



Planning, Streets and Traffic Committee

Monday, May 22, 2023, at 5:00 p.m.

City Service Center – 915 Quarrier Street – Conference Room

AGENDA

1. Call to Order

2. Unfinished Business

3. New Business

Bill No. 7986 - A bill to amend the Zoning Ordinance of the City of Charleston, as amended, by adding Section 24-100-11 relating to off-premise electronic message boards.

Bill No. 7989 - A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from a combination of a R-O and C-8 districts to a solely C-8 district, the lots 15 and 16 of the parcel situated at 4415 MacCorkle Ave SE, Charleston, WV and Tax Map 16, Parcel 123 of Kanawha City.

Bill No. 7990 - A Bill to repeal and replace Chapter 91, Article II of the Code of the City of Charleston, as amended, relating to updating the floodplain regulations.

Bill No. 7993 - A Bill to Amend and reenact Ordinance 7371 by establishing two-hour parking from 8:00am to 5:00pm, Monday through Saturday on the northerly side of Bigley Avenue from a point 43 feet west of Cora Street to a point 165 feet west of Cora Street and amending the Traffic Control Map and Traffic Control File, established by the code of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

4. Discussion

- Meters on Brooks Street on the corner of Brooks and Kanawha Blvd.
- Police parking downtown.
- Convert police parking space on 300 Capitol Street to a public metered parking space next to Davis Park (closest to Lee Street).
- Convert police parking space on 300 Dickinson Street to a public metered parking space next to USPS (closest to Lee Street).
- Convert KRT bus parking space on 100 West Washington to metered public parking.

5. Approval of the Minutes of the April 24, 2023, meeting

6. Adjournment

Bill No. 7986

Introduced in Council:

May 1, 2023

Introduced by:

Mary Beth Hoover

Adopted by Council:

Referred to:

Municipal Planning Commission
Planning, Streets and Traffic

Bill No. 7986 - A BILL to amend the Zoning Ordinance of the City of Charleston, as amended, by adding Section 24-100-11 relating to off-premise electronic message boards.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Section 24-100-11 of the Zoning Ordinance for the City of Charleston, as amended, is hereby added to read as follows:

Sec. 24-100-11 Off-Premise Electronic Message Board

Off-premise electronic message boards may only be erected if the applicant for the proposed new sign removes and/or uninstalls other active nonconforming off-premise signs in their possession whose square footage equals at least double the square footage of the proposed new sign's total square footage.

Existing off-premise signs may be converted to an off-premise electronic message board only if an amount equaling the square footage of the converted sign's total square footage is removed from other active nonconforming off-premise signs in the applicant's possession. The conversion to an off-premise electronic message board may include structural changes but shall not increase the degree of nonconformity beyond that of the original sign.

For the purpose of this section, an active nonconforming off-premise sign is one that meets the following criteria within the past twelve (12) months:

1. has not been abandoned,
2. has had its copy face changed, or
3. has received income on the copy face.

Electronic message boards shall be static and nonanimated and shall remain fixed for a minimum of 8 seconds. Messages must transition instantly, with no transition graphics. The luminance may not exceed 5,000 nits (candela per square meter) between sunrise and sunset or 250 nits during nighttime hours.

Planning Streets and Traffic Committee
Staff Analysis
May 22, 2023

REQUEST:

Bill No. 7986 - A bill to amend the Zoning Ordinance of the City of Charleston, as amended, by adding Section 24-100-11 relating to off-premise electronic message boards.

APPLICABLE CODE:

Charleston Zoning Ordinance, adopted November 21, 2005, Article 24, Sec. 24-100-11.

STANDARD OF REVIEW:

The amendment is a change to the zoning ordinance, which requires a legislative decision. The Committee is charged with reviewing the recommendation of the Planning Commission and forwarding a recommendation to the City Council for final action. The Committee should determine if the text amendment is consistent with the goals and objectives of the Comprehensive Plan.

HISTORY:

The idea behind the request was presented to the city by WV Outdoor. Staff worked with WV Outdoor over the last year to draft an ordinance that balances the desire of outdoor advertising companies to leverage the latest digital technology with the City's goal of reducing sign clutter and improving aesthetics.

The amendment proposes the following:

- Existing billboards can be converted to digital billboards if the petitioner removes nonconforming billboards of equal or greater sign area somewhere else in the city.
- New digital billboards may be erected if the petitioner removes nonconforming billboards with at least twice as much sign area somewhere else in the city.
- To address potential adverse impacts, the bill requires digital billboards to remain static and nonanimated for a minimum of eight seconds. Messages must transition instantly with no transition graphics. Additionally, digital billboards cannot exceed 5,000 nits between sunrise and sunset or 250 nits during nighttime hours.

ANALYSIS:

The bill creates an incentive for outdoor advertising companies to reduce the amount of sign clutter in the City. Similar amendments are becoming increasingly popular around the country.

RECOMMENDATION AND FINDINGS:

Staff recommends **approval** for the following reason:

1. The amendment will encourage a reduction in the number of nonconforming billboards while requiring performance standards that maintain quality aesthetics and addresses distracted driver concerns.

Municipal Planning Commission

Checklist for Application for Rezoning

MPC Hearing Date: MAY 3, 2023

Bill #: 7989

Applicant Information	Property Information
Name: <u>Andrea Richardson</u>	Address: <u>4415 MacCorkle Ave SE</u>
Address: <u>4000 Stanton Ave SE</u>	Tax Map and Parcel: <u>KC MAP 16 PARCEL 123</u>
Phone: <u>304-989-3841</u>	Zoning District: <u>R-0/C-8</u>
Agents Name, Address, Phone (If other than Applicant): <u>//</u>	Property Owner and Mailing Address: (if other than applicant) <u>//</u>

IMPORTANT: This application must be typed or legibly printed and filed by the filing deadline with the Planning Department in person or by mail to 915 Quarrier Street, Suite 1 Charleston, WV 25301. The following items must accompany this application: 1) a narrative justification to rezone including the information outlined below; 2) a Bill sponsored by a member of Charleston City Council using the format of the sample provided; 3) a map of the area proposed for rezoning, drawn to scale; 4) \$125.00 filing fee in the form of a check or money order made payable to the City of Charleston. In addition, you or your representative must be present at the scheduled public hearing in order to present your request and answer questions. THE PLANNING DEPARTMENT WILL NOT ACCEPT ANY INCOMPLETE APPLICATIONS.

JUSTIFICATION

The following shall be included in a written justification for the request for rezoning:

- ☐ Statement of petitioner's identity as contract purchaser, agent or owner.
- ☐ Property Address including Kanawha County Tax map and Parcel No.
- ☐ Description of the use for which a rezoning is being requested and specific district being requested (eg. R-6 Medium Density Residential District or C-10 General Commercial District).
- ☐ Statement of compliance with the City's Comprehensive and Neighborhood Plans, OR justification for variance from the City's Comprehensive and Neighborhood Plans.
- ☐ Statement that a map of the subject property that is attached.

BILL

A Bill must be submitted along with the above justification.

- ☐ Name of sponsoring member of City Council
- ☐ Formatting exactly as shown on the attached sample bill. Use Arial 12 pt type and line numbering. The Planning Department will acquire a bill number.

I hereby affirm that all of the statements and information contained in or filed with this application are true and correct to the best of my knowledge.

Andrea Richardson
Signature

4-4-23
Date

Bill No. 7989

Introduced in Council

Passed by Council

May 1, 2023

Introduced by

Referred to

Pam Burka

**Municipal Planning Commission
Planning, Streets, and Traffic**

Bill No. 7989 – A bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from an R-O district to a C-8 district, that certain parcel of land identified as 4415 MacCorkle Ave SE, Charleston, WV, 25304

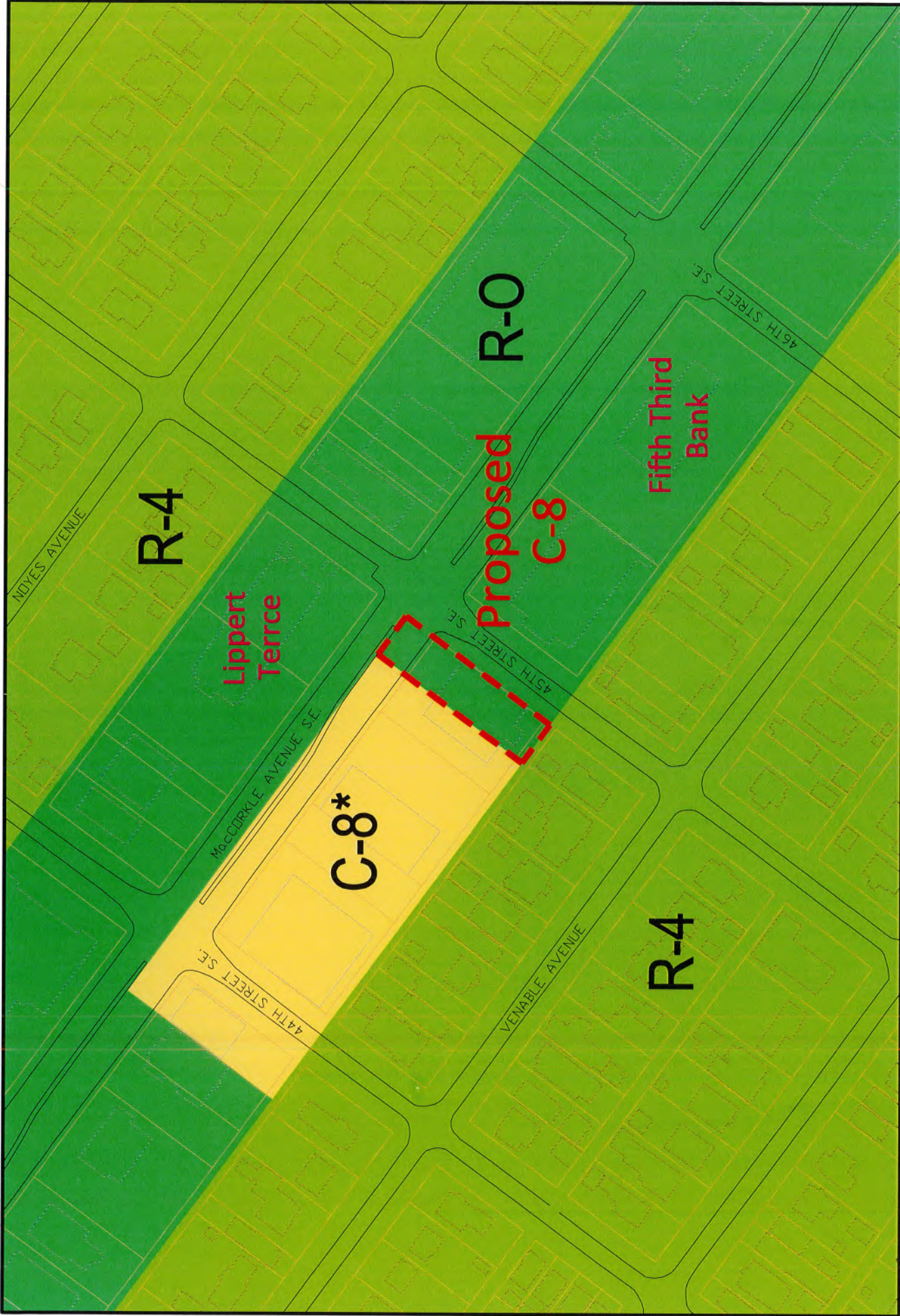
Be it Ordained by the City Council of the City of Charleston, West Virginia:

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, is hereby amended by rezoning from an R-O district to a C-8 district the whole of the following described parcel of land:

a) Parcel No. 123 as shown on Kanawha City Tax Map No. 16. Subject parcel legally described as "LTS 13-14-15-16 BK 98 MCCORKLE AVE 4417". Said tax map is of record in the Planning Office.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Article 27 of this ordinance.

