

Barbara S. Austin 06-12-08
Barbara S. Austin Clerk to Council
County Council Berkeley County SC

BILL NO. 08-09

ORDINANCE NO. 08-05-21

AN ORDINANCE AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES, BERKELEY COUNTY, SC, ENTITLED FLOOD DAMAGE PREVENTION AND PROTECTION AND REPEALING ORDINANCE NUMBERED 90-10-13, IN ITS ENTIRETY.

WHEREAS, it is in the best interests of the citizens of Berkeley County to have an updated ordinance for the management of the flood hazard areas in the County in order for the citizens of Berkeley County to be able to receive federally subsidized flood insurance through the National Flood Insurance Program, and to receive discounts thereto as a result of the participation by Berkeley County in the Community Rating System, and

WHEREAS, the Berkeley County flood insurance rate maps have been reformatted by the Federal Emergency Management Agency (FEMA) into a County-wide format, and

WHEREAS, these reformatted maps utilize alternative letter designations for the indicated flood zones, and

NOW, THEREFORE, BE IT ORDAINED by Berkeley County Council, in a meeting duly assembled, that Chapter 26 of the Code of Ordinances, Berkeley County, South Carolina, is amended by the provisions of this Ordinance as follows:

ARTICLE I. IN GENERAL

Sec. 26-1. Statutory Authorization

The Legislature of the State of South Carolina has in Code of Laws, §4-26-30(5), delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the County Council, of Berkeley County, South Carolina, does ordain these flood damage prevention and protection regulations.

Sec. 26-2. Findings of fact.

1. The flood hazard areas of Berkeley County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. These flood losses are caused by the cumulative effect of obstructions in floodplains, causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damage.
2. These flood losses are caused by the cumulative effect of obstructions in flood plains, causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood proofed, or other wise unprotected from flood damage.
3. In order for owners of property located within Berkeley County which is subject to periodic inundation to obtain flood damage insurance through the National Flood Insurance Program, the United States

government, by statute and through regulations promulgated by the Federal Emergency Management Agency (FEMA), requires that Berkeley County enact floodplain regulations designed to reduce the amount of potential flood losses.

4. Berkeley County has previously adopted various ordinances establishing regulations related to the prevention of flood damage.
5. Based on the findings set forth above, Berkeley County Council finds it is in the public interest and a benefit to the general health, safety and welfare of the residents of Berkeley County, to adopt an ordinance revising and amending the county's flood damage prevention regulations.

Sec. 26-3. Statement of purpose.

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

1. Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Require that structures vulnerable to floods, including appurtenant structures, be protected against flood damage.

Sec. 26-4. Objectives.

The objectives of this ordinance are:

1. To protect human life and health;
2. To minimize expenditure of public money for costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in flood plains;
6. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas, and;
7. To ensure that potential homebuyers are notified that property is in a flood area.

Sects. 26-5 - 26-26. Reserved.

ARTICLE II. DEFINITIONS

Sec. 26-10. Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application in light of its stated objectives.

"A" Zone means an area in the A, AE, AO, AH, or A-99 zone on the Berkeley County flood insurance rate map.

Accessory residential structure means a structure on the same parcel of property as the principal structure, used for parking of vehicles or typical residential equipment, or for limited storage.

Appeal means a request for a review of the building official's interpretation of any provision of this chapter to the Building Board of Adjustment and Appeal.

Appurtenant Structure means a structure, which is on the same parcel of property as the principal structure, the use of which is incidental to the use of the principal structure in light of its stated objectives.

Area of Shallow Flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one (1) percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident.

Area of Special Flood Hazard means the land in the flood plain with a community, subject to a one (1) percent or greater chance of flooding in any given year (A, AE, AO, AH, A-99, V, VE). For purposes of these regulations, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard".

Base Flood or 100-Year Flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

Basement means that portion of a building having its floor subgrade (below ground level) on all sides.

Breakaway Wall means a wall that is not part of the structural support of a building that is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Building See structure.

Building Official means the floodplain manager.

Building Permit includes mechanical, electrical, plumbing, and any other permits issued by the county building official.

Coastal High Hazard Area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to flooding and high velocity waters caused by, but not limited to, hurricane wave wash. This includes Zones, V and VE.

Critical Facility means a structure or facility that:

1. Produces, uses, or stores highly volatile, flammable, explosive, toxic and/or water-reactive materials,
2. Is a hospital, nursing home, or housing likely to contain occupants, who may not be sufficiently mobile to avoid death or injury during a flood,
3. Is a police station, fire station, vehicle and equipment storage facility or emergency operations center that is needed for flood response activities before, during or after a flood, or

4. Is a public or private utility facility that is vital to maintaining or restoring normal services to flooded areas before, during or after a flood.

