

**ORDINANCE NO. 80**

**UNSAFE STRUCTURES AND  
PROPERTIES**

**ORDINANCE**

**OF THE**

**VILLAGE OF FLAT ROCK,**

**NORTH CAROLINA**

**Adopted: September 12, 2013**

**Amended: June 30, 2021**

# Table of Contents

<b>I</b>	<b>GENERAL PROVISIONS.....</b>	<b>1</b>
	Section 101. Authority.....	1
	Section 102. Title.....	1
	Section 103. Purpose .....	1
	Section 104. Jurisdiction.....	1
<b>II</b>	<b>INTERPRETATION AND DEFINITIONS .....</b>	<b>1</b>
	Section 201. Word interpretation.....	1
	Section 202. Definitions .....	2
<b>III</b>	<b>PROCEDURE FOR DESIGNATION OF UNSAFE BUILDINGS, STRUCTURES OR PROPERTY AND CORRECTIVE ACTION.....</b>	<b>3</b>
	Section 301. Unsafe buildings and structures .....	3
	Section 302. Unsafe vacant property. ....	3
	Section 303. Notice of unsafe condition.....	3
	Section 304. Failure to take corrective action; notice of corrective action hearing .....	3
	Section 305. Procedure for unknown owner; notices .....	4
	Section 306. Order to take corrective action.....	4
	Section 307. Appeal; finality of order if not appealed.....	5
	Section 308. Posting and removing a notice; civil penalty .....	5
<b>IV</b>	<b>ADMINISTRATION AND ENFORCEMENT .....</b>	<b>6</b>
	Section 401. Enforcement.....	6
	Section 402. Duties and function; Village Council, Enforcement Officer and Corrective Action Hearing Board.....	6
	Section 403. Appointment of Corrective Action Hearing Board.....	7
	Section 404. Failure to comply with order; failure to comply with ordinance .....	7
	Section 405. Corrective action by the Village .....	7
	Section 406. Additional lien .....	8
	Section 407. Nonexclusive remedy .....	8
<b>V</b>	<b>HEARINGS AND APPEALS .....</b>	<b>8</b>
	Section 501. Appeals to the Village Council.....	8
	Section 502. Procedures for corrective action hearings.....	9
	Section 503. Fee schedule.....	10
<b>VI</b>	<b>AMENDMENTS .....</b>	<b>10</b>
	Section 601. Authority to amend .....	10
	Section 602. Initiation of amendments .....	10
	Section 603. Planning Board action.....	10
	Section 604. Public hearing; ordinances and ordinance amendments .....	10
<b>VII</b>	<b>LEGAL STATUS.....</b>	<b>10</b>
	Section 701. Conflict of laws.....	10
	Section 702. Severability .....	11
	Section 703. Effective date .....	11

# UNSAFE STRUCTURES AND PROPERTIES ORDINANCE

## ARTICLE I GENERAL PROVISIONS

### **Section 101 Authority.**

The Village Council of the Village of Flat Rock, pursuant to the authority conferred by the North Carolina General Statutes, specifically NCGS §160D-1117 (Periodic inspections). Through NCGS §160D-1129 (Regulation authorized as to repair, closing, and demolition of nonresidential buildings or structures; order of public officer). (Sections under 160D, Article 11. Building Code Enforcement.), hereby enacts this ordinance into law.

### **Section 102 Title.**

This ordinance shall be known and may be cited as the Flat Rock Unsafe Structures and Properties Ordinance.

### **Section 103 Purpose.**

This ordinance is being adopted based on a finding by the Village Council that an ordinance is necessary in order to protect the health, safety and general welfare of the citizens of Flat Rock, to prevent injury and illness to the occupants of property and the public as a result of damage, deterioration or lack of proper maintenance or repair of property, and to eliminate public nuisances resulting from damage, deterioration or lack of proper maintenance or repair of property that cause unsafe or dangerous conditions. It is not the purpose of this ordinance to authorize the enforcement of the North Carolina State Building Code or other governmental or regulatory requirements.

### **Section 104 Jurisdiction.**

This ordinance shall be applicable within the corporate limits of the Village of Flat Rock.

## ARTICLE II INTERPRETATION AND DEFINITIONS

### **Section 201 Word interpretation.**

Except as specifically defined herein, all words used in this ordinance have their customary dictionary definitions. For the purpose of this ordinance, certain words or terms used herein shall be interpreted as follows:

The word “Village” means the Village of Flat Rock, North Carolina.

