

## 8. ENFORCEMENT

### 8.1 PURPOSE

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

### 8.2 VIOLATIONS

Whenever, by the provisions of this Ordinance, the performance of any act is required, or the performance of any act is prohibited, or whenever any regulation or limitation is imposed on the use of any land, or on the erection, alteration, or the use or change or use of a structure, a failure to comply with such provisions shall constitute a violation of this Ordinance.

No person who, being the owner or agent of the owner of any land located within the jurisdiction of this Ordinance, shall transfer or sell any interest in any property within a proposed subdivision except as shown on such subdivision plat and by express reference thereto, and after approval of such plat as herein provided and after same has been recorded in the office of the Orange County Register of Deeds. Nothing herein shall prevent anyone from making a transfer of property the finality of which transfer is conditioned upon the final approval of and recording of the subdivision plat.

### 8.3 RESPONSIBLE PERSONS

The owner, tenant, or occupant of any land or structure, or part thereof, and any architect, engineer, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may be held responsible for the violation and be subject to the penalties provided herein.

### 8.4 ENFORCEMENT GENERALLY

#### 8.4.1 NOTICE OF VIOLATIONS

For procedures on notice of violations, see the Town's *Administrative Manual*.

### 8.5 REMEDIES AND PENALTIES

#### 8.5.1 CRIMINAL PENALTIES

Pursuant to N. C. Gen. Stat., Section 14-4, any person, firm, or corporation convicted of violating the provisions of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount not to exceed five hundred dollars (\$500).

## **8.5.2 CIVIL PENALTIES**

- 8.5.2.1** Any act constituting a violation of this Ordinance shall also subject the offender to a civil penalty of One Hundred Dollars (\$100.00), if the offender fails promptly to correct such violation after (a) receiving a final written notice of violation which he does not appeal to the Board of Adjustment within the specified period or (b) denial of his appeal from a final written notice of violation by the Board of Adjustment. If the offender fails to pay the penalty within thirty (30) days of receiving final written notice of a violation when no appeal was taken, or within ten (10) days after the Board of Adjustment has denied an appeal, the penalty may be recovered by the Town in a civil action in the nature of the debt.
- 8.5.2.2** Each day that any violation continues beyond (a) thirty (30) days after receiving final written notice of a violation when no appeal is taken, or (b) ten (10) days after the Board of Adjustment has denied an appeal shall constitute a separate violation and a separate offense for purposes of the penalties and remedies specified herein.
- 8.5.2.3** It shall be presumed that all notices of violation are received five (5) days after the date such notices are mailed to the responsible person (Section 8.3, *Responsible Persons*).

## **8.5.3 ADDITIONAL PENALTIES**

In addition to the penalties and remedies above, the Planning Director shall pursuant to authorization by the Town Board, institute any appropriate action or proceedings to prevent, restrain, correct, or abate a violation of the Ordinance or to prevent use or occupancy of the building, structure or land so long as said violation continues.

# **8.6 PREVENTION OF DEMOLITION BY NEGLECT**

## **8.6.1 INTENT**

The purpose of this Ordinance is to permit the Town of Hillsborough, through its Historic District Commission and its Planning Department, to protect the Town's historic architectural resources by intervening when a significant resource is undergoing demolition by neglect.

Demolition by neglect occurs when the condition of an improved property located in the Historic District is deteriorating in such a way as to threaten the structural integrity or the relevant, significant architectural detail of the structure such that the structure or its character may be lost to current and future generations.

A significant resource, as the term is used in this Ordinance, is defined as any property, structure or architectural resource designated as an historic landmark, or designated as "contributing" in the Hillsborough Historic District's nomination to the National Register of Historic Places, or in the Hillsborough Historic District Architectural Inventory of 1996, or which has gained significance through amendments to the 1996 Inventory prepared by an architectural historian.

