

STATE OF SOUTH CAROLINA  
PLEAS

CIRCUIT  
COUNTY OF CHARLESTON

PAUL BOEHM,

Appellant,

v.

TOWN OF SULLIVAN'S ISLAND  
BOARD OF ZONING APPEALS  
And TOWN OF SULLIVAN'S ISLAND,

Respondents.

IN THE COURT OF COMMON

FOR THE NINTH JUDICIAL

CASE NO: 2015-CP-10-1103

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SC Court of Appeals

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JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

**ORDER**

This matter came before the Court for a hearing on April 7, 2015, on the Appeal of Paul Boehm from the written Orders of the Town of Sullivan's Island Board of Zoning Appeals ("BZA"), dated April 10, 2014 and February 8, 2015. The BZA heard three appeals from Mr. Boehm and denied the appeals after concluding without any factual findings that Mr. Boehm's structure located on 2720B Goldbug Avenue on Sullivan's Island was a nonconforming accessory structure, a garage. By Order, dated November 19, 2014, this Court remanded the matter to the BZA "to make findings of fact based on evidence in the record to support their conclusion that the structure at issue is a garage under the terms of the Zoning Ordinance." On remand, the BZA made "findings of fact" in an Order, dated February 12, 2015. Mr. Boehm appealed from that Order, and that matter is before the Court. After considering the briefs and oral arguments of both parties, the record on appeal, and the terms of the Zoning Ordinance, the Court has

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determined that the decision of the BZA should be reversed and that the Town of Sullivan's Island should issue the requested permits to Mr. Boehm.

### STANDARD OF REVIEW

On appeal, the findings of fact by the BZA shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence. S.C. Code Ann. § 6-29-930 (Supp. 2011). "In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the Board is correct as a matter of law." Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004). Furthermore, "[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." Restaurant Row Assocs. v. Horry Cty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). "However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." Id.

### FACTS

The facts are not in dispute. In 2001, Mr. Boehm bought the property designated as 2720 Goldbug Avenue on Sullivan's Island after discussing same with the Town's then Zoning Administrator, who assured him that there were two principal buildings on the lot under the Zoning Ordinance. At that time, there were three structures on the property: the main house (a principal building), a small building containing a two bedroom apartment on the second floor above an enclosed unheated parking/storage area (a second principal building), and a carport for use by the main house (an accessory structure). In 2003, Mr. Boehm divided 2720 Goldbug into two condominiums, selling

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the primary residence to his son and retaining the apartment building as 2720B Goldbug Avenue.

In 2001, the Town issued a building permit to Mr. Boehm to build an accessory structure, a slat house adjacent to 2720B Goldbug for use as a deck by that structure. The residents of the apartment/dwelling have used the roof of the slat house as a deck ever since.

In 2009, Mr. Boehm applied for a variance to connect the slat house roof to the walkway at the back of 2720B. The BZA denied this request, relying on the Zoning Ordinance, Sec. 21-150(B) and (F)(3), which apply to "Two or more Principal Buildings on one lot." In the minutes of the meeting, there was no discussion as to whether 2720B was not a principal building.

During the years of his ownership, Mr. Boehm has continuously rented out 2720B as, and has had a rental license for, the dwelling for each of the last fourteen years. The apartment/dwelling has a separate electric meter and is connected to the City sewer system, both of which are not allowed for an accessory structure under the Zoning Ordinance.

In 2013, Mr. Boehm decided to make some improvements to 2720B and applied for a permit to elevate the roof of 2720B. The Town Zoning Administrator denied this request on the ground that 2720B was a garage, an accessory structure, and was already taller than the height restrictions for an accessory structure under the Zoning Ordinance. Mr. Boehm appealed that decision to the BZA.

During that same time period, Mr. Boehm applied for a permit allowing him to extend the existing roof of 2720B Goldbug to cover the exterior stairway and walkways.

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The Zoning Administrator initially granted Mr. Boehm a building permit for these improvements and inspected and approved the posts that were installed but subsequently issued a stop work order, because those same posts were outside the "existing footprint" of 2720B. Mr. Boehm appealed that decision to the BZA.