The word “Mayor” means the Mayor of the Village of Flat Rock, North Carolina.

The words “Village Council” mean the Council of the Village of Flat Rock, North Carolina.

The word “ordinance” means the Flat Rock Unsafe Structures and Properties Ordinance.

The words "enforcement officer" means the Village of Flat Rock Enforcement Officer.

The words “Planning Board” mean the Village of Flat Rock Planning Board.

The words "Corrective Action Hearing Board" mean the Village of Flat Rock Corrective Action Hearing Board.

The word “shall” is mandatory, and the word “may” is permissive.

The word “person” includes an individual, a firm, association, organization, partnership, corporation, company, trust, governmental unit, limited liability company or any combination thereof.

## **Section 202 Definitions.**

*Building.* Any structure used or intended for supporting or sheltering any use or occupancy.

*Junk.* Any and all items that have been discarded, abandoned or are no longer functional, useful or being used for any purpose. Junk shall include, but not be limited to, scrapped metals, rope, clothes, rags, plastics, batteries, paper, trash, rubber, building materials, debris, waste, dismantled or wrecked machinery, and unlicensed vehicles that are not operational, or parts thereof.

*Manufactured home.* A structure as defined in NCGS §143-145(7).

*Parties in interest.* All individuals, associations and corporations who have interests of record in a building, structure or property, or any who are in possession thereof.

*Property owner or owners.* The holder(s) of all interests in the title to real property in fee simple.

*Residential building or structure.* A building or structure used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

*Structure.* That which is built or constructed.

*Vacant property or property.* A lot or tract of property that does not have a building or structure constructed upon it.

**ARTICLE III  
PROCEDURE FOR DESIGNATION OF UNSAFE BUILDINGS, STRUCTURES  
OR PROPERTY AND CORRECTIVE ACTION**

**Section 301 Unsafe buildings and structures.**

A. Designation of Unsafe Buildings. - Every building that shall appear to the inspector 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 systems, inadequate means of egress, or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

B. Nonresidential Building or Structure. - In addition to the authority granted in subsection (A) (Designation of Unsafe Buildings), an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if it meets all of the following conditions:

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

C. Whenever a petition is filed with the enforcement officer by a public authority or by at least five residents of the Village charging that the conditions of subsection A of this Section 301 exist on a property, or whenever the enforcement officer finds that the conditions of subparagraph A of this Section 301 exist on a property, the enforcement officer is hereby authorized, if preliminary investigation discloses a basis for such conditions, to give notice of the unsafe condition in accordance with Section 303.

**Section 302 Unsafe vacant property.**

Vacant property that is overgrown, contains junk or is otherwise found by the enforcement officer to be in such condition as to cause or contribute to blight, disease, vagrancy, fire or a safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance may be held to be unsafe. If so, the enforcement officer is hereby authorized to give notice of the unsafe condition in accordance with Section 303.

**Section 303 Notice of unsafe condition.**

The enforcement officer shall promptly give the owner and parties in interest written notice of the unsafe condition by certified mail to their last known address, or by personal service. The notice shall state the specific dangerous or unsafe condition or conditions of the

building, structure or property, that the owner may file a written request with the enforcement officer for a hearing on the unsafe condition, and that if a request for a hearing is not made, that corrective action must be commenced within ten days of the date of the notice of unsafe condition or within such later date within thirty days as the enforcement officer determines is necessary to achieve public safety.

**Section 304 Action in event of failure to take corrective action.**

If the owner of a building, structure or property that the enforcement officer has determined to be unsafe pursuant to Section 301 or Section 302 requests a hearing, or if corrective action has not commenced within the time specified in the notice of unsafe condition, the enforcement officer shall give such owner and parties in interest written notice by certified mail to their last known address, or by personal service, of all of the following:

- (1) That the building or structure is in a condition that appear 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 that would constitute a public nuisance.
- (2) That an administrative hearing will be held before the Corrective Action Hearing Board in accordance with Section 502 at a designated place and time, not later than 10 days after the date of the notice, at which time the owner will be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.
- (3) That following the hearing, the Corrective Action Hearing Board may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate, or dismiss the complaint.

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 is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the local government's area of jurisdiction at least once not later than one week prior to the hearing.

