

# CHAPTER 8. MAINTENANCE STANDARDS

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# Chapter 8 – Maintenance Standards

## 8.1 PURPOSE

It is the general purpose and intent of this chapter to preserve and promote the public health, safety and general welfare of the people of the Town and environs. This includes, among others, physical, aesthetic and monetary values. It is recognized that there may now be, or, may in the future be, residential and nonresidential buildings, structures, yards or vacant areas and combinations thereof which are so dilapidated, unsafe, dangerous, unhygienic, overcrowded, inadequately maintained or lacking in basic equipment or facilities, light, ventilation and heating so as to constitute a menace to the health, safety, and general welfare of the people. The establishment and enforcement of minimum housing and property maintenance standards is necessary to preserve and promote the private and public interest.

## 8.2 MINIMUM HOUSING CODE

### A. PURPOSE AND INTENT

Pursuant to the G.S. 160D-1201, it is hereby declared that there exists in the Town of Wallace dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazard of fire, accidents or other calamities; lack of ventilation, light and sanitary facilities; and other conditions rendering such dwellings unsafe or unsanitary; and there exist abandoned structures which constitute health and safety hazards due to the attraction of insects, conditions creating fire hazards, dangerous conditions constituting a threat to children, and frequent use by vagrants as living quarters in the absence of sanitary facilities; such that these dwellings and abandoned structures are detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the town of Wallace.

In order to protect the health, safety and welfare of the residents of the Town of Wallace as authorized by Chapter 160D of the General Statutes, it is the purpose of this ordinance to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, and for all abandoned structures, as expressly authorized by G.S. 160D-1205.

### B. DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this ordinance:

1. BASEMENT - A portion of the dwelling which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.
2. CELLAR - a portion of the dwelling which is located partly or wholly underground having inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.
3. DETERIORATED - a dwelling that is unfit for human habitation and cannot be repaired, altered, or improved to comply with all of the minimum standards established by this ordinance except at a cost not more than 50% of its value, as determined by the finding of the Planning Director.
4. DILAPIDATED - a dwelling that is unfit for human habitation and cannot be repaired, altered, or improved to comply with all of the minimum standards established by this ordinance except at a cost more than 50% of its value, as determined by the finding of the Planning Director.
5. DWELLING - any building, structure, or part thereof which is wholly or partly used or intended to be used for living, sleeping or habitation by human occupants, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. Temporary housing, as hereinafter defined shall not be regarded as a dwelling. The term shall include with its meaning the terms rooming house and rooming unit, as hereinafter defined.
6. DWELLING UNIT - any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping cooking and eating.
7. EXTERMINATION - the control and elimination of insects, rodents or mother pests by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating or trapping; or by any other recognized and legal pest elimination methods approved by the Planning Director.
8. GARBAGE - the organic waste resulting from the handling, preparation, cooking and consumption of food.

9. Gender words having a masculine gender shall include the feminine and neuter genders.
10. HABITABLE ROOM - a room enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathroom, water closet compartments, laundries, heater rooms, foyers, or communicating corridors, closets and storage spaces.
11. INFESTATION - the presence, within or around a dwelling, of any insects, rodents or other pests in such number to constitute a menace to health, safety or welfare to the occupants or the public.
12. MULTIPLE DWELLING - any dwelling containing more than two dwelling units.
13. OCCUPANT - any person over one year of age, living, sleeping, cooking or eating in, or having actual possession of a dwelling, dwelling unit, or rooming unit.
14. OPERATOR - any person that has charge, care or control of a building, or part thereof, in which dwelling units or rooming are let.
15. OWNER - any person who alone, jointly, or severally with others;
  - (a) Shall have title to any dwelling, dwelling unit or rooming unit, with or without accompanying actual possession thereof; or
  - (b) Shall be a mortgagee of record of any dwelling, dwelling unit or rooming unit; or
  - (c) Shall have charge, care or control of any dwelling, dwelling unit or rooming unit; or as executor, executrix, administrator, administration, trustee or guardian of the estate of the actual owner. Any such person thus representing the owner shall be bound to comply with the provisions of this ordinance, and the rules and regulations pursuant thereto, to the same extent as if he were owner.
16. PARTIES OR PARTIES IN INTEREST - all parties whom have interest of record in a dwelling, dwelling unit or rooming unit and any persons who are in possession thereof.
17. PERSON - any individual, corporation, firm, partnership, association, organization or any other legal entity.
18. PLUMBING - includes all of the following supplied facilities and equipment: gas pipes, gas burning equipment, water pipes, mechanical garbage disposal units, sewage disposal pipes, water closets, sinks, installed dish washers, lavatories, bathtubs, shower bathes, installed clothes washing machine, catch basins, drains, vents and any other similar supplied fixtures, together with all water, sewer and gas lines.
19. PUBLIC AUTHORITY - any official who is in charge of any department or branch of government of the Town of Wallace, Duplin County or the State of North Carolina relating to health, fire or building regulations or other activities concerning dwellings in the Town of Wallace and its jurisdiction.
20. ROOMING HOUSE - any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons not husband and wife, son and daughter, mother or father, sister or brother of the owner or operator.
21. ROOMING UNIT - any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not cooking or eating purposes.
22. RUBBISH - non-organic waste material. The term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass and dust.
23. SUPPLIED - paid for, furnished, or provided for, or under the control of, the owner or operator.
24. TEMPORARY HOUSING - any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than thirty consecutive days.
25. UNFIT FOR HUMAN HABITATION - that conditions exist in a dwelling, dwelling unit, rooming house or rooming unit which violate or do not comply with one or more of the minimum housing standards of fitness or one or more of the requirements established by the ordinance.
26. Words having certain meaning whenever the words "dwelling, dwelling unit, rooming house, rooming unit, premises", are used in this ordinance, they shall be construed as though they were followed by the words "or any part thereof".