3. All prior ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.



STAFF
EXHIBIT

REZONING FROM R-0 TO C-8

MacCorkle Ave



Vriendt, Dan

From: Pam Burka <pamlburka@gmail.com>
Sent: Tuesday, May 2, 2023 7:04 PM
To: Vriendt, Dan
Subject: Rezoning Bill #7989 - 4415 MacCorkle Avenue

This Email Originated from an outside source: Do not open attachments or links unless you know the content is safe, forward suspicious emails as an attachment to: helpdesk@cityofcharleston.org

Dear Dan,

Unfortunately, I am out of town and unable to make the Municipal Planning Commission meeting May 3. As sponsor of the bill named above, I wanted to inform the Commission of my support for rezoning this property so that the entire property is solely a C-8 district. I have spoken to the owner, Andrea Richardson, and believe that she wants to bring a tenant to the property that would enhance the area but has been restricted by the current zoning. We currently have many empty storefronts in Kanawha City, and as the Councilperson for this ward and president of KCCA, it is one of my priorities to work to bring in new, quality businesses. I would encourage you to please vote yes to this rezoning change at 4415 MacCorkle Avenue.

I appreciate your consideration of this request.

Sincerely,
Pam Burka

Dan,

I'm please let know if this is okay! I didn't get a chance to do it before I left town. If you need it on letterhead, please let me know! Thanks!!!

--

Pam Burka
6534 Roosevelt Avenue
Charleston, WV 25304
304-925-1147
304-549-7799
pamlburka@gmail.com

Planning Streets and Traffic Committee
Staff Analysis
May 22, 2023

REQUEST:

Bill No. 7982 – A bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from an R-O district to a C-8 district, that certain parcel of land identified as 4415 MacCorkle Ave SE, Charleston, WV, 25304.

APPLICABLE CODE:

Charleston Zoning Ordinance, adopted January 1, 2006, Article 29.

STANDARD OF REVIEW:

A rezoning is a change to the zoning map, which requires a legislative decision. Therefore, the Committee's role is to make a recommendation to the City Council. The Committee should determine if the request is spot zoning and if it is consistent with the Comprehensive Plan. A rezoning is considered spot zoning when all the following factors are present: A small parcel of land is singled out for special and privileged treatment; The singling out is not in the public interest but only for the benefit of the landowner; the action is not in accordance with the comprehensive plan. If a request is inconsistent with the comprehensive plan, the committee should consider if the original zoning classification was in error, or if the character of the area has changed significantly since the adoption of the comprehensive plan. Proposed uses should be treated with care, because once rezoned, any use that is permitted within the district would be permitted 'by right' with no review by the Committee.

HISTORY:

The parcel in question is currently zoned both C-8 and R-O. The division of this property's zoning occurred when previous ordinances No. 3063 and No. 3728 changed previous parcels – which had different borders and incorporated different lots – into a unified zone of then C-6, now C-8, zoning amongst the R-O corridor along MacCorkle Ave SE. The petitioner seeks to fix this split zoning by having the current parcel zoned exclusively C-8.

ANALYSIS:

Existing Land Use and Zoning: The parcel in question is currently zoned both C-8 and R-O and currently consists of a single commercial structure.

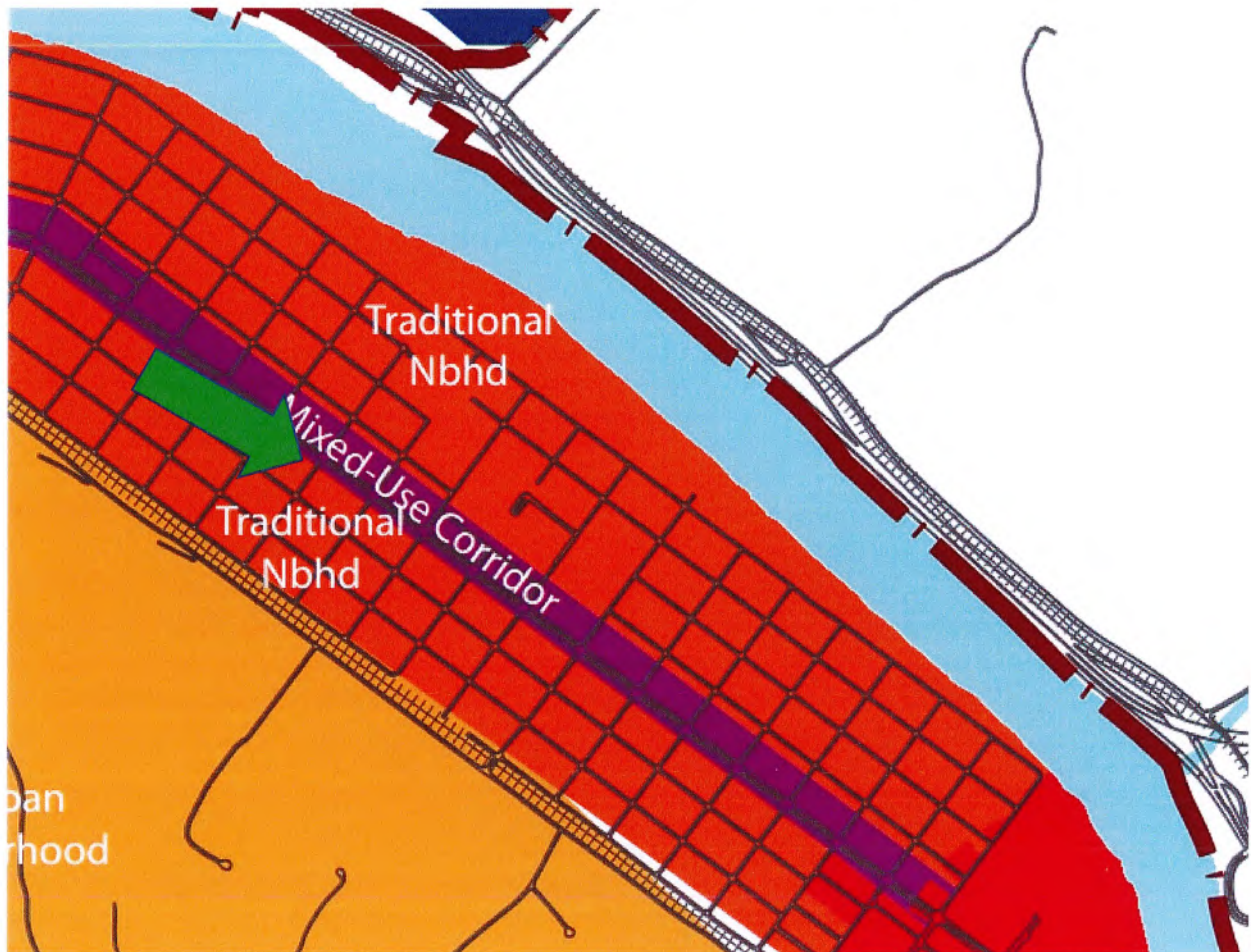
Surrounding Land Use and Zoning: The property resides on the southern side of the 4400 block of MacCorkle Ave SE. The parcels abutting MacCorkle in this area of Kanawha City has been zoned R-O for quite some time and is currently designated as a Mixed-Use Corridor amongst the Traditional Neighborhood block of Kanawha City.

Current Zoning: The current R-O and C-8 split zoning of the parcel severely limits further commercial development due to the inherent confusion over proper application of zoning restrictions. At present, the proper application would most likely be of the more restrictive R-O designation.

Proposed Zoning: The C-8 Village Commercial District designation would allow for a greater variety of commercial development of the parcel.

Compliance with the Comprehensive Plan: The comprehensive plan's future land use map designates this property as being part of a mixed-use corridor within the greater residential Traditional Neighborhood area in Kanawha City. Elsewhere on the corridor, R-O zoning complies with this utilization, but since the early 1980's this part of the 4400 block of MacCorkle has been designated a

zone of commercial development. This clarification of zoning designation would therefore be in compliance with the current land use plan as an area leaning more towards commercial development and less residential and an area with a clear precedent of commercial zoning.



Summary: Applicant seeks to fix the split zoning of her parcel by having it be all C-8. This complies with both the historical commercial zoning of the immediate area and the Land Use Plan's designation as part of a Mixed-Use Corridor.

RECOMMENDATION AND FINDINGS:

Staff recommends **approval** for the following reasons:

1. The rezoning is a minor expansion of the C-8 district and will make the entire block uniform. Thus, the request is not a spot rezoning and is in conformity with the Comprehensive Plan.
2. Approximately one third of the parcel is zoned C-8 while the other two thirds is zoned R-O, the rezoning will make the zoning uniform across the development parcel and thus permit a reasonable use of land.

Bill No. 7990

Introduced in Council:

May 1, 2023

Introduced by:

Mary Beth Hoover

Adopted by Council:

Referred to:

**Municipal Planning Committee
Planning, Streets and Traffic**

Bill No. 7990 - A Bill to repeal and replace Chapter 91, Article II of the Code of the City of Charleston, as amended, relating to updating the floodplain regulations.

Now, therefore, be it Ordained by the Council of the City of Charleston:

That Chapter 91, Article II of the Code of the City of Charleston, West Virginia, be repealed and replaced, all to read as follows:

CHAPTER 91. - ZONING

ARTICLE II. - Floodplain Ordinance

DIVISION 1. - IN GENERAL

Sec. 91-11. Intent.

The intent of this ~~ordinance~~Ordinance is to:

- (a) Promote the general health, welfare, and safety of the ~~community~~Community.
- (b) Encourage the utilization of appropriate minimum construction practices ~~in order to~~ prevent or minimize ~~flood~~flood damage ~~in the future~~.
- (c) Minimize danger to public health and safety by protecting the water supply and sanitary sewage disposal in cooperation with the Charleston Sanitary Board, and to protect natural drainage.
- (d) Assure the County Assessor obtains information concerning improvement of real property as required by WV ~~State~~ Code §11-3-3A3a.
- (e) Assure all E-911 addresses are obtained and kept current to maintain the ~~currency~~ of established emergency response dispatch systems.
- (f) Reduce financial burdens imposed on the ~~community, residents, real property owners and~~ its governmental units, ~~and its residents~~, by preventing the unwise design and construction of development in areas subject to flooding.

36 **Sec. 91-12. Abrogation and Greater Restrictions.**

37
38 This ordinance supersedes any ~~ordinance currently~~ other conflicting provisions
39 which may be in effect in ~~flood-prone~~ identified floodplain areas. ~~Any~~ However, any other
40 ordinance, ~~however, provisions~~ shall remain in full force and effect to the extent that
41 ~~it~~ those provisions are more restrictive. If there is any conflict between any of the
42 provisions of this Ordinance, the more restrictive shall apply.

43
44 **Sec. 91-13. Applicability.**

45
46 It shall be unlawful for any contractor, person, partnership, business, or corporation
47 to undertake or cause to be undertaken, any development, new construction,
48 substantial improvement, repair of substantial damage, other repairs, or the placement
49 or relocation of any structure (including manufactured homes) in the Special Flood
50 Hazard Area within the City of Charleston, unless a floodplain determination has been
51 made from the Floodplain Administrator, a floodplain permit application has been
52 completed, and a permit ~~and certificate of compliance~~ has been ~~obtained from~~ issued by
53 the Floodplain Administrator. In addition, where land is partially or fully in the Floodplain
54 is to be developed, subdivided, utilized for a manufactured home park or subdivision, or
55 otherwise developed, a site plan with elevation data must be submitted to, and
56 approved by, the Floodplain Administrator prior to any development.

57
58 Provision of all other codes, ordinances, and regulations shall be applicable insofar
59 as they are consistent with the provisions of this ~~ordinance~~ Ordinance and the
60 ~~city's~~ City's need to minimize the hazards and damage resulting from flooding.

61
62 **Sec. 91-14. Matters not provided for specifically.**

63
64 Where conditions are encountered that are not specifically provided for herein, the
65 ~~floodplain administrator~~ Floodplain Administrator shall determine the applicability of the
66 provisions of this ~~ordinance~~ Ordinance in accordance with its intent, and shall require the
67 applicant to take appropriate measures pursuant to such determination.

68
69 **DIVISION 2. – INTERPRETATIONS AND DEFINITIONS**

70
71 **Sec. 91-21. ~~Interpretations.~~**

72
73 ~~(a) For the purpose of this ordinance, the following interpretations shall apply:~~

74
75 ~~(1) Words used in the present tense include the future tense~~

76
77 ~~(2) The singular includes the plural.~~

78
79 ~~(3) The plural includes the singular.~~

80
81 ~~(4) The Term "shall" or "will" is always mandatory.~~

(5) ~~The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof".~~

(6) ~~The word "Ordinance" shall refer to the Floodplain Ordinance.~~

~~Sec. 91-22.~~ Definitions.