## 8.6.2 STANDARDS

The exterior features of the building or structure found to have significance (the term is defined above) located within the Historic District shall be preserved by the owner, or such other person as may have legal possession, custody, and control thereof, against decay and deterioration and kept free from structural defects. The owner, or other person having such legal possession, custody, and control, shall upon written request by the Town, stabilize or repair the exterior features of a significant building or structure if they are found to be deteriorating, or if their condition is contributing to deterioration of the property or the district. The following conditions are examples of (by way of illustration, but not limitation) defects which may constitute, or result in a finding of, demolition by neglect:

- (a) Deterioration of exterior walls, foundations, or other vertical support which results in leaning, sagging, splitting, listing, or buckling;
- (b) Deterioration of flooring or floor supports, roofs, or other horizontal members which results in leaning, sagging, splitting, listing, or buckling;
- (c) Deterioration of external chimneys which results in leaning, sagging, splitting, listing, or buckling of the chimney;
- (d) Deterioration or crumbling of exterior plasters or mortars where there is evidence that such condition exposes structural elements to decay;
- (e) Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors or broken or malfunctioning gutters;
- (f) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering;
- (g) Rotting, holes, and other forms of decay where there is evidence that such condition has exposed structural elements;
- (h) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling;
- (i) Deterioration of contributing accessory structures; or
- (j) Overgrown plants/landscaping features which threaten the structural integrity or relevant, significant architectural detail of a structure.

## 8.6.3 PROCEDURE FOR ENFORCEMENT

**8.6.3.1** Any citizen who believes demolition by neglect is occurring with respect to any particular property in the Historic District, may make a written complaint to the Planning Director. The Planning Director may also initiate this enforcement process by filing a written complaint. Such a complaint must include a clear description of the property and the nature of the deterioration claimed to constitute demolition by neglect.

**8.6.3.2** Upon the receipt of a complaint, the Planning Director will conduct a preliminary investigation and prepare a staff report concerning the property which is the subject of

the complaint. The Planning Director may inspect the entire property as part of their investigation, and is not limited in their investigation to the specific conditions identified in the original complaint. The Planning Director who makes the preliminary investigation may consult with professionals including, but not limited to, architects, landscape architects, engineers, building inspectors and historic preservationists, during the investigation.

- 8.6.3.3** The Planning Director shall make a written report of their preliminary inspection. If, upon investigation, the Planning Director determines that a structure may be undergoing demolition by neglect, they will notify the property owner in writing that a complaint and staff report concerning the property will be brought before the Historic District Commission at a meeting held no fewer than thirty (30) days nor more than sixty (60) days from the date of the notice. If the preliminary investigation does not substantiate the complaint, the complaint will be considered resolved and no further action will be taken.
- 8.6.3.4** The notice to the property owner shall include a copy of the Planning Director's staff report concerning the structure, a description of the demolition by neglect review process, how the property owner can resolve the issue immediately, and a list of financial resources which may be available to assist the owner.
- 8.6.3.5** The Planning Director will forward the complaint and staff report to the Historic District Commission to be considered at its next regularly scheduled meeting within the time period described in Section 8.6.3.3 above.
- 8.6.3.6** The Historic District Commission will review the complaint and staff report at a regular meeting.
- 8.6.3.7** If the Historic District Commission finds that the structure may be undergoing demolition by neglect, it shall file an order directing the Planning Director conduct a hearing to determine whether the subject property is undergoing demolition by neglect. The order shall describe the demolition by neglect found during the Planning Director's preliminary inspection of the full property.
- 8.6.3.8** Whenever such an order is filed with the Planning Director, a copy shall be mailed to the property owner or such other person as may have legal possession, custody or control of the property. The Planning Director shall also issue and cause to be delivered to the owner and/or such other person who may have legal possession, custody, and control thereof, as the same may be determined by reasonable diligence, a written Notice stating that the Historic District Commission has reason to believe that the property is undergoing demolition by neglect, identifying the specific condition(s) at the property which have led to that determination, and advising that a hearing will be held before the Planning Director at a place within the Town not less than thirty (30) nor more than forty-five (45) days from the date of the Notice; that the owner and/or parties in interest have the right to answer and to give testimony at the hearing. The Historic District Commission shall also be given notice of the hearing. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Planning Director. The purpose of the hearing is to receive evidence concerning the preliminary finding of

demolition by neglect and to ascertain whether the owner and/or other parties in interest wish to file a claim of economic hardship with the Historic District Commission.