Critical Feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Curvilinear Line means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

Developed Area means an area of a community that is:

1. A primarily urbanized, built-up area that is a minimum of twenty (20) contiguous acres, has basic urban, infrastructure including roads, utilities, communications, and public facilities, to sustain industrial, residential, and commercial activities, and
 - a. Within which seventy-five (75) percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses; or
 - b. Is a single parcel, tract, or lot in which seventy (75) percent of the area contains existing commercial or industrial structures or uses; or
 - c. Is a subdivision developed at a density of at least two (2) residential structures per acre within which seventy-five (75) percent or more of the lots contain existing residential structures at the time the designation is adopted.
2. An undeveloped single parcel, tract, or lot of less than twenty (20) acres that is contiguous on at least three (3) sides to areas meeting the criteria of paragraph (a) at the time the designation is adopted.
3. A subdivision that is a minimum of twenty (20) contiguous acres that has obtained all necessary government approvals, provided that the actual "start of construction" of structures has occurred on at least ten (10) percent of the lots or remaining lots of a subdivision of ten (10) percent of the maximum building coverage or remaining building coverage allowed for a single-lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in paragraph (1)(c) of this definition.

Development means any manmade change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of equipment or materials.

Elevated building means a non-basement structure built to have its lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns, piers, or shear walls.

Existing construction means any structure for which the start of construction commenced before September 23, 1983. "Existing construction" may also be referred to as "existing structures".

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before September 23, 1983.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed

(including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Farm structure means a structure which is constructed on a farm, other than a residence or a structure attached to it, for use on the farm including, but not limited to, barns, sheds and poultry houses, but not including public livestock areas.

FEMA means the Federal Emergency Management Agency.

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood hazard boundary map (FHBM) means an official map of a community, issued by the Federal Insurance Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) and flood-related erosion areas having special hazards have been designated as Zones A, M, and/or E.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community. (A Zones and V Zones).

Flood insurance study. See flood elevation study.

Flood plain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of "flooding").

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway. See regulatory floodway.

Floodway encroachment lines mean the lines marking the limits of floodways on federal, state and local flood plain maps.

Freeboard means a factor of safety usually expressed in feet above a base flood level for purposes of flood plain management. Berkeley County's Freeboard is 1' added to the base flood elevation.

Functionally dependent use means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking, or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

Historic structure means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places that has been certified by the South Carolina Department of Archives and History.

Improvement means any alteration, addition, or structural repair to an existing structure where "substantial improvement" or "substantial damage" is not a factor.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of this ordinance.

Mangrove stand means an assemblage of mangrove trees which is mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one (1) or more of the following species: Black mangrove (*Avicenna nitida*); Red mangrove (*Rhizophora mangle*); White mangrove (*Longunculariaracemosa*); and buttonwood (*Conocarpus erecta*).

Manufactured home means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed to meet HUD standards, for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Manufactured home permanent foundation means a foundation designed by a Professional Engineer registered in South Carolina, with said design subject to the approval of the building official. A bolt-on/bolt-off foundation system is considered as a permanent foundation for mobile homes placed into a manufactured home park.

Mean sea level means the average height of the sea for all stages of the tide as determined by the U.S. Army Corps of Engineers, used as a reference for establishing various elevations within the flood plain. For purposes of this ordinance, the term is based on the National Geodetic Vertical Datum (NGVD), to which base flood elevations shown on a community Flood Insurance Rate Map (FIRM) are referenced.

Modular building unit means a building, including the necessary electrical, plumbing, heating, ventilation, and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, as a finished building and not designed for ready removal to another site. This term is not to be limited to residential dwellings.

New construction means, for flood plain management purposes, structures for which the start of construction

commenced on or after the effective date of a flood plain management ordinance adopted by a community, and includes subsequent improvements to such structures. (Exception: An addition to an existing structure is not considered "new construction" unless it is a substantial improvement.)

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed on or after September 23, 1983.

100-Year flood. See base flood.

Planning and zoning official means the individual charged with administration and enforcement of planning and zoning for the county.

Primary oceanfront sand dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Recreational vehicle means a vehicle that is:

1. Built on a single chassis;
2. Four Hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Remedy a violation means to bring the structure or other development into compliance with state or local flood plain management regulations, or, if this is not reasonably possible as provided in the standards for grant of a variance, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal, state or local financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Sand dune means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Santee Dam Breach Area means the areas defined by the "Santee Dam Breach Areas; Santee Reservoir Dam Breach Simulation" and accompanying mapping by Ayers Associates, January, 1988.

Sheet flow area. See "area of shallow flooding".

60-Year setback means a distance equal to sixty (60) times the average annual long-term recession rate at a site, measured from the reference feature.

Special flood hazard area. See "area of special flood hazard."

Special hazard area means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on a flood hazard boundary map or flood insurance rate map as Zone A, AO, AE, AH, VO, V and VE.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 267-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including gas or liquid storage tanks that are principally above ground, as well as modular and manufactured homes, modular building units and manufactured homes.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred as determined by the building official.