**Section 306 Order to take corrective action.**

A. If, upon a hearing held pursuant to the notice prescribed in G.S. 160D-1119, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the inspector shall make 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 60 days, as the inspector may prescribe, provided that where the inspector finds that there is

imminent danger to life or other property, the inspector may order that corrective action be taken in such lesser period as may be feasible.

B. In making a determination involving the removal or demolition of a residential building or structure, the board shall first consider if it can be repaired, altered or improved for a reasonable cost in relation to the value of the building or structure, typically a cost of less than 50 % of the value of the building or structure.

C. The order shall state a period for remediation, not less than ninety (90) days, as the board may prescribe; provided, that where the board finds that there is imminent danger to life or other property, the board may order that corrective action be taken in such lesser period as may be feasible. Any order issued by the board shall state that the owner has the right to appeal that order as specified in Section 307.

**Section 307 Appeal; finality of order if not appealed.**

A. Any owner who has been subject to an order entered under Section 306 may appeal the order to the Village Council by giving notice of appeal in writing to the local government clerk within 10 days following issuance of the order in accordance with Section 501. In the absence of an appeal, the order of the Corrective Action Hearing Board is final. The Village Council shall hear an appeal in accordance with NCGS §160D-406 (Quasi-judicial procedures) and render a decision within a reasonable time. The Village Council may affirm, modify and affirm, or revoke the order.

B. Notwithstanding anything else to the contrary, if the order to take corrective action under Section 306 requires repair, removal or demolition of a residential building or structure, or an abandoned building or structure, whether the owner is known or unknown, if a notice of appeal is not filed as provided in subsection A of this Section 307, the Village Council shall review the order in accordance with procedures prescribed in Article XV of the Land Development Ordinance as if it had been appealed under subsection A of this Section 307.

C. If after review as provided in subsection B of this Section 307, the Village Council determines that execution of the order is necessary to protect the public health, safety and welfare, it shall, in addition to any notices required in Article XV of the Land Development Ordinance, give written notice, in accordance with subsection D of this Section 307, or in the case of an unknown owner, an owner whose whereabouts cannot be ascertained or an owner who has refused service of a certified mail notice, post a notice in a conspicuous place on the property and publish the notice at least once in a newspaper having general circulation in the Village.

D. The notice specified under subsection C of this Section 307 shall be sent by certified mail to the property owner and parties in interest, and shall state the findings of the Village Council, set a date for a public hearing no earlier than sixty days from the date of the notice and specify that if the owner fails to take corrective action or provide a satisfactory plan to take corrective action within sixty days, the Village Council may adopt an ordinance in accordance with Section 604 that directs the enforcement officer to execute the order to

remove or demolish the building or structure or take other remedial corrective action. An ordinance to repair, alter or improve a residential building or structure adopted under Section 604 in accordance with this subsection shall include a provision that in the event the owner fails to take such remedial action within one year, the building or structure shall be deemed to have been abandoned and that the Village may adopt an ordinance to order the demolition or removal of the building or structure or otherwise remediate the unsafe condition.

E. An ordinance adopted under subsection D of this Section 307 shall be recorded in the office of the Henderson County Register of Deeds and shall be indexed in the name of the property owner in the Grantor index.

**Section 308 Posting and removing a notice; civil penalty.**

In addition to giving notice of an unsafe condition as specified in this Article, the enforcement officer is authorized to post a notice of the dangerous character of the property in a conspicuous place on the exterior wall of a building, structure or other conspicuous place on the property. Any unauthorized person who removes any notice that has been affixed to any building, structure or on any property by the enforcement officer pursuant to this ordinance shall be liable for a civil penalty of \$500 for each such notice removed.

**ARTICLE IV  
ADMINISTRATION AND ENFORCEMENT**

**Section 401 Enforcement.**

The Zoning Administrator, or other Village employee appointed by the Village Council, shall serve as the enforcement officer and is authorized and instructed to administer and enforce the provisions of this ordinance, and to cite violations of the ordinance or violations of orders or conditions issued or imposed by the enforcement officer, the Corrective Action Hearing Board or the Village Council. The enforcement officer shall have the authority, based upon probable cause, to enter the property where a suspected unsafe or dangerous condition exists and inspect the property to determine if such condition or conditions do exist, or if refused entry, seek an administrative warrant for such an inspection. The enforcement officer may hire outside consultants, and consult with the Henderson County Fire Marshall, the Henderson County Building Inspector, or other appropriate county officials in making determinations of unsafe or dangerous conditions under this ordinance.