- 8.6.3.9** If after such hearing, the Planning Director determines that the structure is undergoing demolition by neglect because it is affected by one (1) or more of the conditions set out in Section 8.6.2, *Standards*, the Planning Director shall state in writing the findings of fact in support of such determination and shall issue and cause to be delivered to the owner and/or responsible persons (Section 8.3, *Responsible Persons*) an Order to Repair. The Order to Repair shall describe those elements of the structure that are deteriorating, contributing to deterioration, or deteriorated and which serve as the basis of the determination. The Owner and/or other responsible person shall have ten (10) business days from the date of the Planning Director's written Order to Repair within which to file with the Historic District Commission a written petition for a claim of undue economic hardship. In the event that the owner and/or responsible person wishes to Petition for a claim of undue economic hardship, the Planning Director's Order to Repair shall be stayed until after the Historic District Commission's determination in accordance with the procedures of this code, except as provided in the Section 8.6.8, *Other Town Powers*.
- 8.6.3.10** The commencement and prosecution of work pursuant to the Order of Repair shall stay further enforcement activity under this Section 8.6.3, *Procedure for Enforcement*.

#### **8.6.4 EVIDENCE OF UNDUE ECONOMIC HARDSHIP**

The Owner or responsible person claiming undue economic hardship bears the burden of presenting sufficient evidence to allow the Historic District Commission to determine that undue economic hardship exists. Such evidence shall include at least the following:

##### **8.6.4.1 For all properties:**

- (a) Nature of property ownership (individual, business, or nonprofit) or other legal possession, custody, or control;
- (b) A description of the structures involved;
- (c) Petitioner's financial resources;
- (d) Cost of required repairs or other corrective measures;
- (e) Assessed value of the land and improvements;
- (f) Real estate taxes for the previous two (2) years;
- (g) Amount paid for the property;
- (h) Date of purchase;
- (i) Party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance;
- (j) Annual debt service, if any, for previous two (2) years;
- (k) Any listing of the property for sale or rent, price asked, and offers received, if any; and

- (l) Any potential grants or funding sources available to help improve the property.

**8.6.4.2 For income-producing properties:**

- (a) If the property is income-producing, the annual gross income from the property for the previous two (2) years;
- (b) Itemized operating and maintenance expenses for the previous two (2) years, including proof that adequate and competent management procedures were followed; and
- (c) Annual cash flow, if any, for the previous two (2) years.

**8.6.5 METHODS OF SERVICE**

Notices or orders issued pursuant to Section 8.6.3, *Procedure for Enforcement*, shall be transmitted by first class mail to the owner of the property as listed in the Orange County Tax office and to the occupant of the property at the property's mailing address. All notices and orders shall be presumed to be received by the addresses five (5) days from the date of mailing.

**8.6.6 SAFEGUARDS FROM UNDUE ECONOMIC HARDSHIP**

Undue economic hardship is defined as the property owner's financial inability to make the repairs specified in the Order to Repair pursuant to Section 8.6.3.9. A claim of undue economic hardship must be made, in writing, by filing a request for such a determination with the Planning Director within the time period specified for in Section 8.6.3.9. The determination of undue economic hardship will be made by the Historic District Commission on a case by case basis.

When a claim of undue economic hardship is made, Planning Director shall notify the Commission within five (5) business days following the Planning Director's receipt of the written request for a determination of undue hardship. The Commission shall schedule a hearing at its next available meeting.