Substantial improvement means any reconstruction, rehabilitation, addition or other improvement of a structure, taking place during any five (5) consecutive years in the life of a building, the cumulative cost of which equals or exceeds fifty (50) percent of the market value of the existing structure at the date of "start of construction" of the improvement as determined by the building official. This term includes structures, which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
2. Any alteration of a historic structure provided that the alteration would not preclude the structure's continued designation as a historic structure.

30-year setback means a distance equal to thirty (30) times the average annual long-term recession rate at a site, measured from the reference feature.

"V"-Zone. See **coastal high hazard area.**

Variance means a grant of relief from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in exceptional hardship.

Violation means the failure of a structure or other development to be fully compliant with the county's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until

such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

Sects. 26-11 - 26-126. Reserved.

ARTICLE III. GENERAL PROVISIONS

Sec. 26-20. Lands to which this ordinance applies.

This ordinance shall apply to all areas of special flood hazard designated by the FEMA Flood Maps within the Unincorporated areas of Berkeley County and the lands regulated by the Santee Dam Breach Areas.

Sec. 26-21. Basis for establishing the areas of special flood hazard.

The national flood insurance county-wide rate map consisting of seventy nine (79) panels for the areas of the Berkeley County flood insurance study, community number 450029, effective October 16, 2003, copies of which are on file in the offices of building services and planning, is hereby adopted by reference and declared to be as fully a part of this chapter as if set forth herein. Letters of map change to these adopted maps authorized by the NFIP shall become effective immediately upon receipt by the Building Official.

Sec. 26-22. Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Berkeley County or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Sec. 26-23. Severability.

If any provision of this ordinance or its application to any circumstance is held by a court of competent jurisdiction to be invalid for any reason, then this holding does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and, to this end, the provisions of this ordinance are severable.

Sects. 26-24 - 26-226. Reserved.

ARTICLE IV. ADMINISTRATION

Sec. 26-30. Designation of building official.

The county building official, and/or his/her designee, is hereby appointed to administer and implement the provisions of this ordinance.

Sec. 26-31. Permit procedures.

1. **All designated flood zone areas (A, AE, VE):** Application for a building permit shall be made to the building official, on forms furnished, prior to commencement of any construction activities. The following information, as a minimum, is required:

Application Stage:

- a. For a zoning: Two (2) sets of site plans, indicating the location of the floodway and/or areas having special flood-related erosion hazards, if applicable.
- b. For a building permit: Two (2) sets of building plans drawn to scale and showing, at a minimum, elevations for each exterior wall; floor plan(s); foundation and wall sections and details; stair details; and electrical, plumbing and mechanical riser diagrams; verification that materials proposed below base flood elevation (BFE) or other designated height in AO and undetermined A-Zones are flood resistant per FEMA Technical Bulletin 2-263; flood proofing certification (non-residential), if applicable; and design loads. All HVAC and other equipment must be at the required freeboard upon the receipt of a Certificate of Occupancy. All the above items must be on the required 3 Elevation Certificates for new construction.
- c. In the un-numbered "A" Zone, the homeowner will be required to establish a Base Flood Elevation for their property. The elevation can be established by an engineer using the FEMA program Quick-2 or by going to the property and doing a survey and a Hydrology & Hydraulic study.

Responsibilities of Santee Cooper in The Santee Dam Breach Areas: Refer to Ordinance No. 91-6-15:

- a. In the Santee Dam Breach Area: The Berkeley County Permitting Office will request Santee Cooper to determine the existing ground elevation and maximum floodwater elevation for a proposed dwelling location as established in the counties construction permitting system. Santee Cooper will then recommend a minimum first floor elevation within 3 days of the request.
- b. Santee Cooper will provide the County with list (by tax map number) of land parcels affected by the flood and those existing dwellings already established in the floodplain. Santee Cooper will provide technical support through the development and updating of floodplain mapping for the Santee River. Establish and maintain flood information that will be used to determine dam break flood levels for any point along the Santee River where it adjoins the County.
- c. Santee Cooper will annually update its mapping to ensure that all affected dwellings are accounted for. This will be accomplished by tax office investigation, field reconnaissance, and aerial reconnaissance. Santee Cooper will provide the county with an account of its findings.
- d. Santee Cooper will provide verification of first floor elevation determination should the County require substantiation of the recommended elevation. Santee Cooper will provide first floor elevation certification on all covered parcels of property located within Santee Floodplain as determined by Santee Cooper.
- e. Santee Cooper will provide all reasonable care in maintaining and operating the Santee Dam to ensure the welfare of life and property for those living in the Santee River Floodplain.

Responsibilities of Berkeley County in the Santee Dam Breach Areas: Refer to Ordinance No. 91-6-15:

- a. The County will incorporate the Dam Breach Flood information for the Santee River Floodplain

as provided by Santee Cooper for the purpose of establishing first floor elevation for proposed residential and commercial construction in that floodplain. These flood elevations are established from Dam Breach parameters and take precedent of FEMA-established elevations only when the Dam Breach flood elevations exceed the FEMA flood elevations.