**Section 402 Duties and function; Village Council, Enforcement Officer and Corrective Action Hearing Board.**

The duties of the Village Council in connection with this ordinance shall be to hold public hearings and to vote upon any proposed amendment or repeal of this ordinance as provided by law and, acting as the Board of Adjustment, to hear appeals from decisions by the Corrective Action Hearing Board. The administration, enforcement and interpretation of this ordinance shall be the responsibility of the enforcement officer. The function of the Corrective Action Hearing Board in connection with this ordinance is to hear arguments

and evidence presented by the enforcement officer and any aggrieved property owner as to why or why not a building, structure or property should be held to be unsafe or in dangerous condition and to render a decision as to what corrective action, if any, should be taken consistent with this ordinance.

**Section 403 Appointment of Corrective Action Hearing Board.**

Within ten days after being advised by the enforcement officer that a notice of hearing regarding an unsafe condition has been sent to or delivered to a property owner and parties in interest, the Mayor shall appoint a hearing panel of three members who are chosen from among the six members of the Village Council to act as the Corrective Action Hearing Board, one of whom shall be appointed as the chair person.

**Section 404 Failure to comply with order; failure to comply with ordinance.**

A. Except for an order to repair, remove or demolish a residential building or structure, if the owner of a building, structure or property fails to comply with an order issued pursuant to Section 306 from which no appeal has been taken, or fails to comply with an order of the Village Council following an appeal, he shall be subject to a civil penalty of \$100 for each day of noncompliance after the time given to comply with the order, and be subject to corrective action commenced in accordance with Section 405.

B. If an owner of a residential building or structure fails to comply with an ordinance adopted under Section 307 D from which no appeal has been taken, he shall be subject to a civil penalty of \$100 for each day of noncompliance after the time given to comply with the ordinance, and be subject to corrective action commenced in accordance with Section 405.

**Section 405 Corrective action by the Village.**

A. In the case where the owner of a building, structure or property fails to comply with an order as specified in Section 404, subsection A, or an ordinance as specified in Section 404 subsection B, the Village may, either in addition to or in lieu of other remedies, initiate any appropriate action or proceedings in the appropriate court to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building, structure or property involved, including a court order to remediate the unsafe conditions or remove or demolish a building or structure.

B. In the case of a residential building or structure or an abandoned structure where the Village Council has adopted an ordinance in accordance with Section 307, subsection D, and the property owner has failed to remediate the unsafe condition within the time specified in the ordinance, or for other properties if the property owner has failed to remediate the unsafe condition as specified in the order, the Village Council may, in lieu of taking action under subsection A of this Section 405, cause the building, structure or property to be repaired, improved, removed or demolished or the unsafe conditions removed from the property in accordance with this ordinance and the law.

C. The costs incurred by the Village in connection with the repair, improvement, removal, demolition or other remediation 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 NCGS §160D-1203 (Ordinance authorized as to repair, closing, and demolition; order of public officer.). If a building or structure is removed or demolished or saleable material is removed from a property under this Section, the Village shall sell the usable materials of the building, structure or property and any personal property, fixtures, or appurtenances found in or attached to the building or structure. The proceeds of the sale shall be credited against the cost of the removal, demolition or remediation. Any balance remaining from the sale shall be deposited with the Clerk of Superior Court of Henderson County and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

**Section 406 Additional lien.**

The amounts incurred by the Village in connection with the removal, demolition or remediation shall also be a lien against any other real property owned by the owner of the building, structure or property and located within the Village limits, or within one mile of the Village limits, except for the owner's primary residence. The provisions of Section 405 C regarding liens apply to this additional lien, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

**Section 407 Nonexclusive remedy.**

Nothing in this Article shall be construed to impair or limit the power of the Village to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise, as provided by law.

**ARTICLE V  
HEARINGS AND APPEALS**

**Section 501 Appeals to the Village Council.**

**A. Local Appeals**

The Village Council shall be authorized to interpret this ordinance on appeal and to hear and decide appeals from and review any order, requirement, determination or other decision made by the Corrective Action Hearing Board under this ordinance. An appeal may be taken by any person in interest or otherwise aggrieved or by an officer, department or board of the Village. Appeals shall be taken within the times and in accordance with Article XV of the Land Development Ordinance. No appeal shall be heard by the Village Council unless written notice thereof is filed within thirty (30) calendar days after the property owner or parties in interest receive notice of the final and binding order, requirement, determination or other decision by the Corrective Action Hearing Board.