General

Unless specifically defined below, words and phrases used in this ~~ordinance~~Ordinance shall be interpreted ~~so as~~ to give this ~~ordinance~~Ordinance it's most reasonable application.

~~*Accessory Structure.*~~ *Adjacent property* includes any surface tract, regardless of whether such surface tract is entirely within the City of Charleston, so long as a portion of said surface tract is located within the City of Charleston, which shares an immediate and common boundary up or down stream to the property that is the subject of the application for Floodplain Permit. Adjacent property also includes all other property that may be affected by flooding.

Advisory flood height means the water surface elevation (WSEL), in feet, of the 1% annual chance (100-year) flood at a given location, as determined using hydrology and hydraulics (H&H) analysis and the best available elevation data.

Adversely affect adjacent properties means to adversely affect a property the increase in the elevation of the 100-year base flood elevation must be more than 1 foot at any point. Stated conversely, if the effect is that the 100-year flood base flood elevation rises 1 foot or less the property is not "affected". This standard does not apply to the Floodway. If prior permit(s) has/have been approved in the same area of the Floodplain, the above definition would include the cumulative impact to the base flood elevation.

Appurtenant structure means a secondary structure on the same parcel of property as the principal structure ~~and~~, the use of which is incidental ~~to the use of and shall not be habitable but shall be used only for storage in association with~~ the principal structure ~~on said property~~. This does not include a gas or liquid storage tank.

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

~~*Base Flood.*~~ The flood, which has been selected to serve as the basis upon which the floodplain management provisions of this and other ordinances have been prepared; ~~for~~ *Elevation (BFE)* means the water surface elevation of the base flood in relation to the datum specified on the City's Flood Insurance Rate Map. For the purposes of this

~~ordinance~~Ordinance, the one-hundred (100) year flood ~~or 1% or greater chance of flooding in any given year. (See 100-year flood also)~~

~~Basement~~Any means any area of the building having its floor sub grade (below ground level) on all sides.

~~Certificate of Floodplain Compliance~~A means a certification that the entire development, including the elevation of fill or the lowest floor of a structure is in compliance with all ~~of~~ the provisions of this ~~ordinance~~Ordinance.

Compensatory storage means an artificially excavated, hydraulically equivalent volume of storage within the special flood hazard area used to balance the loss of natural flood storage when artificial fill or structures are placed within the special flood hazard area.

~~Contractor~~— WV State Code 21-11-3(c) — A means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of ~~the~~ undertaking is ~~one~~two thousand five hundred dollars or more. Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Contractor does not include:

- (1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;
- (2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
- (3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;
- ~~(1)~~(4) A pest control operator licensed under the provisions of ~~section seven, article sixteen-W.Va. Code §19-16A-7(a, chapter nineteen of this code)~~ to engage in the application of pesticides for hire, unless the operator also

performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

(2)(5) A corporation, limited liability corporation, partnership, or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs a full-time-a registered architect licensed to practice in this stateState or a registered professional engineer licensed to practice in this stateState. Contractor also does not include employees of such corporation, partnership, or sole proprietorship.

Critical facility means any facility in which even a slight chance of flooding is too great a threat.

Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a special flood hazard area if at all possible. If a critical facility must be located in a special flood hazard area it should be provided a higher level of protection so that it can continue to function and provide services during a flood.

Development-Any means any man-made change to improved or unimproved real estateproperty, including but not limited to buildings or other structuresstructure, mining, dredging, filling, grading, paving, excavation or drilling operations, oil/gas well sites, pads, pits, retention ponds or storage of equipment or materials.

Flood-A means a general and temporary inundation of water in an area of normally dry land.

Flood Insurance Rate Map (FIRM) means the official map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the City of Charleston. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS) means the official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.

Floodplain-

1.—A means a relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;

2. An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

219 *Floodplain Administrator.* The means the person charged with enforcing the
220 provisions of this ordinance. The Floodplain Administrator may also be identified as the
221 Floodplain Manager. Pursuant to W.Va. Code §15-5-20(a) the Floodplain Administrator
222 is required to complete six hours of training in floodplain management annually to
223 maintain good standing with the West Virginia Division of Emergency Management.
224

225 *Floodway.* The means the channel of a river or other watercourse and the adjacent
226 land area that must be reserved to discharge the base flood without increasing the
227 water surface elevation of that flood more than one foot at any point.
228

229 *Flood proofing.* Any (NON-RESIDENTIAL ONLY) means any combination of
230 structural and non-structural additions, changes or adjustments to structures which
231 reduce or eliminate flood damage to real estate property or improved real property,
232 water and sanitary facilities, structures, and their contents.
233

234 *Freeboard.* A means a factor of safety usually expressed in feet above a flood level
235 or BFE for purposes of floodplain management. Freeboard tends to compensate for
236 unknown factors that may contribute uncertainty to flood heights of any given flood and
237 floodway condition, such as wave action, blockage at stream crossings, and increased
238 runoff from urbanization of the watershed.
239

240 Highest Adjacent Grade (HAG) means the highest natural elevation of the ground
241 surface immediately adjacent to the development or structure foundation. This is
242 primarily used for purposes of insurance rating in approximated floodplains.
243

244 *Historic Structure.* Any structure means any structure that is:
245

- 246 (1) Listed individually in the National Register of Historic Places (a listing
247 maintained by the Department of Interior) or preliminarily determined by the
248 Secretary of the Interior as meeting the requirements for individual listing on
249 the National Register;
250
- 251 (2) Certified or preliminarily determined by the Secretary of the Interior as
252 contributing to the historical significance of a registered historic district or a
253 district preliminarily determined by the Secretary to qualify as a registered
254 historic district;
255
- 256 (3) Individually listed on a state inventory of historic places in states with historic
257 preservation programs which have been approved by the Secretary of the
258 Interior; or,
259
- 260 (4) Individually listed on a local inventory of historic places in communities with
261 historic preservation programs that have been certified either:
262
 - 263 a. By an approved state program as determined by the Secretary of the
264 Interior; or,

b. Directly by the Secretary of Interior in states without approved programs.

Interested person or party includes (1) the applicant; (2) the owner(s) of the subject property; (3) at least one adult residing in any residence on the subject property at the time the Floodplain Permit Application is filed; (4) owners of any adjacent property; and (5) at least one adult residing in any residence on the adjacent property at the time the Floodplain Permit Application is filed.

~~Licensed *Manufactured Home Dealer*. A~~manufactured home dealer means a business licensed to sell ~~Manufactured Homes~~manufactured homes in the ~~state~~State of ~~WV~~West Virginia as set forth in the ~~WV state code~~West Virginia Code.

~~Licensed *Manufacturing Home Installer*. A~~manufactured home installer means a contractor licensed to install ~~Manufactured Homes in WV~~manufactured homes in the State of West Virginia as set forth in the ~~WV State~~West Virginia Code.

~~Licensed *Professional Surveyor*. Any~~professional surveyor means any person licensed by the ~~WV state board~~West Virginia State Board of ~~examiners~~Examiners of ~~land surveyors~~Land Surveyors to engage in the practice of land surveying as defined in ~~WV state code~~the West Virginia Code.

~~*Lowest Floor*. The~~Lowest Adjacent Grade (LAG) means the lowest natural elevation of the ground surface immediately adjacent to the proposed development or structure foundation. The primary use of the LAG is to determine whether the structure is located within a special flood hazard area by comparing it to the base flood elevation.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in ~~the~~ FEMA Technical Bulletin 2-93 (FIA-TB-2) and usable solely for 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 has proper flood openings and is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ~~ordinance~~Ordinance.

~~Manufactured *Home*. A~~home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

~~New *Construction*. Structures~~construction means structures for which the ~~Start~~start of ~~Construction~~construction as herein defined commenced on or after June 15, 1983, and including any subsequent improvements to such structures.

309 One-Hundred (100) Year Flood-~~A means~~ a flood that has one chance in one-
310 hundred or a one percent or greater chance of being equaled or exceeded in any given
311 year. (See Base Flood Elevation also)
312

313 Person means any individual or group of individuals, corporation, limited liability
314 corporation, partnership, association, or other entity, including State and Local
315 governments and agencies.
316

317 Practice of Engineering. Any engineering means any service or creative work, as
318 described in ~~WV state code Article West Virginia Code §30-13-1 et seq.~~, the adequate
319 performance of which requires engineering education, training and experience in the
320 application of special knowledge of the mathematical, physical, and engineering
321 sciences to such services or creative work as consultation, investigation, evaluation,
322 planning and design of engineering works and systems; planning the use of land and
323 water; teaching of advanced engineering subjects, engineering surveys and studies;
324 and the review of construction for the purpose of assuring compliance with drawings
325 and specifications any of which embraces such services or work, either public or
326 private, in connection with any utilities, structures, buildings, machines, equipment,
327 processes, work systems, projects and industrial or consumer products or equipment of
328 a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve
329 safeguarding life, health or property, and including such other professional services as
330 may be necessary to the planning, progress and completion of any engineering
331 services. Engineering surveys include all survey activities required to support the sound
332 conception, planning, design, construction, maintenance, and operation of engineered
333 projects.
334

335 Any person who practices any branch of the profession of engineering or who, by verbal
336 claim, sign, advertisement, letterhead, card or in any other way represents himself ~~or~~
337 ~~herself~~ to be a ~~registered professional engineer~~ Registered Professional Engineer, or by
338 using another title implies that he ~~or she~~ is a ~~registered professional engineer~~ Registered
339 Professional Engineer or that he ~~or she~~ is registered under ~~WV state code, article West~~
340 Virginia Code, §30-13-1 et seq. or who holds himself ~~or herself~~ out as able to perform,
341 or who performs any engineering service or work or any other service designated by the
342 practitioner which is recognized as engineering, is considered to practice or offer to
343 practice engineering within the meaning and intent of ~~WV state code article 13~~ West
344 Virginia Code §30-13-1 et seq.
345

346 ~~Person. Any individual or group of individuals, corporation, partnership, association~~
347 ~~or other entity, including State and local governments and agencies.~~
348

349 Principally Above Ground. Where above ground means where at least 51 percent of
350 the ~~actual cash value~~ Actual Cash Value of a structure, less land value, is above ground.
351 [44 Code of Federal Regulations §59.1]
352

353 Professional means any "professional" including but not limited to a "contractor",
354 "developer", "engineer", "architect", "hydrologist", "land surveyor", etc., acting in any

355 capacity with respect to this Ordinance, must be licensed by the State of West Virginia,
356 when certification or licensure from the State of West Virginia is so required.

357
358 Reasonably safe from flooding means that during the base flood, or any other
359 known flooding by the Floodplain Administrator, water should not damage structures
360 and any subsurface waters related to the base flood and should not damage existing or
361 proposed structures. Ways of determining Reasonably Safe from Flooding may be 3
362 feet above Highest Adjacent Grade, above high water marks from historic flooding,
363 using topographic extrapolation from contour lines or utilizing the advisory flood height
364 data on the WV Flood Tool.

365
366 ~~Recreational Vehicle.~~ A means a vehicle which is:

- 367
368 (1) Built on a single chassis;
369
370 (2) 400 square feet or less when measured at the largest horizontal projection;
371
372 (3) Designed to be self-propelled or permanently towable by a light duty truck; and
373
374 (4) Designed primarily not for use as a permanent dwelling but as temporary living
375 quarters for recreational, camping, travel, or seasonal use.

376
377 ~~Registered professional engineer.~~ A means a person who has been duly registered
378 or licensed as a registered professional engineer by the West Virginia ~~state board~~ State
379 Board of registration ~~Registration~~ for ~~professional engineers~~ Professional Engineers as
380 required ~~under WV state code article by W.Va. Code §30-13-13 et seq.~~

381
382 ~~Remedy a Violation.~~ To violation means to bring a structure or other development
383 into compliance with the requirements of this ~~ordinance~~ Ordinance, or, if full compliance
384 is not possible, to reduce the adverse ~~impacts~~ impact of the non-compliance to the
385 greatest extent feasible.

386
387 ~~Reasonably Safe from Flooding.~~ Means base flood waters will not inundate the land
388 or damage structures to be removed from the special flood hazard area and that any
389 subsurface waters related to the base flood will not damage existing or proposed
390 buildings.