**C. MINIMUM STANDARDS OF FITNESS FOR DWELLINGS AND DWELLING UNITS**

1. Every dwelling and dwelling used for human habitation, or held out of use for human habitation, shall comply with all of the minimum standards of fitness for human habitation and all of the requirements of *Sections 8.2(D), MINIMUM STANDARDS FOR STRUCTURAL CONDITION* through *8.2(I) MINIMUM STANDARDS FOR CONTROL OF INSECTS, RODENTS AND INFESTATIONS* of this ordinance.

2. No person shall occupy as owner-occupant, or let to another for occupancy or use for human habitation, any dwelling or dwelling unit which does not comply with all of the minimum standards of fitness for human habitation and all of the requirements of *Sections 8.2(D), MINIMUM STANDARDS FOR STRUCTURAL CONDITION* through *8.2(I) MINIMUM STANDARDS FOR CONTROL OF INSECTS, RODENTS AND INFESTATION*.

**D. MINIMUM STANDARDS FOR STRUCTURAL CONDITION**

The following standards shall constitute the minimum standards for structural condition of a dwelling or dwelling unit:

1. Walls or partitions or supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, and shall not be rotted, deteriorated, or damaged, and shall not have holes or cracks that may admit rodents.
2. Floors and roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.
3. Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.
4. Steps, stairs, landings, porches, or other parts or appurtenances shall be maintained in such condition that they will not fail or collapse.
5. Adequate facilities for egress in case of fire or panic shall be provided.
6. Interior walls and all ceilings, closets and hallways shall be finished of suitable materials, which will, by reasonable household methods promote sanitation and cleanliness, and shall be maintained in such a manner so as to enable occupants to maintain reasonable privacy between various spaces.
7. The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to weather shall be constructed and maintained as to be weather and watertight.
8. There shall be no chimney or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard.
9. There shall be no use of ground for floors or use of wood floors on the ground.

**E. MINIMUM STANDARDS FOR BASIC PLUMBING, HEATING AND ELECTRICAL EQUIPMENT AND FACILITIES**

**1. PLUMBING SYSTEM**

- (a) Each dwelling unit shall be connected to a potable water supply and to a public sewer or other approved sewage disposal system.
- (b) Each dwelling shall contain not less than a kitchen sink, lavatory, tub or shower, water closet, and adequate supply of both hot and cold water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply.
- (c) All plumbing fixtures shall meet the standards of the state plumbing code and shall be maintained in a state of good repair and in good working order.
- (d) All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of the same. The water closet and shower or tub shall be located in a room affording privacy to the user.

**2. HEATING SYSTEMS**

Every dwelling and dwelling unit shall have facilities providing heat according with the following:

- (a) Central and Electric Heating Systems. Every central or electric heating system shall be of sufficient capacity to heat all habitable rooms, bathrooms and water closet compartments in every dwelling unit to which it is connected and shall follow the U.S. Governmental Guidelines for temperature settings.
- (b) Other Heating Facilities. Where central or electric heating is not provided, each dwelling unit shall be provided with sufficient fire place chimneys, flues, gas vents or other facilities to which heating appliances may be connected to heat all habitable rooms and shall follow the U.S. Governmental Guidelines for temperature settings.

3. ELECTRICAL SYSTEMS

- (a) Every dwelling and dwelling unit shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least two floor or wall type convenience receptacles connected in such a manner as determined by the State Electrical code. There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one ceiling or wall type electric light fixture. In the event the ceiling or wall type fixture is not provided at least three wall or floor type convenience receptacles shall be provided.
- (b) Every public hall and stairway in every multiple dwelling shall provide adequate electric lighting at all times when natural daylight is not sufficient.
- (c) All 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 Electrical Code.

**F. MINIMUM STANDARD FOR VENTILATION**

1. GENERAL

Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be ten percent of the floor area of such room. Whenever walls or other portions of structures face a window or any room and such light-obstructing structures are located less than five feet from the window and extend to a level which is above that of the ceiling or the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as being a contribution to the required minimum window area.

Whenever the only window in the room is a skylight-type window in the top of such room, the total window area of such skylight shall be at least fifteen percent of the total floor area of such room.

2. HABITABLE ROOMS

Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total openable window area in every habitable room shall be equal to forty-five percent of the minimum window area size or minimum skylight window size as required or shall have other approved equivalent ventilation.

3. EVERY BATHROOM AND WATER CLOSET

Every bathroom and water closet compartment shall comply with all of the lighting and ventilation requirements for habitable rooms except that no window or skylight shall be required in adequately ventilated bathroom and water closet rooms equipped with approved ventilation systems.