- b. The County will review each construction permit request to determine its proposed location requirements in comparison to the Santee River floodplain location. The County will also compare the proposed permit with the list of affected tracts of land provided by Santee Cooper.
- c. The County will contact Santee Cooper for proposed construction within the Santee River Floodplain requesting a determination of proposed first floor elevation for the structure.
- d. The County will provide enforcement of the pertinent ordinances for this agreement to ensure the welfare of life and property for its citizens.

It is the intent of this agreement that it be both effective and efficient in its performance. Should either party wish to modify this agreement for either of these reasons, a meeting time and place will be established by the initiating party to discuss and establish changes without affecting the original intent of the agreement.

2. **Coastal high hazard areas ("V" zones):** Application for a building permit shall be made to the building official on forms furnished prior to commencement of any construction activities. The following information as a minimum is required:

Application Stage:

- a. For a zoning permit: Two (2) sets of site plans, indicating the locations of areas having special flood-related erosion hazards, if applicable.
- b. For a building permit: Two (2) sets of building plans drawn to scale and showing, at a minimum, floor plan(s); foundation details and certification of compliance; wall details and certification; breakaway wall details, and certification, if applicable; elevations for each exterior wall; electrical, plumbing and mechanical riser diagrams; stair details; Architect/Engineer S.C. Seal; verification that materials proposed below base flood elevation (BFE) are flood resistant per FEMA Technical Bulletin 2-263; and design loads.

Sec. 26-32. Duties and responsibilities of the building official and planning and zoning official

1. Duties of the building official shall include, but not be limited to:
 - a. Review all applications for building construction permits to assure that the requirements of this ordinance have been satisfied.
 - b. Verify and record the actual elevation (in relation to mean sea level) of the lowest floor in A-Zone (including basement) and the bottom of the lowest horizontal structural member in V-Zone for all new construction; and verify and record that (non-residential) buildings when below BFE in A-Zones have been flood-proofed and certified by a registered professional engineer or architect, or both.
 - c. In the **area of special flood hazard**, the building official shall review construction plans, and obtain pre-construction and as-built V-Zone design and breakaway wall certificates for properties in the **coastal high hazard area**, to ensure that the requirements of this ordinance have been satisfied.

- d. Where interpretation is needed as to the exact location and elevation of all areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the building official shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance.
 - e. Maintain copies of flood elevation certificates, V-zone certificates; flood proofing certificates, and other applicable flood-zone related documents indefinitely.
 - f. The building official shall review all violations of which he/she receives notice during the course of construction. Failure of the contractor to make required changes shall be cause for issuance of a stop-work order for the project.
 - g. Prevent encroachments by denial of permits within floodways unless certification and flood hazard reduction provisions of Article V of this ordinance are met.
 - h. Maintain a copy of letter of map amendments issued by FEMA in the office of the building official.
 - i. When base flood elevation or floodway data have not been provided by the applicants, the building official shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source.
 - j. Duties assigned to the Planning and Zoning Official and/or communities not contracting for services with these entities.
 - k. Determine the elevation requirement for construction in flood zones.
 - l. Advise applicant that additional federal or state permits may be required, and if specific federal or state permit requirements are known, maintain copies of such permits on file with the zoning permit, to be made available to the public.
 - m. Notify adjacent communities and the S. C. Natural Resources Department prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.
 - n. Ensure that maintenance and inspections are provided within the altered or relocated portion of watercourses so that the flood-carrying capacity is not diminished, and maintaining records of the same until completion of the project.
2. Duties of the planning and zoning official, where applicable, shall include, but not be limited to:
- a. Require a zoning permit in conformance with the provisions of the Berkeley County Zoning and Land Development Regulations, as amended, and/or the *Berkeley County Comprehensive Plan* prior to the commencement of any development or construction activities. The permit shall give a full description of proposed construction.
 - b. Maintain on file for public access all flood maps issued by the Federal Emergency Management Agency.
 - c. Maintain permanent copy of building permits issued indefinitely.