391
392 Special Flood Hazard Area (SFHA) means the land in the Floodplain Area subject
393 to a one percent or greater chance of flooding in any given year. Special flood hazard
394 areas are designated by the Federal Emergency Management Agency in Flood
395 Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and
396 A99. The term includes areas shown on other flood hazard maps that are specifically
397 listed or otherwise described in this Ordinance.

398
399 ~~Start of Construction.~~ (The definition for start of construction is to be used only
400 when calculating means the starting time of the 6 month expiration of a permit.)

401
402 ~~The~~ date the permitFloodplain Permit was issued, including permitsFloodplain
403 Permit for substantial improvement or repair of substantial damage, provided the actual
404 start of construction, repair, reconstruction, rehabilitation, addition, placement, or other
405 improvement was within 180 days of the permitFloodplain Permit date. The actual start
406 means either the first placement of permanent construction on a site, such as the
407 pouring of slabslabs or footings, the installation of piles, the construction of columns, or
408 any work beyond initial excavation, or the placement of a manufactured home on a
409 foundation. Although a permitFloodplain Permit must be obtained prior to beginning,
410 permanent construction does not include land preparation, such as clearing, grading
411 and filling, nor does it include the installation of streets and/or walkways, nor does it
412 include excavation for a basement, footings, piers or foundations or the erection of
413 temporary forms, nor does it include the installation on the property of accessory
414 buildings, such as garages or sheds not occupied as dwelling units or not part of the
415 main structure. For an alteration, the actual start of construction means the first
416 alteration of any wall, ceiling, floor, or other structural part of a building, whether or not
417 that alteration affects the external dimensions of the building.

418
419 ~~State Coordinating Office.~~ The means the West Virginia Division of Homeland
420 Security and Emergency Management.

421
422 ~~Stream.~~ As means as defined in ~~WV State~~ West Virginia Code ~~§7-1-3U3u~~, any
423 watercourse, whether natural or man-made, distinguishable by banks and a bed,
424 regardless of ~~theirits~~ size, through which water flows continually or intermittently,
425 regardless of its volume.

426
427 ~~Structure.~~ A means a walled and roofed building, including a gas or liquid storage
428 tank that is principally above ground, as well as a manufactured home.

429
430 Subdivision means development that includes the creation of individual land
431 parcels for future sale. It does not include development where rights-of-way or
432 easements are obtained and recorded.

433
434 Subject property includes the surface tract(s) upon which the proposed
435 development is planned and for which the Floodplain Permit Application is submitted.

436
437 ~~Substantial Damage.~~ Damagedamage means damage of any origin sustained by a
438 structure whereby the cost of restoring the structure to ~~it'sits~~ before damage condition
439 would equal or exceed 50 percent of the ~~market value of the structure before the~~
440 ~~damage occurred.~~ Substantial damage also means cumulative flood-related damages
441 sustained by a structure on two separate occasions during a 10 year period for which
442 the cost of repairs at the time of each flood event equals or exceeds 25 percent of
443 thefair market value of the structure before the damage occurred. ~~See "Substantial~~
444 ~~Improvement."~~

445
446 Substantial Improvement. Anyimprovement means any repair, reconstruction,

rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the fair market value of the structure before the ~~Start~~start of ~~Construction~~construction of the improvement.

This term includes structures, which have incurred “substantial damage”, as defined herein regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violation(s) of ~~state~~State or ~~local health, sanitary~~Local Health, Sanitary or ~~safety code specifications~~Safety Code Specifications which have been identified by the ~~local code enforcement official~~Local Code Enforcement Official and which are the minimum necessary to assure safe living conditions.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ~~ordinance~~Ordinance requirements that do not preclude the structure’s continued designation as a historic structure. Documentation that a specific ~~ordinance~~Ordinance requirement will cause removal of the structure from the National Register of Historic Places, or the State Inventory of Historic ~~places~~Places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ~~ordinance~~Ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

~~For the purpose of this definition improvement~~Improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences whether or not ~~that~~the alteration affects the external dimensions of the structure.

~~Top of Bank. The bank means the~~ lines depicted on the FIRM maps delineating each side of a stream indicate the top of the bank. In the field a professional familiar with fluvial geomorphology should document the top of the bank. When a professional is not employed, the top of the bank will be considered to be the top of the first significant slope landward of the ~~waters~~water’s edge when it is followed by at least 50 feet of relatively flat land.

Variance means a grant of relief by a community from the terms of a floodplain management regulation.

Violation. The means the failure of any structure or development to be fully compliant with all requirements of this Ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this Ordinance is presumed to be in violation until such time as the documentation is provided. No future improvements or developments can be made to structures found to be in violation unless the development is to bring the structure into compliance with the current ordinance.

DIVISION 3. – ESTABLISHMENT OF THE FLOODPLAINSPECIAL FLOOD HAZARD

AREA

Sec. 91-31. Identification.

- (a) The identified ~~floodplains~~special flood hazard area shall be those areas of the City of Charleston which are subject to ~~thea~~ one ~~hundred (100) percent or greater chance of flooding in any given~~ year ~~flood~~, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the City of Charleston by the Federal Emergency Management Agency (FEMA) dated ~~February 6, 2008~~August 1, 2023 or the most recent revision thereof including all digital data developed as part of the FIS.
- (b) The identified ~~floodplains~~special flood hazard area shall also be those special flood hazard areas ~~of the City~~ which have been identified as flood hazard areas by the City of Charleston by use of historic or other technical data and shown on ~~the Charleston "Local Flood Hazards Map".an officially recognized "FIRM or the West Virginia Flood Hazard Determination Tool Specifically Advisory Flood Height data".~~ These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

Sec. 91-32. Descriptions of FloodplainSpecial Flood Hazard Areas.

The identified ~~floodplain~~special flood hazard area shall consist of the following four specific areas:

- (a) ~~The Floodway area (F1)~~Area shall be those areas of AE zone identified as ~~such~~Floodways in the FIS and as shown on the ~~floodway map or~~ FIRM. ~~In the Approximated floodplain area (F4) for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the top of the bank of the channel to the upland limit of the floodplain.~~ The term shall also include any floodway areas identified/delineated by developers in ~~other studies for the approximated area discussed in Section D~~ Below floodplain and designated as such by the community.
- ~~(a) The Floodway Fringe area (F2) shall be those areas for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.~~
- (b) ~~The AE Area without~~Without Floodway (F3) shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
- (c) The Approximated area (F4)floodplain shall be those areas identified as an A Zone on the FIRM ~~or floodway map~~ included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided. ~~For these areas,~~

elevation and floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable

(d) Advisory Flood Heights

~~This information is not available displayed on the WV Flood Hazard Determination Tool. This data may be used (when available) by the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering or other techniques. Only professional engineers or others of demonstrated qualifications shall undertake hydrologic and hydraulic analyses. The responsible Professional shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include if a cover letter, signed by the responsible professional, providing a statement of findings property is in basic terms. In addition, studies, analyses, computation, etc., used the Special Flood Hazard Area, and to determine base flood elevations and floodways shall be submitted assist in sufficient detail determining the height in which to allow elevate the structure as a permitting tool and is acceptable data to FEMA for a Letter of Map Amendment (LOMA).~~

(e) The thorough technical review AO and AH floodplain those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by the City of Charleston 1-percent-annual-chance shallow flooding where average depths are between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes.

Sec. 91-33. Changes in Designation of Area.

- (a) ~~The delineation of the identified floodplain area may be revised by the City of Charleston where~~ Where natural or man-made changes have occurred and/or where more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, have been completed by a River Basin Commission or other qualified government agency, private entity, or qualified individual who can sufficiently document the necessity for such changes; the process to revise the delineation of the identified special flood hazard area may be recommended by the Floodplain Administrator and executed by the City of Charleston. However, prior to any such change, approval must be obtained from the Federal ~~Insurance Administration (FIA).~~ Emergency Management Agency.
- (b) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practical but, not later than six months from the date such information becomes available, the City shall notify FEMA of the changes by submitting technical or scientific data.
- (b)(c) The City of Charleston may identify and regulate new flood hazard or ponding areas. These areas may shall be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived technical information such as

flood of record, historic high-water marks and/or ~~topographic data.~~ approximate study methodologies.

Sec. 91-34. Elevations Prevail.

(a) ~~If the lowest natural grade adjacent to a proposed building site that is within an identified flood hazard area is at or development is~~ above the Base Flood Elevation specified in the Flood Insurance Study, the structure shall not be required to conform to the flood prevention design, and construction standards or flood-related development codes in Article VI. ~~Topographic data certified by a registered professional engineer or surveyor shall be submitted in sufficient detail to allow a thorough review by the the following is provided to the~~ Floodplain Administrator. ~~The applicant is advised to apply for:~~

(1) elevation information certified by a Licensed Professional Surveyor or Engineer and a site plan demonstrating that all proposed development will occur above the Base Flood Elevation or,

(a)(2) a Letter of Map Amendment (LOMA) from FEMA to have the Special Flood Hazard Area designation removed removing the site from the parcel or structure. SHFA then the site shall be considered to be outside the Floodplain Area and shall not be required to conform to the provisions of this Ordinance at the discretion of the Floodplain Administrator.

(b) If the lowest natural grade adjacent to ~~a proposed building site~~ development is below the Base Flood Elevation ~~specified in the Flood Insurance Study~~, the site shall be considered to be within the ~~floodplain area~~ Floodplain Area and the proposed structure shall be required to conform to all appropriate provisions of this ~~ordinance~~ Ordinance.

Sec. 91-35. Boundary Disputes.

Should a dispute concerning any ~~district~~ Floodplain boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the Board of Zoning Appeals ~~sitting as the "Floodplain Appeals Board"~~. The burden of proof shall be on the appellant/applicant.

DIVISION 4. – UTILIZATION OF THE FLOODPLAINSPECIAL FLOOD HAZARD AREA

Sec. 91-41. Floodway (F1).

(a) Within any ~~floodway area~~ Floodway Area (F1), no encroachments, including fill, new construction, substantial improvements, ~~repair of substantial damage~~, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering

practice that the proposed encroachment ~~will not result in any increase in the Base Flood Elevation~~ would not result in any increase in flood levels during the occurrence of the base flood discharge. The resultant engineering study shall include a cover letter, signed, and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

(b) ~~The Floodway shall be preserved to the greatest extent possible to carry the discharge of the base flood.~~ Because floodways ~~Floodways~~ present increased risk to human life and property ~~because of~~ due to their relatively faster and deeper flowing waters: ~~the Floodways shall be preserved to the greatest extent possible.~~

(1)(a) ~~_____~~ New development shall not be permitted in the ~~floodway~~ Floodway where reasonable alternatives exist elsewhere ~~as determined by Floodplain Administrator~~. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the ~~floodway~~ Floodway encroachment before a permit is issued.

(2)(b) ~~_____~~ When the ~~floodway~~ Floodway is the only reasonable alternative the applicant shall demonstrate that the ~~floodway~~ Floodway encroachment is the minimum necessary to accomplish the project.

(c) All permitted uses, activities, and development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein, and in all other applicable ~~codes, ordinances and regulations~~ Federal and State Law, Ordinances and Regulations.

When small, single lot

Sec. 91-42. Floodway Fringe (F2) and Approximated Floodplain (F4).

(a) ~~In the Floodway Fringe (F2) and Approximated Floodplain (F4), any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.~~

(b) ~~All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the Approximated Floodplain area (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data.~~

(1) ~~This data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service, City of Charleston's aerial mapping, or state and local water resource department.~~

(2) ~~If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts.~~

(c) ~~All new or improved structures located in the Approximated Floodplain (F4) shall be elevated at least three (3) feet above the highest adjacent grade unless Base Flood Elevation data has been obtained from an authoritative source or developed by a qualified professional using a detailed methodology as described above.~~

(d) development (not incorporating significant amounts of fill) is proposed in a special flood hazard areas for which no regulatory floodway has been designated, a regulatory floodway may, at the discretion of the Floodplain Administrator, be determined to be a width equal to the channel of the stream and the adjacent land areas to a distance of one-half the width of the special flood hazard area as measured from the top of the bank nearest the site to the upland limit of the 1% annual chance special flood hazard area boundary.

~~Sec. 91-43. AE area without floodway (F3).~~

Sec. 91-42. AE Zone Without Floodway Area.