**G. MINIMUM STANDARDS FOR SPACE, USE AND LOCATION**

Every dwelling unit shall contain at least one hundred and fifty square feet of habitable floor area for the first occupant, at least one hundred square feet of additional habitable area for each of the next three occupants, and at least seventy five square feet of additional habitable floor area for each additional occupant.

In every dwelling unit and every rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least seventy square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least fifty square feet of floor area for each occupant twelve years of age and over and at least thirty five square feet of floor area for each occupant under twelve years of age.

1. ROOM SIZES

Every dwelling unit shall contain at least the minimum room size in each habitable room as required by State Residential Building Code.

2. CEILING HEIGHT

Every habitable room in every dwelling unit shall be at least seven feet from floor to ceiling. That portion of the room which is less than five square feet shall not be considered habitable floor area.

3. FLOOR AREA CALCULATION

Floor area shall be calculated on the basis of habitable room area. However, closet area and wall area within the dwelling unit may count for ten percent of the habitable floor area. The floor area of any part of the room where the ceiling height is less than four and one half feet shall not be considered as part of the floor area for the purpose of determining maximum permissible occupancy.

4. CELLAR

No cellar shall be used for living purposes.

5. BASEMENTS

No basements shall be used for living purposes unless:

- (a) The floor and walls are substantially watertight.
- (b) The total window area, total openable window area and ceiling height are equal to those required for habitable rooms.
- (c) The minimum window area of every habitable room is entirely above the grade adjoining such window area, except where the window or windows face a stairwell, window well or access-way.

**H. MINIMUM STANDARDS FOR SAFE AND SANITARY MAINTENANCE**

1. EXTERIOR FOUNDATION AND ROOFS

Every foundation wall, exterior wall and exterior roof shall be substantially weather tight and rodent proof; shall be kept in sound condition and good repair; shall be capable of affording privacy; and shall be safe to use and shall capable of supporting the load for which normal use would cause to be placed thereon. Every exterior wall shall be protected with paint or other protective covering to prevent the entrance or penetration of moisture or weather.

2. INTERIOR FLOORS, WALLS AND CEILING

Every floor, interior walls and ceilings shall be substantially rodent proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use would cause to be placed thereon.

3. WINDOWS AND DOORS

Every window and exterior door, basement door or cellar door and hatchway shall be substantially weather tight, watertight and rodent proof, and shall be kept in sound working condition and good repair.

4. STAIRS, PORCHES AND APPURTENANCES

Every inside and outside stairs, porch and any appurtenance thereto shall be safe to use and capable of supporting the use that normal use would cause to be place thereon and shall be kept in sound condition and good repair.

5. BATHROOM FLOORS

Every bathroom floor surface and water closet compartment floor surface shall be constructed and maintained so that it will be reasonably impervious to water and will permit such floor to be easily kept in clean and sanitary condition.

6. SUPPLIED FACILITIES

Every supplied facility, piece of equipment or utility which is required under this ordinance shall be constructed or installed so that it will function safely and effectively and shall be maintained in satisfactory condition.

7. DRAINAGE

Every yard shall be properly graded in order to obtain thorough drainage and to prevent the accumulation of stagnant water.

8. NOXIOUS WEEDS  
Every yard and all exterior property areas shall be kept free of species of weeds and plant growth which are noxious or detrimental to health.
9. EGRESS  
Every dwelling unit shall be provided with adequate means of egress as required by the State Residential Building Code.

**I. MINIMUM STANDARDS FOR CONTROL OF INSECTS, RODENTS AND INFESTATIONS**

1. SCREENS  
In every dwelling unit, for protection against mosquitoes, flies and other insects, every door opening directly from a dwelling unit to outdoor space shall be equipped with screens and a self-closing device. Every window or other device with openings to outdoor space, used or intended to be used for ventilation shall likewise be equipped with screens.
2. RODENT CONTROL  
Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide entry for rodents, shall be equipped with screens or other such approved device as will effectively prevent their entrance. This subsection does not apply to pet doors.
3. INFESTATION  
Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit shall be responsible for such extermination when ever his dwelling is the only one infested. Whenever infestation is caused by the failure of the owner to maintain the dwelling in a rodent proof or reasonably insect proof condition extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of the owner.
4. RUBBISH STORAGE AND DISPOSAL  
Every dwelling and dwelling unit shall be supplied with approved containers and covers for storage of rubbish as required by the Wallace Town Ordinance, and the owner, operator or the agent in control of such dwelling or dwelling unit shall be responsible for the removal of rubbish.
5. GARBAGE STORAGE AND DISPOSAL  
Every dwelling and every dwelling unit shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit, or an approved outside garbage can as required by the Town of Wallace ordinances.

**J. MINIMUM STANDARDS APPLICABLE TO ROOMING HOUSES; EXCEPTIONS**

All of the provisions of this ordinance, and all of the minimum standards and requirements of this ordinance, shall be applicable to rooming houses, and to every person who operates a rooming house, or who occupies or lets to another for occupancy any rooming unit in any rooming house, except as provided in the following paragraphs:

1. WATER CLOSET, HAND LAVATORY AND BATH FACILITIES  
At least one (1) water closet, lavatory basin and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four (4) rooms within a rooming house wherever these facilities are shared. All such facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall not be more than one (1) story removed from any of the persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. Such required facilities shall not be located in a cellar.