Sec. 26-33. Appeal and variance procedures

1. The Berkeley County Construction Board of Adjustment & Appeals as established by County Council shall hear and decide appeals and requests for variance meeting the following provisions from the requirements of this ordinance:
 - a. Decisions on which a variance or appeal is requested shall be those made by the building official or his designee.
 - b. Requests for a hearing for a variance or appeal of a decision shall be in writing, and shall be received in the office of the building official within 20 calendar days of notice to the appellant of the decision.
 - c. The appellant shall be the owner of the property affected by the decision or his or her duly authorized representative.
2. This board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the building or the planning and zoning official in the enforcement or administration of this ordinance.
3. Any person aggrieved by the decision of this board or any taxpayer may appeal such decision, as provided in §4-26-30 of the S.C. Code of Laws.
4. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.
5. Variances may be issued for a new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that requirements of this article are met and the structure of other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
6. Variances may be issued to wet flood proof an expansion to an existing farm structure in accordance with Technical Bulletin 7-263, *Wet Flood Proofing Requirements for Structures Located in Special Flood Hazard Areas in Accordance with the National Flood Insurance Program* available from the Federal Emergency Management Agency. The structure must meet all of the conditions and considerations for variances otherwise established within this ordinance. In addition, the following standards shall apply:
 - a. Use of the structure must be limited to agricultural purposes such as pole frame buildings with open or closed sides used exclusively for the storage of farm machinery and equipment; steel grain bins and steel frame corn cribs; and general purpose barns for temporary feeding of livestock;
 - b. The expansion to an existing farm structure must be built or rebuilt, in the case of an existing building which is substantially damaged, with flood-resistant materials for building elements below the base flood elevation;
 - c. The expansion to an existing farm structure must be adequately anchored to prevent flotation, collapse or lateral movement. All of the structure's components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, hydrodynamic and debris impact forces;

- d. The expansion to an existing farm structure shall meet the requirements for hydrostatic venting requirements of Section 26-41 of this ordinance;
 - e. Electrical, mechanical or other utility equipment must be located at or above one foot above the base flood elevation, or must be maintained in a flood proofed enclosure complying with Section 26-41 of this ordinance which is capable of resisting damage during flood conditions;
 - f. The expansion to an existing farm structure must comply with floodway encroachment provisions of section 26-41 of this ordinance;
 - g. Major equipment or machinery must be protected from damage by flooding, which may include safely removing the contents of an expansion to an existing farm structure to a specified site out of the flood plain upon notification of potential flooding event.
7. In passing upon such applications, this board shall consider all staff reports and technical evaluations, all relevant factors and all standards specified in other sections of this ordinance, and
- a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity of the facility to a waterfront location, in the case of a functionally dependent usage;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. The conformance of the proposed use to the *Berkeley County Comprehensive Plan* and the *Berkeley County Zoning and Land Development Regulations*;
 - h. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - i. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site during a base flood event, and
 - j. The costs of providing governmental services to the site during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems, and streets and bridges.
8. The board may attach such reasonable conditions to the granting of variances, as it deems necessary to further the purpose of this ordinance.
9. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result, nor shall a variance be based on financial hardship alone; nor solely due to existing or as-built elevation deficiencies that will cause extreme hardship.
10. Conditions for variances:

- a. Variances shall be issued only on a determination that the variance is the minimum necessary needed to afford relief considering the flood hazard; and in the instance of an historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building;
- b. Variances shall be issued only upon:
 - i. A showing of good and sufficient cause,
 - ii. A determination that failure to grant the variance would result in exceptional hardship, and
 - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, creation of a nuisance, fraud on or victimization of the public, or conflict with other existing laws or ordinances.
- c. Any applicant to whom a variance is granted shall be given written notice specifying the differences between the base flood elevation and the elevation of which the building is to be built and a statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation, and
- d. The building official shall maintain the records of all appeal actions and report any variances granted to the Federal Emergency Management Agency upon request.
- e. Variances may not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.

Sects. 26-35 – 26-326. Reserved.

ARTICLE V. PROVISIONS FOR FLOOD HAZARD REDUCTION.

Sec. 26-40. General standards

1. All new construction and substantial improvements within the areas of special flood hazard shall:
 - a. Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and debris impact,
 - b. Be constructed with Class 4 or 5 materials resistant to flood damage as per FEMA Technical Bulletin 2-263, entitled "Flood-Resistant Material Requirements for Buildings Located in Special Flood Hazard Areas", incorporated herein by reference, in all areas below one foot above the base flood elevation,
 - c. Be constructed by methods and practices that minimize potential for flood damages, and
 - d. Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are located so as to prevent water from entering or accumulating within the components during conditions of flooding to a minimum of one foot above the base flood elevation.
2. In areas of special flood hazard, new and replacement water supply systems shall be designed to minimize or prevent infiltration of flood waters into the systems; and

3. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and
4. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
5. No new flood insurance coverage may be provided on or after September 23, 1983 for any new construction of, or substantial improvement to, a structure located on any coastal barrier within the coastal barrier resources system as defined in Section 4 of the Coastal Barrier Resources Act.
6. Replacement of electrical, heating, ventilation, plumbing, and air conditioning equipment to existing structures where substantial improvement or damage is not a factor, shall be elevated to at least existing lowest floor level; and ductwork installed below BFE shall be designed so as to prevent water from entering or accumulating within during conditions of flooding.
7. New development in the area of special flood hazard shall minimize disruption to shorelines, stream channels, stream banks, and the regulatory floodway.
8. All improvements to a structure where substantial improvement or substantial damage is not a factor shall be designed and constructed so as to meet the requirements of this ordinance, with the exception that the minimum elevation of the lowest floor of an improvement to an existing legally non-conforming structure shall be the existing lowest floor elevation of the structure.
9. All new construction or substantially improved *accessory residential structures*, as defined herein shall meet the following conditions:
 - a. **Accessory residential structures** shall not be used for human habitation.
 - b. **Accessory residential structures** shall be constructed in compliance with Sections 26-40(1)(a), Section 26-40(1)(b) and Section 26-41(1).
 - c. Flood elevation certificates may be required, if the structure has a footprint in excess of 600 square feet and is determined by the building official that these are necessary to determine the elevation of electric or other utility services provided to the accessory structure.