Within any AE ~~area without floodway~~Zone Without Floodway Area, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. ~~This requirement can be satisfied by utilization of the floodway area where determined.~~

~~Sec. 91-44. Alteration or relocation of a stream.~~

(a) ~~Whenever a developer intends to alter (including placement of bridges, culverts or other stream crossings) or relocate a stream within the Floodplain Area, the developer shall notify in writing, by certified mail, the City of Charleston's floodplain administrator,~~

City of Charleston
Attn: Floodplain Administrator
915 Quarrier Street, Suite 1
Charleston, WV 25301

~~the State Coordinating Office,~~

The State Coordinating Office

Building 1 Room EB-80
1900 Kanawha Blvd.
Charleston, WV 25305-0360

and any adjacent communities of all such intended activities prior to the alteration or relocation of the stream, and shall submit copies of such notification to the Federal Insurance Administration c/o FEMA Region III, One Independence Mall, Sixth Floor, 615 Chestnut Street, Philadelphia, PA 19106-4404. All applicants proposing to alter or relocate a stream must obtain all required permits including those set forth in the City of Charleston stream alteration/Stream Crossing administrative procedures. The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval prior to issuing the local permit.

~~The developer shall also assure the City of Charleston in writing that the carrying capacity within the altered or relocated portion of stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment.~~

Sec. 91-43. Approximated Floodplain (Zone A).

Within any Approximated Floodplain Area:

- (a) The Floodplain Administrator shall use elevation and floodway information from Federal, State, or other acceptable sources when available to determine the elevation above which development will be reasonably safe from flooding.
- (b) When data from an acceptable source is not available, the Floodplain Administrator shall review, or shall cause to be reviewed; all proposed development to determine (1) the amount being invested and (2) the specific flood risk at the site. The Floodplain Administrator shall then require the applicant to determine the elevation above which the development and adjacent properties including but not limited to existing buildings will be reasonably safe from flooding using hydrologic and hydraulic analyses or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineers or others of demonstrated qualifications, engineer who shall certify that the technical methods used correctly reflect currently accepted professional practice.technical concepts. The resultantresulting study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the floodplain administratorFloodplain Administrator.
- (c) The Any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with

this floodplain ordinance and related provisions contained herein and in all other applicable Federal and State Laws, Ordinances and Regulations.

(d) Within any approximated Floodplain Zone (Zone A) without Floodway Area, no new construction or development shall be allowed unless it is demonstrated that the cumulative impact of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point.

(e) When Advisory Flood Height Data is available, this data will be utilized to assist in permitting and regulating development within the Special Flood Hazard Area.

Sec. 91-44. Alteration or relocation of a stream.

(a) Whenever a developer intends to alter or relocate a stream within the special flood hazard area the developer shall notify in writing, by certified mail, the City of Charleston's Floodplain Administrator, the State Coordinating Office, any adjacent communities, and any adjacent property owners of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Emergency Management Agency. In addition, prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.

(b) The developer shall also assure the City of Charleston in writing that the flood carrying capacity within the altered or relocated portion of the stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. administratorIf hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resulting study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, and computations shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

(a)(c) Alteration of a stream includes placement of temporary or permanent culverts, bridges, or other stream crossings. The Floodplain Administrator may require the use of certain "best practice" techniques in the construction of bridges, culverts, or stream alterationscrossings to prevent damage-or, loss of stream crossings and localizinglocalized flooding caused by blockagesblockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and-carry/or anticipated future increases in flood heights.

(b)(d) All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance Ordinance.

(e)(e) The developer is required to provide the communityCity a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts ~~and~~ bridges, and other stream crossings. It shall be the responsibility of the applicant to transfer ~~this~~the agreement to the ~~new owner~~purchaser when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the ~~floodplain administrator~~Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 91-84 of this Ordinance.

(d)(f) ~~The~~When any watercourse alteration has occurred, the applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study (FIS) and/or Flood Insurance Rate Maps, ~~(FIRM)~~, when notified by the ~~floodplain~~Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

DIVISION 5. – CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Sec. 91-51. General.

~~Permits are~~A Permit is required ~~in order~~ to determine whether all new construction or substantial improvements are:

- (a) Located in ~~the an~~ identified Floodplain ~~or~~, Floodway, or other special flood hazard area.
- (b) ~~Designed~~Designated (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.
- (c) Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2-93 (FIA-TB-2) or the most recent revision thereof.
- (d) Constructed by methods and practices that minimize flood damage.
- (e) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located ~~so as~~ to prevent water from entering or accumulating within the components during ~~conditions of~~ flooding.

860 (f) To comply with West Virginia Code §11-3-3a concerning County Assessor "Building
861 or Real Property Improvement Notice".

862
863 (g) Approved by County Health Department for Well, Septic, and other permits to
864 assure facilities are designed and located in compliance with the flood damage
865 reduction requirements of this Ordinance.

866
867 **Sec. 91-52. Basic Format.**

868
869 The basic format of the permit shall include the following:

870
871 (a) Name and address of applicant.

872
873 (b) Name and address of owner of land on which proposed development is to occur.

874
875 (c) Applicant shall provide names, addresses, and valid West Virginia license numbers
876 of all contractors working at the building site, or affidavits stating that work is being
877 performed by individuals exempt from contractor licensing as set forth in Title 28,
878 Series 2, section 3.9(b) of the West Virginia Code of State Regulations or the most
879 recent revision thereof, if known at the time the Permit Application is submitted. If
880 not known, applicant shall provide the information within 14 days of execution of a
881 contract with its contractor(s) prior to beginning construction.

882
883 (d) A description of site location sufficient to locate the proposed development
884 including district, tax map and parcel numbers and most recent deed book and
885 page number.

886
887 (e) A standard site plan showing size and location of the proposed development as
888 well as any existing buildings or structures. The site plan shall also show all
889 adjacent roads and watercourses with direction of flow, the lowest adjacent grade
890 to the proposed foundation and/or toe of fill, the Base Flood Elevation, and the
891 location of the Floodway boundary when applicable.

892
893 (f) An acknowledgement that the applicant agrees to pay any and all fees associated
894 with the permitting process as set forth in Division 7, Sections 91-73 and 91-79 of
895 this Ordinance.

896
897 (g) An acknowledgment that the applicant agrees to allow The Floodplain Administrator
898 and authorized representatives of floodplain management programs access to the
899 development to inspect for compliance.

900
901 **Sec. 91-53. Elevation and Flood Proofing Information.**

902
903 All applicants are encouraged to exceed the minimum elevation requirements
904 contained herein. Flood insurance rates can be lowered significantly by increasing the
905 elevation of the lowest floor above the freeboard height required by this

ordinance Ordinance.

Depending on the type of structure involved, the following information shall also be included in the application for work within the Floodplain Area Special flood hazard area:

- (a) ~~For All~~ structures ~~to, ductwork and electrical connections shall~~ be elevated two feet above the Base Flood Elevation and:
- (1) A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 - (2) A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a ~~Registered Professional Engineer, Surveyor, or Architect~~ registered professional engineer or licensed professional surveyor.
 - (3) Plans showing the ~~method~~ methods of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator, a ~~Registered Professional Engineer~~ registered professional engineer or ~~Architect~~ architect shall prepare ~~these~~ the plans.
 - (4) Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to two feet above the Base Flood Elevation at the building site.
 - (5) During ~~the course of~~ construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is highly recommended that the applicant ~~shall submit~~ check for error by obtaining elevation data completed by a registered professional engineer or licensed professional surveyor certifying the height of the lowest floor ~~completed by a Licensed Surveyor. If a mistake in elevation has been made this is the best time to correct the error.~~
 - (6) ~~A Nonconversion~~ finished construction elevation certificate must be prepared by a licensed professional surveyor or others of demonstrated qualification. The elevation certificate must confirm the structure in question together with attendant utilities are elevated in compliance with permit conditions.
 - (6)(7) A Non-Conversion Agreement shall be signed by the applicant whenever the ~~community~~ Floodplain Administrator determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall ~~be recorded with the office of the County Clerk and shall~~ state:

- 951 a. The area below Base Flood Elevation shall not be converted for use other
952 than for parking, building access or for allowable storage as detailed in this
953 ~~ordinance~~Ordinance.
954
955 b. The applicant agrees to notify prospective ~~buyers~~purchasers of the
956 existence of ~~this agreement~~the Non-Conversion Agreement. It shall be
957 the responsibility of the applicant to transfer the agreement at closing to
958 the ~~new owner via~~purchaser through notarized signature, a copy of all new
959 ~~agreements~~Non-Conversion Agreements shall be provided to the
960 Floodplain Administrator. ~~Failure to transfer the Non-Conversion~~
961 ~~Agreement and provide a signed copy to the Floodplain Administrator shall~~
962 ~~subject the violator to the penalties set forth in Section 91-84 of this~~
963 ~~Ordinance.~~
964

965 (a)(b) ~~For~~All structures ~~to~~shall be flood proofed to two feet above the Base Flood
966 Elevation (nonresidential structures only):
967

968 All applicants ~~are encouraged to~~shall meet or exceed the minimum flood proofing
969 requirements contained herein. Flood insurance rates can be lowered significantly
970 by increasing the level of flood proofing above the height required by this
971 ~~ordinance~~Ordinance. ~~In order to~~To obtain an "elevation credited" flood insurance
972 rate on dry flood proofed buildings, flood proofing must extend at least one foot
973 above the Base Flood Elevation.
974

- 975 (1) Plans showing details of all flood proofing measures, prepared by a ~~Registered~~
976 ~~Professional Engineer or Architect~~registered professional engineer, showing
977 the size of the proposed structure and its relation to the lot where it is to be
978 constructed.
979
980 (2) A determination of elevations of the Base Flood, existing ground, proposed
981 finished ground, lowest floor, and flood proofing limits; ~~certified by a~~
982 ~~Registered Professional Engineer, Surveyor,~~registered professional engineer
983 ~~or Architect~~licensed professional surveyor.
984
985 (3) A Flood ~~proofing~~Proofing Certificate, FEMA 81-65, as revised by FEMA, shall
986 be prepared by the ~~Registered Professional Engineer or Architect~~registered
987 professional engineer who prepared the plans in (1) above, stating the
988 structure in question, together with attendant utility and sanitary facilities ~~is~~are
989 designed so that:
990
991 a. The structure is ~~water tight~~watertight with walls substantially impermeable
992 to the passage of water from the lowest structural element to two feet
993 above the Base Flood Elevation.
994

- b. The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

~~(b)~~(c) For Appurtenant structures constructed of flood resistant materials – used solely for parking of vehicles, or limited storage, ~~(Accessory (Appurtenant Structures only)~~

- (1) ~~Plans showing~~A site plan prepared by a licensed professional surveyor or others of demonstrated qualifications showing elevation of existing ground, proposed finished ground and lowest floor. The plan shall also show details of all proposed flood proofing measures, resistant materials usage and showing the size of the proposed structure and its relation to the lot where it is to be constructed. The location of the Floodway boundary shall be represented on the plan when a Floodway is present on the site.

- ~~(1) A completed~~An Elevation Certificate showing elevation of existing ground, proposed finished ground, and lowest floor.

- (2) ~~A certificate, based on finished construction,~~ must be prepared by the Floodplain Administrator, that confirms a licensed professional surveyor or others of demonstrated qualifications. This certificate or report must confirm that the structure in question, together with attendant utilities is designed so that:

- a. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) are used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation ~~down~~ and that all utilities are located at least two feet above the Base Flood Elevation.

- ~~a.b.~~ Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or Architect~~registered professional engineer or architect~~ or meet or exceed the following minimum criteria:

1. 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.
2. The bottom of all openings shall be no higher than one foot above grade.

- 1039 3. Openings may be equipped with screens, louvers, valves or other
1040 coverings or devices provided that they permit the automatic entry
1041 and exit of floodwaters.

1042
1043 ~~4.(3) The~~ In addition, the applicant shall sign a ~~Non-conversion~~ Conversion
1044 Agreement and notify prospective ~~buyers~~ purchasers of the existence of the
1045 ~~agreement.~~ Non-Conversion Agreement. It shall be the responsibility of the
1046 applicant to transfer the ~~Non-conversion~~ Conversion Agreement to any ~~new~~
1047 ~~owner~~ purchaser at closing ~~viathrough~~ notarized signature. A ~~signed~~ copy of the
1048 ~~signed agreement~~ transferred Non-Conversion Agreement shall be provided to
1049 the ~~floodplain administrator~~ Floodplain Administrator. ~~Failure to transfer the~~
1050 Non-Conversion Agreement and provide a signed copy to the Floodplain
1051 Administrator shall subject the violator to the penalties set forth in Section 91-
1052 84 of this Ordinance.

