixtures, or appurtenances found in or attached to the building, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Superior Court by the Inspector, 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 of the decree of the court.  
(Ord. 93, passed 10-4-1999)

**§ 151.48 FAILURE OF OCCUPANT TO COMPLY WITH ORDER TO VACATE.**

(A) If any occupant fails to comply with an order to vacate a building, the Inspector may file a civil action in the name of the town to remove such occupant. The action to vacate the building shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any persons occupying such building. 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 Inspector produces a certified copy of an ordinance adopted by the Town Council pursuant to this section authorizing the Inspector to proceed to vacate the occupied building, the Magistrate shall enter judgement ordering that the premises be vacated and that all persons be removed.

(B) The judgement ordering that the building be vacated shall be enforced in the same manner as the judgement for summary ejectment entered under G.S. § 42-30. An appeal from any judgement entered hereunder by the Magistrate may be taken as provided in G.S. § 7A-228, and the execution of such judgement may be stayed as provided in G.S. § 7A-227. An action to remove an occupant of a

building who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this section unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the Town Council has ordered the Inspector to proceed to exercise his or her duties under this section to vacate and close or remove and demolish the building. (Ord. 93, passed 10-4-1999)

**§ 151.49 DEMOLITION OF NONRESIDENTIAL BUILDINGS BY OWNER.**

Where a nonresidential building is under the jurisdiction of this chapter, the building may be demolished by the owner provided that the following requirements are met.

(A) The owner obtain a demolition permit from the County Inspections Department.

(B) All sewer, gas, water, and similar taps or connections be properly closed and disconnected.

(C) All debris from the building be removed from the site. This requirement is for the removal of all debris that is above the street level of the building.

(D) The lot be graded to a smooth, even, finished grade, free from building material, debris, holes, and/or depressions. Where building debris remains on the site below street level, the owner must back fill the lot with 12 inches of clean fill which shall be graded to a smooth, even finished grade.

(E) Where walls of adjacent buildings become exposed as a result of the demolition, said walls 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 chapter. 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 the adjacent property and weatherproofed if necessary to prevent deterioration of the wall.

(Ord. 93, passed 10-4-1999)

***ADMINISTRATION***

**§ 151.60 OFFICE OF NONRESIDENTIAL BUILDING MAINTENANCE STANDARDS INSPECTOR.**

(A) For the purposes of administering and enforcing the provisions of this chapter, the office of Nonresidential Building Maintenance Standards Inspector, (herein called "Inspector"), is hereby created.

(B) The Inspector shall be appointed by the Town Council shall take and subscribe to the oath of office administered by the Town Clerk, and shall have such powers as may be necessary or convenient

to carry out and effectuate the purposes and provision of this chapter, including without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

(1) To investigate the nonresidential building conditions in the jurisdiction in order to determine which buildings therein are unsafe, being guided in such examinations of buildings by the requirements set forth in this chapter and for the purpose of carrying out the objectives of this chapter with respect to such nonresidential buildings;

(2) To administer oaths and affirmations and to examine witnesses and receive evidence;

(3) To enter upon and within premises and buildings for the purpose of making examinations and investigations; provided, that such entries shall be made at reasonable hours in such a manner as to cause the least possible inconvenience to the persons in possession; and

(4) To delegate any of his or her functions and powers under this chapter to such officers and agents as he or she may designate.

(Ord. 93, passed 10-4-1999)

#### **§ 151.61 INSPECTIONS.**

(A) For the purpose of carrying out the intent of this chapter, the Inspector is hereby authorized to enter, examine, and survey at all reasonable times all nonresidential buildings and premises, including abandoned structures. The owner or occupant of every nonresidential building, or the person in charge thereof, shall give the Inspector free access to such building and its premises, at all reasonable times for the purposes of such inspection, examination, and survey. Every occupant of a nonresidential building shall give the owner thereof, or his or her agent or employee, access to any part of such building and its premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or with any lawful order issued pursuant to the provisions of this chapter.

(B) The Inspector may make periodic inspections for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in nonresidential structures within the jurisdiction. In addition, he or she may make inspections when he or she has reason to believe that such conditions may exist in a particular structure or premises.

(Ord. 93, passed 10-4-1999)

#### **§ 151.62 DEFECTS IN BUILDINGS TO BE CORRECTED.**

When the Inspector finds any defects in a nonresidential building, or finds that a building has not been constructed in accordance with applicable state and town laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his or her duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions, or violations



of law in the property he or she owns. Failure to do so shall constitute a violation of this chapter. Each day any violation of this chapter shall continue shall constitute a separate offense.

(Ord. 93, passed 10-4-1999)

**§ 151.63 VIOLATIONS.**

In addition to the conditions, acts, or failure to act that constitute violations specified in this chapter, it shall be unlawful for the owner of any building and premises to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close or vacate and remove or demolish the same, upon order of the Inspector duly made and served as herein provided, within the time specified in such order. It shall be unlawful for the owner of any building, with respect to which an order has been issued pursuant to § 151.43, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration, or improvement or its vacation and closing, or vacation and removal or demolition.

(Ord. 93, passed 10-4-1999) Penalty, see § 151.99

**§ 151.99 PENALTY.**

In addition to other penalties and remedies provided by this chapter, violation of this chapter shall constitute either a misdemeanor punishable by fine or imprisonment as provided by G.S. § 14-4, as amended, or at the election of the town, shall subject the offender to civil penalties, remedies, and enforcement procedures contained in § 10.99.

(Ord. 93, passed 10-4-1999)