2. **MINIMUM FLOOR AREA FOR SLEEPING PURPOSES**

Every room occupied for sleeping purposes by one (1) occupant shall contain at least seventy (70) square feet of floor area, and every room occupied for sleeping purposes by more than one (1) occupant shall contain at least fifty (50) square feet of floor area for each occupant twelve (12) years of age and over and at least thirty five (35) square feet of floor area for each occupant under twelve (12) years of age.

3. **SANITARY CONDITION**

The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors, and ceilings, and for the sanitary maintenance of every other part of the rooming house. The operator shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the rooming house is contained is leased or occupied by the operator.

4. **SANITARY FACILITIES**

Every water closet, flush urinal, lavatory basin and bathtub or shower required by paragraph (1) of this section shall be located in the rooming house and within a room or rooms which afford privacy, are separate from the habitable rooms, are accessible from a common hall, and are accessible without going outside the rooming house or through any other room therein.

**K. RESPONSIBILITIES OF OWNERS AND OCCUPANTS**

1. **PUBLIC AREAS**

Every owner of a dwelling containing more than two dwelling units shall be responsible for maintaining a clean and sanitary condition in the shared public areas of the dwelling and premises thereof.

2. **CLEANLINESS**

Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition the part of the dwelling, dwelling unit and premises thereof which they occupy and control.

3. **RUBBISH AND GARBAGE**

Every occupant of a dwelling or dwelling unit shall dispose of their rubbish and garbage in a clean and sanitary manner by placing it in the supplied storage facilities. In all cases, the owner shall be responsible for the availability of rubbish and garbage storage facilities.

4. **SUPPLIED PLUMBING FIXTURES**

Every occupant of a dwelling unit shall keep all supplied plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of same.

5. **CARE OF FACILITIES, EQUIPMENT, AND STRUCTURE**

No occupant shall willfully destroy, deface, or impair any of the facilities or equipment, or any part of the structure of a dwelling or dwelling unit. (Note: The respective responsibilities of landlords and tenants under rental agreements for dwelling units are further enumerated in State Law, G.S. Chapter 42, Article 5.)

**L. POWERS AND DUTIES OF PLANNING DIRECTOR**

The Planning Director is hereby designated as the officer to enforce the provisions of this ordinance and to exercise the duties and powers herein prescribed. The Planning Director is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this Ordinance. The Planning Director shall have the following powers and duties:

1. To investigate the dwelling conditions and to inspect dwellings and dwelling units located in the planning jurisdiction of the Town of Wallace, in order to determine which dwellings and dwelling units are unfit for human habitation, and for the purpose of carrying out the objectives of this Ordinance with respect to repair, closing, or demolition of such dwellings and dwelling units;



2. To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;
3. To keep a record of the results of inspections made under this Ordinance and an inventory if those dwellings that do not meet the minimum standards of fitness herein prescribed;
4. To administer oaths and affirmations, examine witnesses, and receive evidence;
5. To enter upon premises for the purpose of making examinations and inspections; provided, such entries shall be made in accordance with *Section 8.2(M) INSPECTIONS, DUTY OF OWNERS AND OCCUPANTS* of this Ordinance and State law, and shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
6. To appoint and fix the duties of such officers, agents, and employees as he deems necessary to assist in carrying out the purposes of this Ordinance, and to delegate any of his functions and powers to such officers, agents, and employees; and
7. To perform such other duties as may be prescribed herein or by the Town Council.

**M. INSPECTIONS, DUTY OF OWNERS AND OCCUPANTS**

1. For the purpose of making inspections, the Planning Director is hereby authorized to enter examine, and survey at all reasonable times all dwellings, dwelling units, rooming houses, rooming units, and the premises associated therewith. The owner or occupant of every dwelling, dwelling unit, rooming house, or rooming unit, or the person in charge thereof, shall give the official free access to such dwelling, dwelling unit, rooming house, or rooming unit as it premises at all reasonable times for the purposes of such inspection, examination, and survey.
2. Every occupant of a dwelling, dwelling unit, rooming house, or rooming unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit 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 Ordinance or with any lawful order issued pursuant to the provisions of this Ordinance. (Note: When permission to inspect a dwelling or its premises is denied, the Planning Director must obtain a warrant to inspect. B.S. 15-27.2 provides for the issuance of warrants for the conduct of inspections authorized by law. The NC Court of Appeals, *In Re Dwelling*, 24 NC App. 17 (1974), has held that the consent of the tenant occupant who was in actual possession and control of the premises was sufficient to authorize an inspection without a warrant, notwithstanding the fact that the owner has objected to the warrant less search. When faced with a situation where permission to inspect is denied, Planning Directors are advised to seek the advice of the city or town attorney.)

**N. PROCEDURE FOR ENFORCEMENT**

**1. PRELIMINARY INVESTIGATION; NOTICE; HEARING**

Whenever a petition is filed with the Planning Director by a Public Authority, any Public Safety Official, including but not limited to, Police, Fire, or EMS, or by at least five (5) residents of the Town of Wallace charging that any dwelling or dwelling unit is unfit for human habitation, or whenever it appears to the Planning Director, upon inspection, that any dwelling, dwelling house or dwelling unit is unfit for human habitation, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or dwelling unit a complaint stating the charges and containing a notice that a hearing will be held before the Planning Director at a place therein fixed, not less than ten (10) nor more than thirty (30) days after serving a complaint. Notice of such hearing shall also be given to at least one of the persons signing a petition relating to such dwelling. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in the courts of law or equity shall not be controlling in hearings before the Planning Director.