## B. State Appeals

Per NCGS §160D-1127 (Appeals) unless otherwise provided by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the Commissioner of Insurance or the Commissioner's designee or other official specified in G.S. 143-139 by filing a written notice with the Commissioner and with the inspection department within a period of 10 days after the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law.

## **Section 502 Procedures for corrective action hearings.**

A. *Hearings.* Upon being advised of the need for a corrective action hearing under Section 304 or Section 305 by the enforcement officer, the Mayor shall schedule a time for a public hearing that shall be held within thirty calendar days of the filing of a notice of hearing under Section 304 or Section 305.

B. *Notice of public hearing.* For all hearings of the Corrective Action Hearing Board, the enforcement officer shall give written notice of the public hearing to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to other parties in interest; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the Village may rely on the Henderson County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than twenty-five days, prior to the date of the hearing. Within that same time period, the enforcement officer shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. All notices shall state the location of the lot or building, the type and nature of the hearing and the time, date and place of the hearing.

C. *Conduct of hearings.* Any party may appear at the hearing in person, by agent or by attorney. All testimony shall be given under oath or affirmation, and any party shall have the right to confront and cross-examine another party's witnesses.

D. *Voting.* The concurring vote of a majority of the members of the Corrective Action Hearing Board shall be necessary to make any decision or determination regarding the action to be taken regarding an unsafe or dangerous condition determination by the enforcement officer or otherwise to render a decision on matters arising in the administration of this ordinance. An abstention shall constitute a vote to affirm a determination of the enforcement officer or take action regarding the property in question.

E. *Decisions by the Corrective Action Hearing Board.* A decision by the Corrective Action Hearing Board shall be made within five calendar days of the date of conclusion of the corrective action hearing and notice of such decision shall be given by the secretary of the Corrective Action Hearing Board, by certified mail, to the property owner and parties in interest no later than the close of business the day following the date of such decision and by first class mail to any other person who has made a written request for such notification.

**Section 503 Fee schedule.**

The Village Council may establish, and modify from time to time, a fee schedule for the administration and enforcement of this ordinance. Fees may include expenses for technical advisors when needed to evaluate a structure or property. In order to be deemed complete, all notices of appeal shall be accompanied by payment of applicable fees.

**ARTICLE VI  
AMENDMENTS**

**Section 601 Authority to amend.**

This ordinance may be amended by the Village Council in accordance with the provisions of this article.

**Section 602 Initiation of amendments.**

Proposed changes or amendments to this ordinance may be initiated by the Village Council, Planning Board, Corrective Action Hearing Board or the enforcement officer.

**Section 603 Planning Board action.**

Before taking any action on a proposed amendment to this ordinance, the Village Council may consider the Planning Board's recommendation on such proposed amendment.

**Section 604 Public hearing; ordinances and ordinance amendments.**

Before enacting any amendment to this ordinance, or a corrective action ordinance as specified in Section 307, subsection D, the Village Council shall hold a public hearing on the proposed amendment or ordinance. Prior to the public hearing, the Village shall publish a notice of public hearing in a local newspaper with general circulation in the Village once a week for two consecutive weeks. The first such publication shall appear not less than ten or more than twenty-five calendar days prior to the date fixed for the public hearing. In computing such period, the day of the publication shall not be counted, but the date of the hearing shall be counted. The notice shall include the time, place and date of the hearing, and the nature of the amendment or corrective action ordinance to be adopted. The notice of public hearing shall also conform to the requirements of NCGS §160A-364.

**ARTICLE VII  
LEGAL STATUS**

**Section 701 Conflict of laws.**

Whenever this ordinance imposes more restrictive standards than are required under any North Carolina statute or other Village ordinance, the requirements of this ordinance shall govern. Whenever any statute or other ordinance requires more restrictive standards than are required by this ordinance, the provisions of such statute or ordinance shall govern.

**Section 702 Severability.**

Should any section or provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction in the subject matter, such declaration shall not affect the validity of the ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

**Section 703 Effective date.**

This ordinance shall take effect and be in force on and after June 30, 2021.

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Michelle Parker, C.M.C.  
Village Clerk

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Robert V. Staton  
Mayor

Approved as to form:

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Sharon B. Alexander, Village Attorney