Sec. 26-41. Specific standards.

1. In all areas with the letter "A" as its first flood zone attribute (A, AE, AO, and AH), the following provisions are required:
 - a. All new construction and substantial improvements of residential structures within Zones AE and AH on the Berkeley County FIRM shall be elevated so that the top of the lowest floor level of the lowest floor (including basement) is elevated to one foot above the base flood elevation.
 - b. All new construction and substantial improvements of non-residential structures within Zones AE and AH on the community FIRM shall have:
 - i. the lowest floor (including basement) elevated to or above one foot above the base flood level, or
 - ii. together with attendant utility and sanitary facilities, be designed so that below one foot above the base flood level the structure is watertight with walls substantially impermeable

to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

- c. Where a non-residential structure intended to be made watertight below the base flood level.
 - i. A registered professional engineer or architect licensed in South Carolina shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of paragraph 26-41(1)(b)(ii) of this ordinance, including but not limited to *Flood proofing Non-Residential Structures* (FEMA 102) as published by the Federal Emergency Management Agency incorporated herein by reference, and
 - ii. A record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are flood proofed shall be maintained with the building official.
 - d. Enclosed areas below the lowest floor, including foundation crawl space areas, shall be designed to automatically equalize hydrostatic and hydrodynamic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect licensed in South Carolina or meet or exceed the following minimum criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters. The area of the opening is the net clear opening calculated as the open area (excluding area of screening or other coverings that prohibit the free flow of water through the opening).
 - e. Enclosed areas below the lowest floor, with the exception of foundation crawl spaces, shall be the minimum necessary to allow for parking of vehicles, limited storage, and access to the primary occupancy (stairway or elevator).
2. Specific standards high hazard areas V or VE zones located within the areas of special flood hazard are area designated as coastal high hazard areas. These areas have special flood hazards associated with wave wash, and therefore, the following provisions shall apply:
- a. All new construction within zones V and VE on the Berkeley County FIRM is located landward of the reach of mean high tide.
 - b. Provide that all new construction and substantial improvements in zones V and VE, if base flood elevation data is available on the Berkeley County FIRM, are elevated on pilings and columns so that:
 - i. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above one foot above the base flood level, and
 - ii. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by the *International Building Code or International Residential Code* as adopted and periodically amended by the South Carolina Department of Labor, Licensing and Regulation. A

registered professional engineer or architect licensed in South Carolina shall develop the structural design, specifications and plans for construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of paragraphs (2)(b)(i) and (ii) of section 26-41 of the *Code of Ordinances, Berkeley County, South Carolina*.

- c. New construction and substantial improvements within Zones V and VE on the Berkeley County FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of twenty (20) pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect licensed in South Carolina certifies that the designs proposed meet the following conditions:
 - i. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,
 - ii. The elevated portion of the building and supporting foundations system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards. Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.
- d. There shall be no fill used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, thereby rendering the building free of obstruction prior to generating excessive loading forces, ramping effects, or wave deflection. The building official shall approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist licensed in South Carolina, which demonstrates that the following factors have been fully considered:
 - i. Particle composition of fill material does not have a tendency for excessive natural compaction;
 - ii. Volume and distribution of fill will not cause wave deflection to adjacent properties; and,
 - iii. Slope of fill will not cause wave run-up or ramping.
- e. Manmade alteration of sand dunes and mangrove stands within Zones VE and V on the Berkeley County FIRM, which would increase potential flood damage, shall be prohibited.
- f. The placement of new or replacement manufactured homes is prohibited.
- g. A modular building may be installed in a V or VE-Zone, providing all applicable building codes and NFIP regulation requirements are met.
- h. Pre-construction and as-built design and breakaway wall certifications, where applicable, shall be provided by registered professional engineers and/or architects licensed in South Carolina for new

and substantially improved structures in V or VE flood zones on the Berkeley County FIRM. These certificates shall also be provided for all lateral additions to structures in V or VE flood zones.