2. PROCEDURE AFTER HEARING

After such notice and hearing, the Planning Director shall state in writing his determination whether the dwelling or dwelling unit is unfit for human habitation, and, if so, whether it is deteriorated or dilapidated. If Planning Director determines that the dwelling or dwelling unit is deteriorated, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to repair, alter, or improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this ordinance within a specified period of time, not to exceed ninety (90) days. Such order may also direct and require the owner to vacate and close such dwelling or dwelling unit until such repairs, alterations, and improvements have been made. If the Planning Director determines that the dwelling is dilapidated, he shall state in writing his finding of fact to support such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner either to repair, alter or improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this ordinance, or else to vacate and remove or demolish the same within a specified period of time not to exceed ninety (90) days.

3. FAILURE TO COMPLY WITH ORDER

- (a) IN PERSONAM REMEDY. If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the Planning Director to repair, alter, or improve or to vacate and close the same within the dwelling unit shall fail to comply with an order of the Planning Director to repair, alter or improve or to vacate and close and remove or demolish the same within the time specified therein, the Planning Director shall submit to the Town Council at its next regular meeting a resolution directing the Town Attorney to petition the superior court for an order directing such owner to comply with the order of the Planning Director, as authorized by G.S. 160D-1208(e).
- (b) IN REM REMEDY. After failure of an owner of a deteriorated or dilapidated dwelling or dwelling unit to comply with an order of the Planning Director within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in the preceding paragraph (1), the Planning Director shall submit to the Town Council an ordinance ordering the Planning Director to cause such dwelling or dwelling unit to be repaired, altered, improved, vacated, closed, removed or demolished, as provided in the original order of the Planning Director, and pending removal or demolition, to place a placard on such dwelling as provided by G.S. 160D-1203 and *Section 8.2(P)* of this ordinance.

4. APPEALS FROM ORDER OF PLANNING DIRECTOR.

An appeal from any decision or order of the Planning Director may be taken by any person aggrieved thereby. Any appeal from the Planning Director shall be taken within 10 days from the rendering of the decision or service of the order, and days from the rendering of the decision or service of the order, and shall be taken by filing with the Planning Director and with the Zoning Board of Adjustment a notice of appeal which shall specify the ground upon which the appeal is based. Upon the filing of any notice of appeal, the Planning Director shall forthwith transmit to the Board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Planning Director refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When an appeal is from a decision of the Planning Director requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Planning Director certifies to the Board, facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of this requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order. Such restraining order may be granted for due cause shown upon not less than one day's written notice to the Planning Director, by the Board, or by a court of record upon petition made pursuant to G.S. 160D-1208(d) and *8.2(N)(5)* of this Section.

The Board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all

the powers of the Planning Director, but the concurring vote of four members of the Board shall be necessary to reverse or modify any decision or order of the Planning Director. The Board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.

**5. PETITION TO SUPERIOR COURT BY OWNER.**

Any person aggrieved by an order issued by the Planning Director or a decision rendered by the Board shall have the right, within thirty (30) days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the Planning Director pending a final disposition of the cause, as provided by G.S. 160D-1208(d).

**6. PROCEDURES AND STANDARDS OF THIS ORDINANCE TO APPLY TO ABANDONED STRUCTURES:**

The procedures and minimum standards for the regulation of dwellings and dwelling units set out in section 9-26 through 9-48 of this article shall apply to abandoned structures in the Town, except that abandoned structures are not required to meet minimum standards that are uniquely applicable to occupied dwellings and dwelling units, including without limitation those standards set forth in *Sections 8.2(C), 8.2(E), 8.2(F), 8.2(G), 8.2(I), 8.2(J), and 8.2(K)*.

**O. METHODS OF SERVICE OF COMPLAINTS AND ORDERS**

Complaints or orders issued by the Planning Director shall be served upon persons either personally or by registered or certified mail. If the whereabouts of such persons are unknown and the same cannot be ascertained by the Planning Director in the exercise of reasonable diligence, the Planning Director shall make an affidavit to that effect, and the serving of such complaint or order upon such person may be made by publishing the same at least once no later than the time at which personal service would be required under the provisions of this ordinance in a newspaper having general circulation in the Town of Wallace. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.

**P. IN REM ACTION BY PLANNING DIRECTOR; PLACARDING**

After failure of an owner of a dwelling or dwelling unit to comply with an order of the Planning Director issued pursuant to the provisions of this ordinance, and upon adoption by the Board of an ordinance authorizing and directing him to do so, as provided by G.S. 160D-1203(5) and *Section 8.2(N)* of this ordinance, the Planning Director shall proceed to cause such dwelling or dwelling unit to be repaired, altered or improved to comply with the minimum standards of fitness established by this ordinance, or to be vacated and closed and removed or demolished, as directed by the ordinance of the Board, and shall cause to be posted on the main entrance of such dwelling or dwelling unit a placard with the following words: "this building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful".

