

ARTICLE VII - Enforcement and Review

§ 152-111. Complaints Regarding Violations.

Whenever the Administrator receives a written, signed complaint alleging a violation of this ordinance, he or she shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

§ 152-112. Persons Liable.

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

§ 152-113. Procedures Upon Discovery of Violations.

(A) If the Administrator finds that any provision of this chapter is being violated, he or she shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Administrator's discretion.

(B) The final written notice (and the initial written notice may be the final notice) shall state what action the Administrator intends to take if the violation is not corrected and shall advise that the Administrator's decision or order may be appealed to the Board of Adjustment in accordance with section 152-91, "Appeals."

(C) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this ordinance or pose a danger to the public health, safety, or welfare, the Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in section 152-115.

(D) The Administrator shall issue stop work orders in accordance with section 152-114.

§ 152-114. Stop Work Orders

(A) Whenever the Administrator determines that a person is engaged in doing work that constitutes, creates, or results in a violation of this chapter and that irreparable injury will occur if the violation is not terminated immediately, the Administrator may order the specific part of the work that constitutes, creates, or results in a violation of this chapter to be immediately stopped.

(B) A stop work order issued under this section shall be in writing, directed to the person doing the work and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed. A copy of the stop work order shall also be sent forthwith to the owner of the property where the work is taking place and the developer, if different from the owner.

(C) Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment pursuant to section 152-91, “Appeals.” However, notwithstanding subsection 152-91(D), an appeal shall not stay the operation of the stop work order, except as provided in subsection (D) of this section.

(D) The Board of Adjustment shall meet and act upon the appeal within fifteen (15) working days after receipt of the appeal notice. If the Board fails to comply with this requirement, the stop work order shall be stayed automatically beginning on the day following the expiration of this fifteen (15) working-day period, and the stay shall remain in effect until the Board of Adjustment meets and acts on the appeal.

(E) The notice of hearing requirements set forth in section 152-102 shall not apply to appeals of stop work orders. However, the staff shall orally notify the appellant of the date, time, and place of the hearing as soon as it has been scheduled and shall send to the appellant a written confirmation of this notice as soon as possible.

(F) Neither the person upon whom a stop work order is served nor an owner or developer served with a copy under subsection (B) may thereafter cause, suffer, or permit a violation of the order while it remains in effect, except during a period in which the operation of the order is stayed under subsection (D).

§ 152-115. Penalties and Remedies for Violations.

(A) Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances, special use permits, conditional use permits, or conditional zoning districts and violations of stop work orders, shall constitute a misdemeanor, punishable as provided in N.C.G.S. 14-4.

(B) Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances, special use permits, conditional use permits, or conditional zoning districts shall also subject the offender to a civil penalty of up to Two Hundred 00/100 Dollars (\$200.00) per violation.

(1) In determining the amount of the civil penalty assessment, the Administrator shall consider the following factors, and the decision levying a civil penalty shall cite those factors deemed applicable:

- (a) Whether the violation poses or could pose a threat to the public health or to private property;
- (b) The duration and gravity of the violation;
- (c) The cost of rectifying the damage;

- (d) The amount of money saved by noncompliance;
- (e) Whether the violation was committed willfully or intentionally, negligently, or as the result of an unforeseeable or unavoidable accident;
- (f) Whether the violator promptly ceased the violation upon notice by the Town and took whatever steps were reasonably possible to limit or correct any damage caused by the violation;
- (g) The prior record of the violator in complying or failing to comply with the provisions of this chapter or any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances, special use permits, conditional use permits, or conditional zoning districts;
- (h) The cost to the Town of the enforcement procedures;
- (i) The scope and the scale of the project where the violation occurs; and
- (j) Whether the civil penalty is levied for a single day’s violation or a single event or whether it is levied on a daily basis for a continuing violation, as authorized under subsection 152-115(F). Civil penalties levied on a daily basis may cumulatively exceed the \$200.00 cap set forth in this subsection;

(2) Using the factors listed above, the Administrator shall determine to what extent the violation deviates from the requirements of this chapter and what potential for harm the violation poses. The following chart shall be used to calculate the penalty to be assessed for a single event and for each day of a continuing violation:

| Extent of Deviation from Requirement | | | | |
|--------------------------------------|----------|-------|----------|-------|
| Potential for Harm | | Minor | Moderate | Major |
| | Minor | \$50 | \$50 | \$75 |
| | Moderate | \$75 | \$100 | \$125 |
| | Major* | \$150 | \$175 | \$200 |

*Violations that pose immediate or severe threats to the public health or to private property (i.e. threats that pose a greater than major potential for harm) may be assessed a higher penalty than \$200.00 for a single event and/or for daily penalties.

(C) A notice of civil penalty shall inform the violator that the penalty is due upon receipt of the notification and, if applicable, that successive civil penalties of a specified amount shall

accrue each day that the violation continues. The notice shall also inform the violator that if the civil penalty is not paid within ten (10) days of receipt of the notice, the penalty may be recovered by the Town in a civil action in the nature of debt.

(D) Appeals.

(1) A civil penalty may be appealed to the Board of Adjustment in accordance with section 152-91, except that such appeal must be filed within ten (10) days after receipt by the violator of the notice of civil penalty.

(2) An appeal stays further efforts to collect a civil penalty but does not stay the accrual of daily civil penalties.

(3) If a civil penalty is levied for a violation about which the violator was previously sent a final notice of violation in accordance with section 152-113, and the violator did not appeal to the Board of Adjustment within the prescribed time the Administrator's determination as to the existence of the violation, an appeal of the civil penalty under this subsection presents only the issue of whether the Administrator erred in setting the amount of the civil penalty, not the issue of whether the violation occurred or the violator's responsibility for the violation.

(E) This chapter may also be enforced by any appropriate equitable action, including but not limited to injunction and orders of abatement

(F) Each day's continuing violation shall be a separate and distinct offense.

(G) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter.

§ 152-116. Permit Revocation and Building Permit Denial.

(A) A zoning, sign, special use or conditional use permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this ordinance, or any additional requirements lawfully imposed by the permit-issuing authority.

(B) Before a special use or conditional use permit may be revoked, all of the notice and hearing and other requirements of article VI of this chapter shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

(C) The burden of presenting evidence sufficient to authorize the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth in subsection (a) shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.

(D) A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or finding of fact that support the motion.

(E) Before a zoning or sign permit may be revoked, the Administrator shall give the permit recipient ten (10) days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the permit is revoked, the Administrator shall provide to the permittee a written statement of the decision and the reasons therefore.

(F) No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, special use or conditional use permit after such permit has been revoked in accordance with this section.

(G) Building permits required pursuant to G.S. § 160A-417 may be denied for lots that have been illegally subdivided. No building permit may be denied, however, if the permit applicant can show that he or she purchased the lot in good faith (i.e. he or she did not know and had no reasonable way of knowing that the lot was illegally subdivided) and for value.

§ 152-117. Judicial Review.

(A) Every decision of the Planning Board or Town Board granting or denying a special use permit or conditional use permit and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Moore County by proceedings in the nature of certiorari.

(B) The petition for the writ of certiorari must be filed with the Moore County Clerk of Court within thirty (30) days after the later of the following occurrences:

(1) A written copy of the board's decision (see section 152-106, "Written Decision") has been filed in the office of the Planning Department; or

(2) A written copy of the board's decision (see section 152-106) has been delivered by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

(C) A copy of the writ of certiorari shall be served upon the Town of Aberdeen.

§ 152-118 through § 152-120. Reserved.