1053
1054 **Sec. 91-~~53~~54. Site Plan Criteria.**

1055
1056 Site plans are required for all development, new construction and substantial
1057 improvements determined to be in a special flood hazard area and all proposed
1058 subdivisions and manufactured home parks. These proposals shall be reviewed by the
1059 Floodplain Administrator to assure that they are consistent with the need to minimize
1060 flood damage.

1061
1062 The owner or developer ~~of any proposed development, including Subdivisions and~~
1063 ~~Manufactured Home Parks,~~ shall submit a preliminary site plan to the Floodplain
1064 Administrator that includes the following information:

- 1065
1066 (a) Name of registered professional engineer, licensed professional surveyor, or other
1067 qualified person responsible for providing the information required in this section.
1068
1069 (b) A map showing the location of the proposed subdivision and/or development with
1070 respect to ~~the town's floodplain areas~~ Floodplain Areas, proposed ~~lots~~ lot sites, and
1071 ~~fills. In addition, it is required that all subdivision proposals and other proposed new~~
1072 ~~developments which are proposed to take place either fully or partially within the~~
1073 ~~approximated floodplain (F4) and which are greater that ten (10) lots or two (2)~~
1074 ~~acres, whichever is the lesser, shall include base flood elevation data using the~~
1075 ~~Flood Insurance Study (FIS) data. This data shall be prepared and certified by a~~
1076 ~~registered professional engineer or others of demonstrated qualifications, who shall~~
1077 ~~certify that the technical methods used correctly reflect currently accepted technical~~
1078 ~~concepts~~ fill areas.
1079
1080 (c) Where the subdivision ~~and/or development lies or~~ manufactured home park lie
1081 partially or completely in the floodplains special flood hazard areas, the plan map
1082 shall include detailed information giving the location and elevation of proposed
1083 roads, ~~public~~ utilities and building sites. All such maps shall also show contours at
1084 intervals of two (2) or five (5) feet depending upon the slope of the land and identify

accurately the boundaries of the ~~floodplain area~~ special flood hazard areas. A registered professional engineer or licensed professional surveyor must certify the site plan.

(d) All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the Approximated Floodplain Area (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include Base Flood Elevation data and shall delineate the Floodway.

(1) When a Flood Insurance Study (FIS) is available from FEMA, the data contained in that study must be used to substantiate the Base Flood Elevation.

(2) If a FEMA Flood Insurance Study is not available the required data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or State and Local Water Resource Department.

(3) If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.

(a) Where the subdivision or other development site lies partially in the floodplainspecial flood hazard area and all proposed development including fill will take place on natural grade a significant vertical distance above the floodplain areaApproximated Floodplain Area (Zone A) boundary depicted on the map, development of detailed Base Flood Elevation data may not be necessary. In these cases, the site plan for the proposed development must show contours at intervals of two (2) or five (5) feet depending on the slope, and clearly delineate the area to be developed and the location of the floodplain-area special flood hazard boundary as depicted on scaled from the FEMA map. A registered professional engineer, licensed professional surveyor, or others of demonstrated qualifications must certify the site plan.

Sec. 91-54.55. – Restrictions to Subdivision of land in floodplainspecial flood hazard areas.

Subdivision of land in the floodplainspecial flood hazard area mustshall result in lots that include a buildable portion outside of the identifiedspecial flood hazard area and to every extent practical shall be served by streets within the proposed subdivision having surfaces not lower than 1 foot belowat or above the base flood elevation of the line defining the floodplain-special flood hazard area limits. All new structures mustshall be sited on the portion of the subdivided lot that is located outside of the identifiedspecial flood hazard area.

DIVISION 6. – SPECIFIC REQUIREMENTS

1131
1132 **Sec. 91-61. Design and Construction Standards.**
1133

1134 ~~In order to~~To prevent excessive damage to buildings, structures, and related
1135 utilities and facilities, the following restrictions apply to all development, subdivision
1136 proposals, manufactured home parks, new construction and to construction of
1137 substantial improvements, and the repair of substantial damage, to existing structures
1138 occurring in the ~~Floodplain Area~~Special flood hazard area.
1139

1140 (a) Basements and Lowest Floors
1141

1142 ~~(1) Residential structures~~

1143 (1) Structures – All new construction, relocation, substantial improvements,
1144 including repair of substantial damage, of residential structures must have the
1145 lowest floor, including basement, ductwork, and utilities, elevated to two feet
1146 above the Base Flood Elevation.
1147

1148 ~~(2) Nonresidential structures~~

1149 (2) Non-residential Structures – All new construction, relocation, substantial
1150 improvements, including repair of substantial damage, of ~~nonresidential non-~~
1151 residential structures must have the lowest floor, including basement, ductwork
1152 and utilities, elevated to two feet above the Base Flood Elevation; or, together
1153 with attendant utility and sanitary facilities, be designed so that below the
1154 structure is water tight with walls substantially impermeable to the passage of
1155 water from the lowest structural element to two feet above the Base Flood
1156 Elevation ~~the structure is flood proofed in accordance with the requirements~~
1157 ~~detailed in this ordinance~~.
1158

1159 ~~(3) Fully enclosed structures below the lowest floor~~

1160 (3) Openings – For all new construction, relocation, substantial improvements, and
1161 repair of substantial damage, those fully enclosed areas below the lowest floor
1162 that are usable solely for parking of vehicles, building access or storage in an
1163 area other than a basement and which are subject to flooding shall be
1164 designed to automatically equalize hydrostatic flood forces on exterior walls by
1165 allowing for entry and exit of floodwaters. Designs for meeting this requirement
1166 must either be certified by a ~~Registered Professional Engineer~~registered
1167 professional engineer or meet or exceed the following minimum criteria:
1168

1169 ~~a. A minimum of two openings having a total net area of not less than one~~
1170 ~~square inch for every square foot of enclosed area subject to flooding shall~~
1171 ~~be provided.~~

1172 ~~b. a. The bottom of all openings shall be no higher than one foot above grade.~~

1173
1174
1175 ~~Openings may be equipped with screens, louvers, valves, or other coverings or devices~~
1176 ~~provided that~~

- a. 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;
- b. The bottom of all openings shall be no higher than one foot above grade;
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices if they permit the automatic entry and exit of floodwaters.

(4) A Non-Conversion Agreement shall be signed by the applicant on all flood-proofed structures and any elevated structures when the Floodplain Administrator determines that the area below the first floor could be converted to a non-conforming use (generally applies to the enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:

- a. The area below the Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this Ordinance;
- b. The applicant agrees to notify prospective purchasers of the existence of the Non-Conversion Agreement. It shall be the responsibility of the applicant to transfer the Non-Conversion Agreement at closing to the purchaser through notarized signature. A copy of a Non-Conversion Agreement shall be provided to the Floodplain Administrator. Failure to transfer the Non-Conversion Agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 91-84 of this Ordinance.

(b) Manufactured Home Placement

~~The~~Certain unique characteristics of ~~pier-supported structures-manufactured homes~~ installed in special flood hazard areas pose an elevated risk of ~~bodily harm and~~ substantial damage to property. Therefore, it is required that:

All~~Thus~~all manufactured homes to be ~~sited~~installed within the ~~identified~~special flood hazard areas ~~in~~of the City of Charleston shall be installed by a contractor possessing a valid ~~WV~~West Virginia Manufactured Home ~~Installer's license~~Installer's License. The installer shall use an installation design engineered to withstand flood hazards specific to the particular home site. ~~The installation design shall incorporate the following floodplain management requirements.~~ Manufactured homes to be installed or substantially improved within the special flood hazard areas shall be installed in accordance with the following standards:

- (1) ~~Elevation so that the~~The lowest floor, ductwork and utilities including HVAC/heat pump ~~are~~shall be elevated two feet above the Base Flood Elevation.
- (2) ~~Reinforced piers~~Elevation shall be on reinforced piers on a permanent foundation or other foundation elements of at least equivalent strength engineered for use in a flood hazard area ~~and attached to a permanent foundation.~~ Installation designs incorporating dry stacked block piers shall not be used in special flood hazard areas.
- (3) ~~The frame of the unit~~All manufactured homes shall be securely anchored to an adequately anchored ~~permanent~~ foundation system in accordance with the Code of Federal Regulations, Title 44 Chapter (1) Subpart (B) Section 60.3(b)(8). All manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse and, or lateral movement.
- (4) ~~Installation designs incorporating dry stacked block shall. Methods of anchoring may include, but are not be used in flood hazard areas.~~
- (3) Ground 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.
- (4) Permanently attached rigid skirts and perimeter wall skirts of brick or block must have openings to prevent collapse and damage to supporting piers. The openings must be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:
- a. 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.
- b. The bottom of all openings shall be no higher than one foot above grade.
- (5) Openings may be equipped with screens, louvers, valves, or other coverings or devices if they permit the automatic entry and exit of floodwaters.
- (6) Any additions to a manufactured home shall be similarly anchored and vented.

~~(5)(7) Flexible Skirting and rigid skirting not be considered permanent attached to frame or foundation system of a manufactured home are not required to have openings.~~

~~(8) A contractor possessing a valid WV Manufactured Home Installer's license The licensed West Virginia manufactured home installer installing the unit shall perform a site inspection and certify in writing that the manufactured home has been installed to the standards set forth above in this Ordinance.~~

(c) Accessory Appurtenant Structures

~~(1) Except as provided in subsection 2 below, Accessory When possible, appurtenant structures shall be located out of the floodplains special flood hazard area or elevated to two feet above the Base Flood Elevation.~~

(2) Where accessory appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:

a. Use of the structure shall be restricted to parking or limited storage.

~~a.1.~~ Structures shall be no more than 600 square feet in size and valued at less than \$10,000-00- (Ten thousand dollars).

~~b.2.~~ Floors shall be at or above grade on at least one side.

~~c.3.~~ Structures shall be located, oriented, and constructed to minimize flood damage.

~~d.4.~~ Structures shall 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.

~~e.5.~~ Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation.

~~f.6.~~ Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.

7. The venting Opening requirements contained in Section 91-61 (A):

Hydrostatic flood forces on exterior walls are applicable equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered

professional engineer or architect or meet or exceed the following minimum criteria:

g-(i) 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 strictly adhered to provided.

~~h. Shall not be used for human habitation.~~

(ii) A Nonconversion The bottom of all openings shall be no higher than one foot above grade.

(iii) Openings may be equipped with screens, louvers, valves or other coverings or devices if they permit the automatic entry and exit of floodwaters.

(3)b. In addition, a Non-Conversion Agreement shall be signed by the applicant, and recorded with the office of the County Clerk, stating that the use of the accessory appurtenant structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this ordinance Ordinance. The applicant agrees to notify prospective buyers purchasers of the existence of this agreement the Non-Conversion Agreement. It shall be the responsibility of the applicant to transfer the agreement Non-Conversion Agreement at closing to the new owner via purchaser through notarized signature, a. A copy of all new agreements the Non-Conversion Agreement shall be provided to the floodplain administrator. Floodplain Administrator. Failure to transfer the Non-Conversion Agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 91-84 of this Ordinance.

(d) Recreational Vehicle Placement

Recreational vehicles to be placed within any floodplains special flood hazard area shall either:

(1) Be installed in accordance with the manufactured home placement requirements and all other flood reduction requirements contained in this Ordinance; or

(2) Both:

i. Be on site for fewer than 180 consecutive days; and be

(1) ~~Be~~ fully licensed and ready for highway use ~~or~~

(2) ~~Meet the provision of Section 91-61 of this ordinance.~~

(3)ii. 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~~disconnected utilities ~~and~~, security devices, and has no permanently attached additions.

(e) Fill

The City of Charleston officially recognizes the beneficial functions the ~~floodplain~~Floodplain Area serves in storage and transportation of water during floods. ~~The placement of fill in floodplains has undesirable and detrimental effects on velocity, erosion and sedimentation rates causing increased flooding.~~

~~The City of Charleston officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. Placement of fill~~
Placement of fill in the ~~floodplains~~special flood hazard area is discouraged and should be minimized. ~~In the floodway, no fill shall be permitted~~

Placement of fill in other areas of the special flood hazard area shall be restricted to functional purposes such as elevating a structure. Fill shall only be permitted in the same permit with the related structure or other functional purpose. Placement of fill to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. The Floodplain Administrator may require the developer to provide compensatory storage before permitting fill.