Occupation of a building so posted shall constitute a misdemeanor. Each such ordinance shall be recorded in the office of the Register of Deeds in the county wherein the property is located, and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160D-1203(5).

**Q. COSTS, A LIEN ON PREMISES**

As provided in G.S. 160D-1203(7), the cost of any repairs, alterations, or improvements, or of vacating and closing or removal or demolition, caused to be made or done by the Planning Director pursuant to Section 16 of this ordinance shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have priority, and be collected in the same manner as the lien for special assessments established by Article 10. Chapter 160A of the General Statutes.

**R. ALTERNATIVE REMEDIES**

Neither this ordinance nor any of its provisions shall be construed to impair or limit in any way the power of the Town of Wallace to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this ordinance by criminal process as authorized by G.S. 14-4 and *Section 8.2(T)* of this ordinance, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances of laws.

**S. BOARD OF ADJUSTMENT TO HEAR APPEALS**

All appeals which may be taken from decisions or orders of the Planning Director pursuant to *Section 8.2(N)* of this ordinance shall be heard and determined by the Board of Adjustment. As the appeals body, the Board shall have the power to fix the times and places of its meetings, to adopt *necessary* rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The Board shall perform the duties prescribed by *Section 8.2(N)(4)* and shall keep an accurate journal of all its proceedings. If the Board of Adjustment consists of more than five members, the chairman shall designate five members to hear appeals under this ordinance.

**T. CONFLICT WITH OTHER PROVISIONS**

In the event any provision, standard, or requirement of this ordinance 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 Town shall prevail except when in conflict with the Historical Zoning Ordinance.

**U. VIOLATIONS; PENALTY**

1. It shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close and remove or demolish the same, upon order of the Planning Director duly made and served as herein provided, within the time specified in such order. Each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense.
2. It shall be unlawful for the owner of any dwelling or dwelling unit, with respect to which an order has been issued pursuant to *Section 8.2(N)* of this ordinance, 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. Each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
3. The violation of any provision of this ordinance shall constitute a misdemeanor, as provided by G.S. 14-4.
4. In addition to the penalty established by subsection (c) above, and the remedies provided by other provision of this ordinance, this ordinance may be enforced by an appropriate equitable remedy issued by a court of competent jurisdiction.

**V. SEVERABILITY**

If any provision of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, independent provision and such holding shall not affect the validity of any other provision hereof, and to that end, the provisions of this ordinance are hereby declared to be severable.

**8.3 NON-RESIDENTIAL MAINTENANCE STANDARDS**

**A. CONDEMNATION OF BUILDINGS OR STRUCTURES, GENERALLY**

The Planning Director shall declare unsafe any building which appears to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe

wiring or heating system, inadequate means of egress, or other causes. In such event, the Planning Director shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

#### **B. CONDEMNATION OF NONRESIDENTIAL BUILDINGS OR STRUCTURES**

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

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

If the Planning Director declares a nonresidential building or structure to be unsafe, the Planning Director must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this subsection, the term "community development target area" means an area that has characteristics of a development zone under G.S. § 105-129.3A, a "nonresidential development area" under G.S. § 160A-503(10), or an area with similar characteristics designated by Town Council as being in special need of revitalization for the benefit and welfare of its citizens.

#### **C. ACTION IN EVENT OF FAILURE TO TAKE CORRECTIVE ACTION**

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

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

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

#### **D. EQUITABLE ENFORCEMENT**

1. In the case of a nonresidential building or structure declared unsafe under this article, the town may, in lieu of seeking civil enforcement under G.S. § 160D-1125, cause the building or structure to be removed or demolished. The amounts incurred by the town in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of Chapter 160A, G.S. If the building or structure is removed or demolished by the town, the town shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The town shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from

the sale shall be deposited with the Clerk of Superior Court of Duplin County and shall be disbursed by the court to the person found to be entitled thereto.

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

#### **E. APPEALS**

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

#### **F. APPLICABILITY AND COMPLIANCE**

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

#### **G. MAINTENANCE STANDARDS FOR COMMERCIAL STRUCTURES**

All commercial premises shall be maintained in a state of good repair that prevents further decay from wind, rain and external weather and secures the building from any unauthorized admittance from humans, animals or birds. All commercial premises shall be free of nuisances and any hazards to the safety of occupants, customers or other persons utilizing the premises or to pedestrians and/or vehicles passing thereby. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be a violation of this section and must be corrected:

1. Interior walls or vertical studs, which seriously list, lean or buckle, to such an extent as to render the building unsafe;
2. Supporting member or members which show 33 percent or more damage or deterioration, or non-supporting members or enclosing or outside walls that shows 50 percent or more damage or deterioration;
3. Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to reasonably be safe for the purpose used;