- i. Enclosed areas below the lowest floor shall be the minimum necessary to allow for parking of vehicles, limited storage, and access to the primary occupancy (stairways and/or elevator).
 - j. Appurtenant features; defined as swimming pools, decks, gazebos, fences, and other features as determined by the building official as potentially causing an obstruction in the *coastal high hazard area*; must comply with the Federal Emergency Management Agency (FEMA) Technical Bulletin 5-263, *Free of Obstruction Requirements*, or any revisions thereto, incorporated herein by reference.
3. Specific standards for manufactured homes and recreational vehicles. (This section does not apply to modular building units).
- a. New or replacement manufactured homes (e.g. those designed to meet HUD standards) shall not be placed within property located in zone V or VE on the Berkeley County FIRM. Existing manufactured homes in V or VE zones may be permitted to remain as long as the structure complies with minimum health and safety standards and is anchored to resist flotation, collapse, lateral movement or debris impacts.
 - b. Permits shall be obtained for placement of manufactured homes or temporary construction trailers within zone A, AH, AO or AE on the Berkeley County FIRM. A temporary construction trailer may only be permitted to be on site for fewer than 180 consecutive calendar days at a time, and must be fully ready for highway use, and shall be attached to the site only by quick disconnect type utilities and security devices.
 - c. All manufactured homes permitted to be placed within zone A or AE on the Berkeley County FIRM shall be installed using methods and practices which minimize flood damage, which include elevating the lowest floor of the manufactured home on a permanent foundation, as defined herein as a manufactured home permanent foundation, to or above one foot above the base flood elevation as indicated on the FIRM. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
 - d. All recreational vehicles, other than those parked at another permanent structure temporarily while not in use, placed or sited within zones AE, AH, AO, A, V and VE on the Berkeley County FIRM must:
 - i. Be on the site for fewer than 180 consecutive calendar days, and
 - ii. Be fully registered and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions. If the vehicle is to remain, it must be elevated in accordance with requirements for manufactured homes as provided in section 26-41(3)(d)(v) of this article.
 - e. Manufactured homes placed into AO flood zones shall comply with the elevation requirements indicated in Section 26-42(1) of this ordinance. The manufactured home must be securely anchored on a *manufactured home permanent foundation* as identified herein designs for

manufactured home permanent foundations are subject to approval of the building official.

- f. Manufactured homes placed into A flood zones without established base flood elevations shall comply with the elevation requirements indicated in Section 26-44 (2) of this ordinance. The manufactured home must be securely anchored on a *manufactured home permanent foundation* as identified herein. designs for *manufactured home permanent foundations* are subject to approval of the building official.
4. Regulatory flood ways. Areas of special flood hazard established as regulatory floodways in the Berkeley County flood insurance rate map (FIRM) and/or the Berkeley County flood insurance study are the Berkeley County designated floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential, the following provisions shall apply:
- a. Prohibition of encroachments, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice in accordance with the Berkeley County Flood Insurance Study or as otherwise deemed appropriate by FEMA or the Building Official, certified by a South Carolina licensed engineer, that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharges.
 - b. Encroachments may be permitted within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the county first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of §65.12 of 44 CFR and receives the approval of the federal insurance administrator.
 - c. Prohibition of the placement of manufactured homes, except in an existing manufactured home park or subdivision, and subject to all other requirements of this ordinance and other laws, rules and regulations.
 - d. The area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one (1) foot at any point. Studies performed to designate the regulatory floodway must be in accordance with accepted standard engineering practices, in accordance with the Berkeley County Flood Insurance Study or as otherwise deemed appropriate by FEMA or the Building Official.

Sec. 26-42. Standards for areas of shallow flooding (AO zones).

Those areas located within the areas of special flood hazard established in the Berkeley County flood insurance rate map (FIRM) and/or flood insurance study as AO zones, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet, where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential structures shall have the lowest level of the floor, including basement, elevated to one foot above the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least three (3) feet above the highest adjacent grade.
2. All new construction and substantial improvements of non-residential structures shall:
 - a. Have the lowest level of the floor, including basement, elevated to one (1) foot above the depth

number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least three (3) feet above the highest adjacent grade, or;

- b. Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy and debris.
- c. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the Berkeley County FIRM (at least three (3) feet if no depth number is specified);
- d. All new construction and substantial improvements of nonresidential structures shall:
 - i. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the Berkeley County FIRM (at least three (3) feet if no depth number is specified), or
 - ii. Together with attendant utility and sanitary facilities be completely flood proofed to that level to meet the flood proofing standard specified in Article V.

Adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures shall be provided.

Sec. 26-43. Standards for subdivision proposals.

- 1. All subdivision proposals shall be consistent with the need to minimize flood damage;
- 2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- 3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and;
- 4. Base flood elevation data shall be provided for all subdivision proposals (including manufactured home parks and subdivisions), which is greater than the lesser of five (5) acres or fifty (50) lots.

Sec. 26-44. Standards for streams without established base flood elevations and/or floodways.
(A-Zones and/or streams without designated floodways)

Located within the areas of special flood hazard where streams exist but where no base flood data have been provided or where no floodways have been provided, the following provisions apply:

- 1. No encroachments, including fill material or structures shall be located within a distance of 100 feet of the stream bank unless certification by a registered professional engineer licensed in South Carolina with supporting technical data is provided, demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- 2. In special flood hazard areas without base flood elevation data, new construction or substantial improvements of structures shall be elevated to at least 1 foot above the anticipated flood elevation during a *base flood*, as determined through an engineering analysis meeting the Federal Emergency

Management Agency guidelines for flood insurance studies, or at a minimum so that the lowest floor is no less than three (3) feet above the highest adjacent grade at the building site.