While inspecting the roof extension, the Zoning Administrator saw furniture installed around the perimeter of the slat house/deck and issued an order requiring that Mr. Boehm remove that furniture. Mr. Boehm had placed the furniture there for safety reasons when the BZA denied his variance request in 2009 asking that he be allowed to place a hand railing around the slat house roof. Mr. Boehm appealed that decision to the BZA.

At the first hearing, the BZA heard all of the above facts and then heard from a BZA member, who had recused himself because he lived next door to the 2720B property. This recused BZA member expressed his personal opinion that Mr. Boehm should not be allowed to improve his property. The BZA determined that the controlling question for all three appeals was whether 2720B was a principal building or an accessory structure and determined that, because it looked like a garage, it was a garage and denied all three appeals.

Subsequently, this Court remanded the matter to the BZA to make findings of fact to support its decision under the Zoning Ordinance. The BZA made six findings, all of which determined that 2720B contained an apartment which is a residence or a dwelling under the Zoning Ordinance. None of these findings supported the BZA's decision that the building containing a residence was a "garage" or an "accessory structure" as defined by the Zoning Ordinance.

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## CONCLUSIONS OF LAW

The Sullivan's Island Zoning Ordinance clearly defines a principal building as "any building in which the principal use of the lot is conducted." The principal use of 2720 Goldbug is residential, so any building located on that property in which there is a residence is a principal building. Each and every finding of fact of the BZA found that there was an apartment at 2720B. The Zoning Ordinance defines "residence" and "dwelling" as "a building or portion of a building arranged or designed to provide living quarters for a single family, with no structural features impeding free access throughout the entire structure by all members of the family." Apartment is not defined in the ordinance, but the Court concludes that an apartment is a residence/dwelling under the Zoning Ordinance. The Zoning Ordinance also defines a garage as "an accessory building or portion of a Principal Building used only for the private storage of motor vehicles ..., as an accessory use." Because 2720B contains a residence, it cannot be a garage. Because it contains a residence, it must be a principal building. The Court concludes that 2720B is a principal building under the Town of Sullivan's Island Zoning Ordinance and that the BZA's conclusion is arbitrary, capricious, not based on the law and an abuse of discretion.

The Zoning Ordinance further provides, in Sec. 21-150, "Nonconforming Uses," that "[i]n the event that two or more Principal Buildings occupy a single lot, said occupancy shall constitute a non-conforming use. One structure shall be designated conforming and the other(s) shall be non-conforming ..." The structure with the greatest livable square footage is the conforming use and the other principal building is non-conforming. Thus, 2720B is a nonconforming principal building.

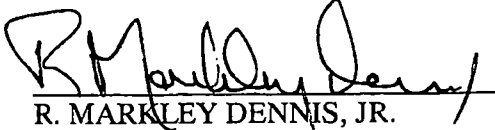
Principal buildings are allowed to have accessory structures under the Zoning Ordinance. The slat house, which acts as a deck for 2720B, is such an accessory structure to 2720B.

Under Sec. 21-151 of the Zoning Ordinance, "structural alterations, including enlargements, are permitted if the structural alteration does not increase the extent of nonconformity." The nonconformity of 2720B is that it is a second residence on the lot. None of Mr. Boehm's requests will increase the extent of nonconformity, because they are merely improvements to the existing one dwelling and will not increase the extent of the nonconformity. The Court concludes that the Town should issue to Mr. Boehm the permits needed to raise the roof and extend the roof over the existing stairs and walkway and should withdraw its Order to remove the furniture on the slat house roof, because there is no provision of the Zoning Ordinance prohibiting furniture on a slat house roof.

IT IS, THEREFORE, ORDERED that the Town of Sullivan's Island shall record on the Certificate of Occupancy for 2720B Goldbug Avenue that it is a nonconforming Principal Building in accordance with Sec. 21-150.F, Zoning Ordinance; shall issue to Paul Boehm a building permit allowing him to raise the roof of this principal building located on 2720B Goldbug Avenue so long as the raised roof is within the height restrictions for a principal building and issue a building permit to complete the roof extension on the posts previously installed; Thereafter the matter is remanded to the BZA for actions consistent with the Court's order.

AND IT IS SO ORDERED.

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R. MARKLEY DENNIS, JR.  
CIRCUIT COURT JUDGE

April ~~23~~ 2015  
Charleston, SC

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**PRATT-THOMAS | WALKER**

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SC Court of Appeals

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