4. Such damage by fire, wind or other causes as to render the building unsafe;
5. Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the town;
6. Inadequate facilities for egress to such an extent that there does not exist at a minimum, sufficient operable doors that the building can be entered safely and exited in the same manner in case of fire or panic;
7. Defects significantly increasing the hazards of fire, accident or other calamities;
8. Lack of adequate ventilation, light, heating or sanitary facilities to such an extent as to endanger the health, safety or general welfare of the occupants or other residents of the town;
9. Lack of proper electrical, heating or plumbing facilities required by this article which constitutes a health or a definite safety hazard. If the electrical, heating or plumbing facilities are in such a condition that the service to those facilities needs to be discontinued to protect the general public, then the Planning Director shall be authorized to notify the appropriate official to disconnect service and that the service shall not be reconnected until the building has been re-inspected and cleared of all violations. Permits may be required from the county building inspections department. Temporary service connections may be permitted to allow for construction and/or cleaning;
10. Any violation of the Town Fire Prevention Code, as specified by the Town Fire Marshal, which constitutes a condition which is unsafe and especially dangerous to life;
11. Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary way;
12. Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the Town Fire Prevention Code;
13. The building and environs 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 and repaired or replaced with like or similar material according to its original use;
14. The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs 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 similar objects;
15. 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;
16. Gutters and down-spouts shall be replaced or repaired as necessary and shall be appropriately located so as not to cause a hazard to pedestrian, vehicular traffic or property;
17. Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;
18. 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 safety hazard to the occupants, pedestrians or other residents of the town;
19. 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 other cracks which might admit rodents;
20. Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used and shall not leak;
21. Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged;
22. Interior steps, railings, landings, porches or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse;
23. All plumbing fixtures and pipes shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition;
24. All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner;

25. 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;
26. All windows shall be maintained free of broken or cracked glass that could be in danger of falling or shattering.

#### **H. INVESTIGATION**

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

#### **I. COMPLAINT AND HEARING**

1. If the preliminary investigation discloses evidence that a building is in violation of the minimum standards, the Planning Director shall issue and cause to be served upon the owner of such building a complaint stating the charges and containing a notice that a hearing will be held before the Planning Director at a place and time therein fixed, not less than ten (10) nor more than thirty (30) days after the serving of said complaint. The owner shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Planning Director. Following the hearing, the Planning Director shall dismiss the complaint if he finds no violation; if he finds that violations of this article exist, he shall order compliance setting forth a maximum of up to 180 days within which to correct the violations. Such order shall contain an outline of remedial action which, if taken, will effect compliance with the provisions of this article.
2. If the Planning Director determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of this article can be made at a cost of less than fifty (50) percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof, an order directing and requiring the owner to repair, alter and improve such building to comply with the standards contained herein.
3. If the Planning Director determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of the article cannot be made at a cost of more than fifty (50) percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such building to comply with the standards contained herein or to demolish the building.

#### **J. SERVICE OF COMPLAINTS AND ORDERS**

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



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

#### **K. FAILURE TO COMPLY WITH ORDERS**

1. If the owner fails to comply with an order to repair the building or structure, the Planning Director may:
  - (a) Cause such structure to be repaired, and pending such repairs, may order the building to be vacated and closed;
  - (b) Cause to be posted on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Wallace."
2. If the owner fails to comply with an order to remove or demolish the building, the Planning Director may:
  - (a) Cause such structure to be removed or demolished;
  - (b) Cause to be posted, pending demolition, on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Wallace."
3. The duties of the Planning Director set forth in subsections (a) and (b) shall not be exercised until:
  - (a) The Town Attorney shall institute in the general court of justice an appropriate action to seek an order of the court directing such owner to comply with the order of the Planning Director; or
  - (b) The Planning Director shall request the Council to order him, by an ordinance specifically describing the subject property, to do either of the following:
    - i. To cause such building to be repaired, altered and improved to comply with the standards established by this article; or
    - ii. To cause such building to be vacated, closed, and removed or demolished. The council, in ordering one of the aforesaid alternatives, shall order the specific action that will best effectuate the purposes of this article. Once the ordinance is adopted by the council a true copy of such ordinance shall be recorded in the office of the register of deeds of the county and the registrar shall index the name of the property owner in the "grantor index."
4. The amount of the cost of repairs, alterations and improvements, or vacating, closing and removal or demolition shall be a lien against the real property upon which the cost was incurred. Such lien shall be filed, have the same priority and be collected as the lien for special assessment provided in Article 10, Chapter 160A of the North Carolina General Statutes. If the unsafe building is removed or demolished by the Planning Director, he shall, if possible, sell in any commercially reasonable manner the materials of the unsafe building and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited by the Planning Director with the clerk of superior court for subsequent disbursement by the court to the persons found by the court to be entitled thereto.

5. Nothing in this section shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.
6. Nothing in this section shall be construed to impair or limit in any way the power of the Building Inspector in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.

#### L. APPEALS

1. An appeal from any decision or order of the Planning Director pursuant to this article may be taken by any person aggrieved thereby. Any appeal from the Planning Director shall be taken within ten (10) days from the rendering of the decision, or if either the owner or his attorney was not present when the decision was rendered, then within ten (10) days of service of such order. Such appeal shall be taken by filing with the Planning Director and with the Board of Adjustment (hereinafter called "the board") a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Planning Director shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the chief Planning Director refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the Planning Director requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the Planning Director certifies to the board after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by a restraining order, which may be granted for due cause upon not less than one day's written notice to the Planning Director by the board, or by a court of record upon petition made pursuant to *Section 8.3(L)(4)* of this section. All regulations, fees and other rules of the board shall apply to these appeals.
2. The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Planning Director, but the concurring vote of 4/5 of the members of the board shall be necessary to reverse or modify any decision or order of the Planning Director. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
3. If the board determines that the building is a building of historical value, the board may enter an order holding the matter in abeyance provided that the owner repairs the building on a timely basis. Such repairs shall commence within six (6) months of the board's order and shall be completed within two (2) years of said date. All such repairs shall be completed in such a way as to maintain the historic character of the building and shall comply with the United States Secretary of Interior standards for the treatment of historic rehabilitation. If the repairs are not commenced and completed within the time periods set out in the order, the Planning Director shall proceed to enforce his original order.
4. Every decision of the board shall be subject to review by the county superior court by proceedings in the nature of certiorari instituted within fifteen (15) days of the decision of the board, but not otherwise.
5. Any person aggrieved by an order issued by the Planning Director or a decision rendered by the board shall have the right, within thirty (30) days after the issuance of the order or rendering of a decision, to petition the