No fill shall be permitted in the Floodway unless it meets the requirements of Section 91-41 of this ordinance. has been demonstrated through hydrologic and hydraulic analyses performed in accordance with currently accepted technical standards that the proposed fill will not result in any increase in the Base Flood Elevation.

All fill placed in the ~~floodplains~~special flood hazard area shall meet or exceed the following standards:

- (1) Fill shall be used only to the extent to which it does not adversely affect the subject property and adjacent properties. The ~~City of Charleston~~Floodplain Administrator may require the applicant to ~~show~~demonstrate through ~~hydrologic and hydraulic engineering techniques~~reports that proposed fill would not adversely affect the subject property and adjacent properties. ~~Hydrologic~~When required, hydrologic and hydraulic analyses shall be undertaken only by a professional ~~engineers or others of demonstrated qualifications, engineer~~ who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The ~~resultant~~resulting study shall include a cover letter, signed and sealed by the responsible

professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the City of Charleston Floodplain Administrator. During permit review the Floodplain Administrator shall consider the following issues that have the potential to cause adverse impact to the subject property and adjacent properties:

a. Unacceptable increases in flood heights.

b. Blocking drainage from the subject property and adjacent properties.

c. Deflection of floodwaters onto adjacent existing structures.

d. Increases to stream velocity initiating or exacerbating erosion problems.

e. Other unique site conditions may be considered when determining whether fill will cause adverse impact to the subject property and adjacent properties including, but not limited to, subsidence areas, karst topography, stream blockages, and steep topography adjacent to the channel.

(2) Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.

(3) A Fill Site must be contoured to drain properly (avoid ponding) consistent with pre-construction conditions. This provision does not apply to properly constructed impoundments which comply with the remainder of this Ordinance, and which are properly permitted by the West Virginia Department of Environmental Protection.

(4) Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in ~~following~~ subsection ~~for nonresidential~~5 below. For non-residential structures, fill shall be placed to provide access acceptable for intended use.

~~(3)~~(5) At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a ~~nonresidential~~non-residential structure.

~~(4)~~(6) Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted; no trash or woody debris shall be buried on site.

~~(5)~~(7) Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards must be

appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.

(6)(8) Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.

(9) Fill site and fill must be protected from erosion.

(7)a. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less ~~must~~will be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.

(8)b. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second ~~must~~will be protected from erosion by armoring them with stone or rock slope protection.

(10) ~~The applicant must~~All applicants placing fill in a special flood hazard area shall obtain a Conditional Letter of Map Revision (CLOMR-F) from FEMA when directed to do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant shall convert the CLOMR-F to a Letter of Map Revision based on Fill (LOMR-F) before a Certificate of Floodplain Compliance/Occupancy can be issued. The Floodplain Administrator is hereby appointed as the designated official to approve a request for a (CLOMR-F) or (LOMR-F), and shall cooperate with the applicant with respect to any requirements of FEMA for requesting a (CLOMR-F) or (LOMR-F), which includes, but is not necessarily limited to, approving said request and executing Form 1, "Overview & Concurrence Form" or other form as may be required by FEMA.

(9)(11) The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study (FIS) and/or Flood Insurance Rate Maps, (FIRM), when notified by the Floodplain Administrator, and ~~must~~shall pay any fees or other costs assessed by FEMA for this purpose.

(f) Placement of Buildings
Structures

(f) All buildings and other development

(1) All structures and other development shall be constructed and placed on the ~~lot so as~~property to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.

(i)(1) Whenever possible, structures and other development shall be constructed with the longitudinal axis parallel to the direction of flood flow and,

(ii)(2) ~~So~~In so far as practicable, structures and other development shall be placed approximately on the same flood-flow lines as those of adjoining structures or development.

(g) Anchoring

(1) All ~~buildings and~~ structures and other development including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.

(2) All air ducts, large pipes, swimming pools, above ground gas and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation or lateral movement.

~~(3) All manufactured homes shall be anchored in compliance with the requirements of 42 CSR Series 19, Sections 10.1, 10.2, and 10b et seq. Anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to foundation elements, such as the following:~~

~~a. Over the top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side for manufactured homes less than 50 feet long.~~

~~b. Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side.~~

~~c. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.~~

~~d. (1) Any additions to a manufactured home shall be similarly anchored. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.~~

(h) Flood Protection Setback

(1) A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank ~~or~~ 25 of 50 feet, whichever is less, shall be maintained from the top of the banks of

all watercourses. Specifically, as for oil and gas wells and well pads, no well pad may be prepared or well drilled within 100 feet from any perennial stream, natural or artificial lake, pond, reservoir, or wetland. [See W.Va. Code §22-6A-12(b)]. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks and enhance aquatic resources. ~~The Kanawha and Elk Rivers shall be exempt from the setback provision due to the large flood carrying capacity of the rivers.~~

~~(2)~~ Necessary public works and temporary construction may be exempted from this subsection.

~~(2)~~ The at the discretion of the Floodplain Administrator ~~may consider an appeal to.~~

(3) At the discretion of the Floodplain Administrator the Flood Protection Setback requirement can be waived in whole or part if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback ~~area~~Area. The ~~appeal~~ conditions shall be the minimum necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front, and back lot line setbacks.

(i) Storage

(1) No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal, or plant life, shall be stored below Base Flood Elevation. ~~except for mineral storage properly and wholly within the ground in compliance with other State environmental agency(ies) requirements.~~

(2) Storage of other material or equipment may be allowed if not subject to ~~major~~substantial damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.

(3) Due to the potential of masking the natural elevation and making it more difficult to enforce this ~~ordinance~~Ordinance, material that resembles "fill" material shall not be considered "storage" material for purposes of this subsection.

(j) Utility and Facility Requirements

(1) All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

- (2) All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- (3) All other new or replacement public ~~and~~/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
- (4) Onsite waste disposal systems shall be located to avoid impairment to ~~them~~the ~~system~~ or contamination from ~~them~~the system during flooding.

(k) Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard areas as well as around structures on slopes within zones AH and AO to guide floodwaters around and away from proposed structures.

(l) Backflow Preventers

Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the ~~floodplains~~special flood hazard area Floodplain Area.

DIVISION 7. – ADMINISTRATION

Sec. 91-71. Designation of Floodplain Administrator.

~~The Plans Reviewer is hereby appointed as~~ Floodplain administrator ~~Administrator~~ is vested with the responsibility, authority and means to implement the commitments made herein. Upon appointment of a new Floodplain Administrator, the City shall give notice to The State Coordinating Office and FEMA. Within one year of his or her appointment, the new Floodplain Administrator shall attend the State/FEMA sponsored NFIP Class 273 entitled "Managing Floodplain Development" and remain current with State required continuing education annual training per W.Va. Code §15-5-20a. In the absence of a formally appointed Floodplain Administrator, the duties set forth in this Ordinance for the Floodplain Administrator shall be temporarily fulfilled by the Planning Director or his or her designee.

The Floodplain Administrator shall administer and implement this local law Ordinance by granting or denying floodplain development permits in accordance with its provisions. The Floodplain Administrator shall also be responsible for submitting all required reports to FEMA concerning participation in the National Flood Insurance Program.

Sec. 91-72. Development Permits and Site Plan Approvals Required.

It shall be unlawful for any contractor, person, individual, partnership, estate, trust,

association, business, limited liability company, joint venture, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, repair of substantial damage, the placement or relocation of any structure (including manufactured homes) within the City of Charleston, unless a permit application and standard site plan has been completed, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the regulatory floodplainspecial flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision, or otherwise developed, a detailed site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

Sec. 91-73. Approval of Permits and Plans.

(a) The Floodplain Administrator shall review, or shall cause to be reviewed, all permit applications and plans ~~in order~~ within 90 days (from the Permit Application submission date) to determine whether the proposed building sites are development is reasonably safe from flooding. Further, the Floodplain Administrator shall review all objections, comments, protest letters and other writings submitted in opposition of said Floodplain Permit Application and give due consideration to the same before granting or denying said Permit.

(b) All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the statethis Ordinance, State and all other applicable codesFederal Laws, Ordinances and ordinancesRegulations.

(c) The City of Charleston shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia Code.

(d) The City of Charleston, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code.

(e) The Floodplain Administrator shall require and keep on file copies of all necessary permitsany documentation pertaining to the permit from ~~thoseany other~~ governmental agencies ~~from which Federal.~~

After the filing of an Application for a Floodplain Permit and receiving a properly and timely filed objection to the issuance of a Floodplain Permit Application, but prior to the Floodplain Administrator's decision to grant or State Law requires approvaldeny the same, the Floodplain Administrator may, in his or her sole discretion, hold a public meeting wherein evidence can be taken or given by interested persons or parties. Said meeting shall record all testimony and receive all exhibits and evidence. Said meeting notice shall be mailed by certified mail return receipt requested to the Permit Applicant and the objecting person or entity and placed upon the agenda of a regularly scheduled

Board of Zoning Appeals meeting announcing the date, time, and place of said meeting not prior to 10 calendar days from official announcement. The meeting transcript and exhibits presented shall be filed in the official Floodplain Application Permit File.

~~The City of Charleston shall keep on file in perpetuity, in a location safe from natural hazards, all information supplied to the Floodplain Administrator.~~

Sec. 91-74. Application Procedures.

Application for a permit and/or site plan approvals shall be ~~made~~filed, in writing, in duplicate, on the forms supplied by the ~~Planning Department~~City of Charleston and shall include all information stipulated under ~~Article V~~Division 5 of this ~~ordinance~~Ordinance.

Sec. 91-75. Changes.

After the issuance of a ~~permit~~Floodplain Permit or site plan approval by the Floodplain Administrator or Floodplain Appeals Board, no changes of any kind shall be made to the application, permit, or any of the plans, specification or other documents submitted with the application without the written consent ~~or~~and approval of the Floodplain Administrator.

Sec. 91-76. Permit Placards.

The City of Charleston shall issue a permit placard, which shall be prominently displayed on the subject property during the time development is in progress. This placard shall show the number of the permit and the date of its issuance.

Sec. 91-77. Start of Construction.

Work on the proposed development shall begin within 180 days after the date of issuance of the Floodplain Permit or the Floodplain Permit shall expire unless a time extension request made in writing to the Floodplain Administrator and filed in the official Floodplain Permit Application File by the Floodplain Administrator is granted, in writing, by the Floodplain Administrator after a showing by the applicant of "justifiable delay" not caused by the negligence or lack of due diligence of the applicant. Any extension of the 180 day Start of Construction timeframe shall only be granted if the permit holder can demonstrate compliance with this Floodplain Ordinance, FIRM and/or FIS in effect at the time the extension is granted. All work on the proposed development must be completed within 18 months of permit issuance, at which time the permit shall expire, unless a time extension made in writing to the Floodplain Administrator and filed in the official Floodplain Permit File by the Floodplain Administrator is granted in writing by the Floodplain Administrator. The request for a time extension shall be in writing and shall state the reasons for the extension. When considering an extension, the Floodplain Administrator shall consider the following criteria:

1724 (a) Has the applicant diligently pursued the completion of the proposed development
1725 during the 18 months?

1726
1727 (b) Will the granting of the extension be detrimental to public safety, health, or welfare
1728 or injurious to other property?

1729
1730 **Sec. 91-78. Stop Work Orders, Inspections and Revocations.**

1731
1732 (a) Stop-Work Orders

1733
1734 (1) The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work
1735 Order Notice" for any development found ongoing without having obtained a
1736 ~~permit.~~Floodplain Permit. Disregard of a ~~stop-work-order~~Stop Work Order
1737 Notice shall subject the violator to the penalties described in Section 91-~~83~~84
1738 of this ~~local-law~~Ordinance.

1739
1740 (2) The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work
1741 Order Notice" for any development found non-compliant with the provisions of
1742 this lawOrdinance and/or the conditions of the ~~permit.~~Floodplain Permit.
1743 Disregard of a ~~stop-work-order~~Stop Work Order notice shall subject the violator
1744 to the penalties described in Section 91-~~83~~84 of this ~~local-law~~Ordinance.

1745
1746 (3) If the Floodplain Administrator issues a Stop Work Order Notice, the Floodplain
1747 Permit shall be stayed pending a determination of whether a violation actually
1748 occurred and/or abatement of the alleged violation, whichever occurs first.