The property owner and/or the responsible person shall present the information provided by Section 8.6.4.1, *For All Properties*, and, where appropriate, 8.6.4.2, *For Income Producing Properties*, to the Historic District Commission at least ten (10) days before the date of the hearing. The Commission may require that an owner and/or parties in interest furnish such additional information as the Commission may reasonable conclude is relevant to its determination of undue economic hardship, and may, in its sole discretion, hold the hearing open or close the hearing and allow the owner or party in interest additional time to furnish the requested additional information. The Commission may direct Planning Director to furnish additional information, as the Commission believes is relevant. The Commission shall also state which form of financial proof it deems relevant and necessary to a particular case.

In the event that any of the required information is not reasonably available to the owner and/or parties in interest and cannot be obtained by the owner, the owner shall describe the reasons why such information cannot be obtained.

#### **8.6.7 COMMISSION'S DECISION ON CLAIM OF UNDUE HARDSHIP**

- 8.6.7.1** Within sixty (60) days following the Commission's hearing on the claim of undue economic hardship, the Commission shall make a determination whether undue economic hardship exists, and shall enter the reasons for such determination into the record. In the event of a finding of no undue economic hardship, the Commission shall report such finding to the Planning Director, and the Planning Director shall cause to be issued an Order to Repair the property within a specified time.
- 8.6.7.2** In the event of a determination that undue economic hardship exists, the finding shall be accompanied by recommended options that may be available to the property owner to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the Town, the County, or other public, private, or nonprofit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations, or relaxation of the provisions of this article sufficient to mitigate the undue economic hardship. The Commission shall report such finding and plan to the Planning Director. The Planning Director shall cause to be issued an Order to Repair the property within a specified time.

#### **8.6.8 APPEALS**

Determinations made by the Planning Director pursuant to Section 8.6.3, *Procedure for Enforcement*, or by the Commission pursuant to Section 8.6.3, *Procedure for Enforcement* or Section 8.6.7, *Commission's Decision on Claim of Undue Hardship*, may be appealed to the Board of Adjustment. To perfect such an appeal, a written application must be filed by an aggrieved party with the Board of Adjustment within thirty (30) calendar days of the date the determination was mailed to the property owner. Appeals shall be in the nature of certiorari (review of a quasi-judicial decision) such that the Board of Adjustment may review the record of the proceedings before the Planning Director or the Commission (as the case may be) to ensure that all procedures required by this Ordinance have been followed, and to ensure that the decision appealed from is supported by competent evidence in the record. However, the Board of Adjustment may not substitute its judgment for that of the Planning Director or the Historic District Commission unless it concludes that either (i) there has been an error of law or procedural error which has resulted in prejudice to the appellant or (ii) there is not substantial, competent evidence in the record to support the decision.

#### **8.6.9 OTHER TOWN POWERS**

Nothing contained within this Article shall diminish the Town's power to declare an unsafe building or a violation of the minimum housing code.

## **8.6.10 PENALTIES AND REMEDIES**

Enforcement of this article may be by any one (1) or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

### **8.6.10.1 Equitable Remedy**

The Town may apply for any appropriate equitable remedy to enforce the provisions of this article.

### **8.6.10.2 Order of Abatement**

The Town may apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this article. Whenever the party is cited for contempt by the court and the Town executed the order of abatement, the Town shall have a lien, in the nature of a mechanic's and material man's, on the property for the cost of executing the order of abatement.

### **8.6.10.3 Civil Penalty**

No civil penalty shall be levied unless and until the Planning Director transmits a notice thereof to the property owner by first class mail. The notice shall also set forth the time period, not less than ten (10) days, within which corrective measures must be commenced and shall establish a deadline for completion of the work. The notice shall state that failure to either (i) commence the work or (ii) complete the work, within the specified time period will result in the assessment of civil penalties and other enforcement action the civil penalty shall be assessed in the amount of one hundred dollars (\$100.00) per day of continuing violation.