superior court for a temporary injunction, restraining the Planning Director pending a final disposition of the cause.

#### **M. VIOLATIONS AND PENALTIES**

1. It shall be unlawful for the owner of any building to fail, neglect, or refuse to repair, alter, and improve the same; or to fail to vacate, close, and remove or demolish the same, upon order of the Planning Director duly made and served as herein provided, within the time specified in such order, and each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any building with respect to which an order has been issued pursuant to this article to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration and improvement or its vacation, closing and removal or demolition, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
2. Any owner of a building who fails to comply with any order described in subsection (a), or who allows occupancy of the building subject to such order after the compliance period in the order has expired, shall be subject to a civil penalty of \$500.00 for each day that noncompliance continues following the expiration of the compliance period specified in the order of compliance. If a person fails to pay the civil penalty within ten (10) days of receipt of the citation, the town may seek to collect it in a civil action in the nature of a debt.
3. Each day that a violation continues after notification that such violation exists shall constitute a separate and distinct offense for purposes of the penalties and remedies set forth in this section.
4. This article may be enforced by any appropriate equitable action.
5. This article may be enforced by any one, all, or any combination of the remedies authorized in this section.

### **8.4 PREVENTION OF DEMOLITION BY NEGLECT**

#### **A. INTENT**

The purpose of this Ordinance is to permit the Town of Wallace, 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 "contributing" in the Wallace Historic District's nomination to the National Register of Historic Place.

#### **B. 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:

1. Deterioration of exterior walls, foundations, or other vertical support which results in leaning, sagging, splitting, listing, or buckling;

2. Deterioration of flooring or floor supports, roofs, or other horizontal members which results in leaning, sagging, splitting, listing, or buckling;
3. Deterioration of external chimneys which results in leaning, sagging, splitting, listing, or buckling of the chimney;
4. Deterioration or crumbling of exterior plasters or mortars where there is evidence that such condition exposes structural elements to decay;
5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors or broken or malfunctioning gutters;
6. 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;
7. Rotting, holes, and other forms of decay where there is evidence that such condition has exposed structural elements;
8. 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;
9. Deterioration of contributing accessory structures; or
10. Overgrown plants/landscaping features which threaten the structural integrity or relevant, significant architectural detail of a structure.

### **C. PROCEDURE FOR ENFORCEMENT**

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 Department. The Planning Department 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.
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 its investigation, and is not limited in its investigation to the specific conditions identified in the original complaint. The Planning Director, when conducting the preliminary investigation, may consult with professionals including, but not limited to, architects, landscape architects, engineers, building inspectors and historic preservationists, during the investigation.
3. The Planning Director shall make a written report of its preliminary inspection. If, upon investigation, the Planning Director determines that a structure may be undergoing demolition by neglect, it 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.
4. The notice to the property owner shall include a copy of the Planning Director 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.
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 8.4(C)(3) above.
6. The Historic District Commission will review the complaint and staff report at a regular meeting.
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. 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.
  
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 8.4(B), 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 9.3, 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 8.4(I), Other Town Powers*.
  
10. The commencement and prosecution of work pursuant to the Order of Repair shall stay further enforcement activity under this *Section 8.4(C), Procedure for Enforcement*.

**D. 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:

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.

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.

**E. METHODS OF SERVICE**

Notices or orders issued pursuant to *Section 8.4(C), Procedure for Enforcement*, shall be transmitted by first class mail to the owner of the property as listed in the Duplin 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.

**F. 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 8.4(C)(9)*. A claim of undue economic hardship must be made, in writing, by filing a request for such a determination with the Planning Department within the time period specified for in *Section 8.4(C)(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, the Planning Director shall notify the Commission within five (5) business days following the Planning Department'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 8.4(D)(1)*, For All Properties, and, where appropriate, *8.4(D)(1)*, 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 reasonably 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 the 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.

**G. COMMISSION'S DECISION ON CLAIM OF UNDUE HARDSHIP**

- 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.
- 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.

#### **H. APPEALS**

Determinations made by the Planning Director pursuant to *Section 8.4(C), Procedure for Enforcement*, or by the Commission pursuant to *Section 8.4(C), Procedure for Enforcement* or *Section 8.4(G), 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.

#### **I. 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.

#### **J. 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.

##### **1. EQUITABLE REMEDY**

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

##### **2. ORDER OF ABATEMENT**

The Town may apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this article. Whenever the party is cited for contempt by the court and the Town 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.

##### **3. CIVIL PENALTY**

No civil penalty shall be levied unless and until the Planning Department 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.

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