1749
1750 (4) In the event of an Appeal on a Floodplain Permit, the Floodplain Administrator
1751 shall immediately issue a Stop Work Order Notice that shall remain in effect
1752 until a resolution of said Appeal.

1753
1754 (b) Inspections and Revocations

1755
1756 (1) During the ~~construction~~development period, the Floodplain Administrator or
1757 other authorized ~~official~~City, State or Federal Government Officials may inspect
1758 the premises to determine that the work is progressing in compliance with the
1759 information provided on the ~~permit-application~~Floodplain Permit Application,
1760 this Ordinance and with all applicable ~~laws~~Federal, State and ~~ordinances~~City
1761 laws, Regulations and Ordinances.

1762
1763 (2) If the Floodplain Administrator discovers that the work does not comply with
1764 the ~~permit-application or any applicable laws and ordinances~~Floodplain Permit
1765 Application, this Ordinance, or that there has been one or more false
1766 ~~statement~~statements or ~~misrepresentation~~misrepresentations by any applicant
1767 in the permitting process, the Floodplain Administrator shall issue a "Stop Work
1768 Order Notice" ~~and~~ revoke the permit, and request a temporary injunction in the
1769 Circuit or Magistrate Court of Kanawha County. The Floodplain Administrator

shall notify any appropriate agency or authority if the Floodplain Administrator finds a violation of any non-Floodplain Law, Regulation or Ordinance.

(3) The Floodplain Administrator or other authorized City, State or Federal Government Officials may inspect any development covered by this or previous Floodplain Ordinances to determine whether any portion of the development has been altered to be non-compliant with the requirements of this or other Ordinances.

Sec. 91-7779. Certificate of Floodplain Compliance.

(a) In ~~areas of the special~~ flood hazard area it shall be unlawful to occupy, or to permit the ~~use or~~ occupancy, of any building or premises, or both, or any part thereof hereafter created, erected, installed, changed, converted or wholly or partly altered or enlarged in its use or structure until a ~~certificate~~ Certificate of compliance Floodplain Compliance has been issued by the ~~Local~~ Floodplain Administrator stating that the building or land conforms to the requirements of this ~~local law~~ Ordinance. Occupying or using a building or premises in violation of this section shall subject the violator to the penalties described in Section 91-84 of this Ordinance.

~~(b)~~ In the special flood hazard area, it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or any part thereof hereafter created, erected, installed, or rebuilt until the utility inspector is in possession of a copy of the Certificate of Floodplain Compliance issued by the Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this Ordinance. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 91-84 of this Ordinance.

~~(b)(c)~~ In the special flood hazard area, it shall be unlawful to install a permanent utility connection to any building or premises, or both, or any part thereof hereafter created, erected, installed, or rebuilt until a certificate Certificate of compliance Floodplain Compliance has been issued by the ~~Local~~ Floodplain Administrator stating that the development conforms to the requirements of this ~~local law~~ Ordinance. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 91-84 of this Ordinance.

~~(e)(d)~~ A certificate Certificate of compliance Floodplain Compliance shall be issued by the ~~Local~~ Floodplain Administrator upon satisfactory completion of all development in ~~areas of the~~ special flood hazard.

~~(d)(e)~~ Issuance of the certificate Certificate of Floodplain Compliance shall be based upon the ~~inspections~~ inspection conducted as prescribed in this ~~ordinance or local administrative procedures~~ Ordinance and any finished construction elevation certificate, hydraulic data, flood proofing certificate, or encroachment analyses

which may have been required as a condition of ~~permit~~the Floodplain Permit approval process.

DIVISION 8. – APPEALS AND PENALTIES

Sec. 91-81. Appeals.

Whenever ~~any~~any person or entity is aggrieved by a decision of the Floodplain Administrator with respect to the ~~provision~~provisions of this ~~ordinance~~Ordinance, it is the right of that person or entity to appeal to the Board of Zoning Appeals, ~~which shall be known sitting~~ as the ~~BZA-Floodplain Appeals Board~~. Such appeal must be filed ~~in accordance with article 30 of the Zoning Ordinance~~Floodplain Administrator in writing, within thirty (30) days. Said Appeal shall be served by the aggrieved person by regular mail on all interested parties on the date that said Appeal is filed. Upon receipt of such appeal, the Floodplain Appeals Board shall set a time, date, and place not less than ten (10) nor more than sixty (60) calendar days for the purpose of hearing the City appeal. Notice of Charleston the time, date and place of the hearing shall be given to all interested parties by placing an announcement of said hearing date, time, and place on the agenda of the next regularly scheduled Board of Zoning Appeals meeting notice and to announce the date, time and place of the appeal hearing not sooner than 10 calendar days from said announcement date, at which time all may appear and be heard. The determination by the Floodplain Appeals Board shall be final in all cases, subject to any Appeal to the Circuit or Magistrate Court of Kanawha County, West Virginia, or any other Court of competent jurisdiction.

In the event an Appeal is filed wherein a Floodplain Permit grant has been ruled by the Floodplain Administrator, the Floodplain Administrator shall immediately issue a Stop Work Order Notice that shall remain in effect until a resolution of said appeal.

Sec. 91-82. Appeal Review Criteria.

(a) ~~All~~Only appeals contesting ~~only~~ the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the ~~Floodplain Appeals Authority Board~~.

~~All decisions on appeals to all other provisions~~**Sec. 91-83. Variances.**

If compliance with any of the requirements of this ~~ordinance~~Ordinance would result in an exceptional hardship to a prospective builder, developer or landowner, the City of Charleston may, upon request, grant relief from the strict application of the requirements.

(b) Considerations for the issuance of Variances to this Ordinance shall adhere to the following criteria:

- (1)(a) ~~Affirmative decisions~~A decision granting or denying the variance request shall only be issued by the Floodplain Appeals AuthorityBoard upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appealpermit would result in exceptional hardship to the applicant, and (iii) a determination that ~~the granting of an appeal~~the permit will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing ~~locals~~ laws, regulations or ~~ordinance~~ordinances;
- (2)(b) An affirmative decision granting a variance shall be issued only upon determination that it is the minimum necessary, considering the ~~flood hazard~~Special Flood Hazard Area, to afford relief. Financial hardship, used as ~~a sole criterion~~criteria, shall not be considered sufficient justification to grant ~~an appeal~~a variance;
- (3)(c) An affirmative decision granting a Floodplain variance shall 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 necessary to preserve the historic character and design of the structure.; and
- (4)(d) The Floodplain Appeals AuthorityBoard shall notify the applicant in writing ~~over and signed by a majority of the signature of a community official~~Floodplain Appeals Board that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, and (ii) such construction below the Base Flood Elevation increases risk to life and property. Such ~~notifications~~notification shall be maintained with a record of all decisions as required in ~~paragraph (4) of this section; and~~Ordinance.
- (5) The Floodplain Appeals AuthorityBoard shall (i) maintain a record of all decisions including justification for ~~their issuance~~the decisions, and (ii) report such decisions issued in its biannual report to the Federal ~~Insurance Administration~~Emergency Management Agency.
- (6) An affirmative decision shall not be granted for issuance of a Floodplain variance for any construction, development, use or activity within any ~~floodway area~~Floodway Area that would cause any increase in the Base Flood Elevation.

Sec. 91-~~8384~~. Penalties.

Any violation of this ordinance shall constitute a zoning violation and is subject to Article 37 of the Zoning Ordinance of the City of Charleston, as amended.

DIVISION 9. – GOVERNMENT ACTIONS

Sec. 91-91. Annexation.

(a) Upon annexation, the provisions of this ordinance shall immediately go into effect.

(b) All plats or maps of annexation shall show the Floodplain boundaries, Base Flood Elevation and location of the Floodway where determined.

(c) In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22(a)(9)(v) all Federal Emergency Management Agency participating governments must notify the State Coordinating Office and Federal Insurance Administration in writing whenever the boundaries of the governments have been modified by annexation or the governments has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. A detailed map showing the boundary change shall accompany the notice.

(d) NFIP participating governments must notify the State Coordinating Office in writing whenever the boundaries of the governments have been modified by annexation or the government has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. A copy of a map of the government boundaries suitable for reproduction, clearly delineating the new boundaries or new area for which the government has assumed or relinquished floodplain management regulatory authority must be included with the notification.

~~Sec. 91-92~~ Any person who violates any of the provisions of this ordinance is guilty if a misdemeanor, and upon conviction, shall be fined not less than fifty (50) dollars or more than five hundred (500) per violation. Each day may be considered a separate offense. The City of Charleston may seek an injunction in the Circuit Court of Kanawha County to restrain a person or unit of government from violating the provisions of this ordinance. The City of Charleston may also seek a mandatory injunction in the Circuit Court of Kanawha County directing a person or unit of government to remove a structure erected in violation of the provisions of this ordinance. If the City of Charleston is successful in any such suit, the respondent shall bear the costs of the action.

. Permits for Governmental Entities.

Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this Ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this Ordinance must provide a written statement setting forth the rationale for exemption and file the same with FEMA. In addition, the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

DIVISION 10.

~~DIVISION 9.~~ SEVERABILITY AND MUNICIPAL LIABILITY

~~Sec. 91-91.~~ Severability.

(a) If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect and for this purpose the provisions of this ordinance are hereby declared to be severable 101.

Sec. 91-92. Liability.

The granting of a permit or approval of a subdivision ~~or~~ development plan in an identified ~~flood-prone area~~ Special Flood hazard Area, shall not constitute a representation, guarantee, or warranty of any kind by the City of Charleston, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City of Charleston. ~~The City~~ This Ordinance does not create a private cause of Charleston urges all action. All applicants proposing ~~development~~ construction in or near a ~~flood hazard area~~ Floodplain Area are urged to locate ~~all development~~ construction as far away from, and as high above, all flooding sources as possible.

Planning Streets and Traffic Committee
Staff Analysis
May 22, 2023

REQUEST: Bill No. 7990 - A Bill to repeal and replace Chapter 91, Article II of the Code of the City of Charleston, as amended, relating to updating the floodplain regulations.

LOCATION: The Incorporated City of Charleston, WV

APPLICABLE CODE: Chapter 91, Article II of the Code of the City of Charleston

HISTORY: FEMA created new flood insurance rate maps for Kanawha County after the devastating Clendenin flooding. The new maps do not change anything in Charleston other than the publish date on the maps. However, FEMA requires local governments to update their ordinances to reflect the new map date. The last major revision to the regs was in 2007. Staff reviewed the State's latest model floodplain ordinance and are proposing changes based on their recommendations. Most of the changes relate to expanding the list definitions, adopting best practices, taking advantage of new technological advances with the mapping.

SUMMARY:

This proposal will bring the City's current flood ordinances into current compliance with mandates from FEMA and into parity with the State's Model Ordinance.

RECOMMENDATION AND FINDINGS:

Staff still recommends approval for the following reasons:

1. The adoption of updated map dates is necessary for federal compliance and insurance purposes, and
2. Bringing the City's flood ordinances into parity with the model State ordinances updates the code to the latest best practices in floodplain management.

1 **Bill No. 7993**

2

Passed by Council:

3 Introduced in Council

4 **May 1, 2023**

5 Introduced by:

Referred to:

6 **Beth Kerns**

Planning, Streets and Traffic

7

8 **Bill No. 7993** - A Bill to Amend and reenact Ordinance 7371 by establishing two-hour
9 parking from 8:00am to 5:00pm, Monday through Saturday on the northerly side of
10 Bigley Avenue from a point 43 feet west of Cora Street to a point 165 feet west of Cora
11 Street and amending the Traffic Control Map and Traffic Control File, established by the
12 code of the City of Charleston, West Virginia, two thousand and three, as amended,
13 Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

14 **Be it Ordained by the Council of the City of Charleston, West Virginia:**

15 Section 1. A Bill to Amend and reenact Ordinance 7371 by establishing two-hour
16 parking from 8:00am to 5:00pm, Monday through Saturday on the northerly side of
17 Bigley Avenue from a point 43 feet west of Cora Street to a point 165 feet west of Cora
18 Street

19 Section 2. The Traffic Control Map and Traffic Control File, established by the code
20 of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic
21 Laws, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are
22 amended, to conform to this Ordinance.

23 Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby
24 repealed to the extent of said inconsistency.