Sects. 26-45 – 26.426. Reserved.

ARTICLE VI. NUISANCES, PENALTIES, ORDINANCE CUMULATIVE, EFFECTIVE DATE

Sec. 26-50. Nuisances within a special flood hazard area.

1. Certain nuisances defined: Notwithstanding anything to the contrary set forth in the *Code of Ordinances, Berkeley County, South Carolina*, the following activities occurring within a special flood hazard area constitute a danger to the health, safety, and welfare of the residents of the county, are hereby defined as public nuisances and are prohibited within any special flood hazard area.
 - a. The manufacture, processing, blending, mixing or refining of the following products as defined in the *International Fire Code* as adopted by County Council:
 - i. Explosives;
 - ii. Blasting agents
 - b. Storage of the products listed in subsection (a) above, except that the retail sale of packages products off-the-shelf at properly licensed and otherwise authorized retail sales outlets is allowed.
2. *Defense* – Prior use of property. It shall be a defense to prosecution pursuant to section 1) above if:
 - a. Property located within a special flood hazard zone was being used for a purpose defined as a nuisance in section (a) above, before October, has been continuously used for such purpose thereafter, and such use:
 - i. Was a permitted use pursuant to the county zoning ordinance as of October 1997 or
 - ii. Constituted a lawful non-conforming use under the county's zoning ordinance on October 1997; and
 - b. Property which becomes located within a special flood hazard area as the result of an amendment to the county's FIRM was being used for a purpose defined as a nuisance in section (a) above, before the effective date of the amended FIRM, has been continuously used for such purpose thereafter, and such use:
 - i. Was permitted use pursuant to the county's zoning ordinance as of the effective date of the FIRM; or
 - ii. Constituted a lawful non-conforming use under the county's zoning ordinance on the effective date of the FIRM.

Sec. 26-51. Penalties

1. **Criminal penalties:** Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than

five hundred (\$500.00) dollars or imprisoned for not more than thirty (30) days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Berkeley County from taking such other lawful actions as are necessary to prevent or remedy any violation.

- 2. **Civil Remedies:** In addition to any other criminal or civil remedies that may be available to the county, the county may seek and obtain an injunction against the owner or owner's representative with control over the property in accordance with applicable laws and procedures.

Sec. 26-52. Ordinance cumulative.

The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance, including, but not limited to, Ordinance No. 90-10-13, are hereby expressly repealed to the extent of any such inconsistency or conflict. The enactment of this ordinance shall not serve to terminate or be cause for the termination of the prosecution of any civil or criminal actions under the prior ordinances which were pending at the time of the enactment hereof.

Sec. 26-53. Abrogation and Greater Restriction:

This Ordinance shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this Ordinance imposes a greater restriction, the provisions of this Ordinance shall control.

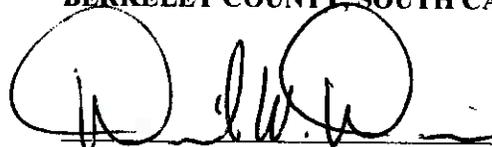
Sec. 26-54. Effective date is amended to read as follows:

This ordinance shall be effective **July 1, 2008**; provided, however, that this ordinance shall not be applicable to new construction or substantial improvements for which the start of construction, as defined in Section 26-10 of the *Code of Ordinances, Berkeley County, South Carolina*, was before the effective date of this ordinance.

ADOPTED this 27th day of May 2008.

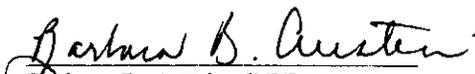
(SEAL)

BERKELEY COUNTY, SOUTH CAROLINA



DANIEL W. DAVIS, Chairman
Berkeley County Council

Attest:


Barbara B. Austin, CCC
Clerk of County Council

08-05-21

Approved as to form:



Nicole Scott Ewing, Esq.
County Attorney

First Reading: February 25, 2008
Second Reading: April 28, 2008
Public Hearing: May 27, 2008
Third Reading: May 27, 2008

MEMBERS OF COUNTY COUNCIL

Phillip Farley
PHILLIP FARLEY Voting yes

Dennis L. Fish
DENNIS L. FISH Voting yes

Timothy J. Callanan
TIMOTHY J. CALLANAN Voting yes

Jack H. Schurlknight
JACK H. SCHURLKNIGHT Voting yes

William E. Crosby
WILLIAM E. CROSBY Voting yes

Caldwell Pinckney, Jr.
CALDWELL PINCKNEY, JR. Voting yes

Cathy S. Davis
CATHY S. DAVIS Voting yes

Steve C. Davis
STEVE C. DAVIS Voting yes